

Varieties of decentralisation in German collective bargaining – experiences from metal industry and retail trade*

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1. Introduction.

Germany is well to the fore in terms of collective bargaining decentralisation in Europe (Keune 2011). In the international literature it is often regarded as a standard case of 'organised' or 'controlled decentralisation', within the framework of which the bargaining parties at sectoral level define the scope for derogations at company level via so-called opening clauses (Visser 2016; OECD 2017). In many European countries German experiences have served as an important reference point for reform of national collective bargaining systems.

The international perception of the German variant of decentralisation, however, is often rather one-sided and does not reflect German collective bargaining in all its diversity. There are at least two fundamental problems. First, its development is very much viewed through the lenses of major manufacturing industries, such as chemicals or metalworking, which industrial relations regimes differ very much from those in other sectors, such as private services (Dribbusch et al. 2017). In addition to a general overview of German collective bargaining and its decentralising tendencies, in this chapter we provide two in-depth case studies – one on the metal industry and one on retail trade – which provides a comprehensive picture of the differentiated world of collective bargaining in Germany.

Secondly, the concept of 'organised decentralisation' often takes too rosy a view and underestimates the level of conflict. As German experiences show clearly, collective bargaining decentralisation is not about a more or less 'intelligent' mode of regulation, but about different interests and power relations. It deals with the fundamental conflict between setting up a level playing-field for all companies and recognising the specific interests and circumstances of individual firms.

The trend towards decentralisation has fundamentally changed the German collective bargaining system. Organised and non-organised forms of decentralisation exist side by side, together with an overall trend toward the erosion of collective bargaining in some parts of the economy. While decentralisation often goes together with a shift in power from labour to capital, it sometimes creates new opportunities for revitalising union power.

2. Decentralisation of German collective bargaining – an overview.

2.1 Basic features of German collective bargaining.

The legal basis of collective bargaining in Germany is provided by the Collective Agreements Act of 1949 (*Tarifvertragsgesetz*) (Däubler 2016). Collective agreements can be concluded between employers' associations (or individual employers), on one hand, and trade unions, on the other. In contrast, works councils – the statutory employee representation bodies elected at workplace and company level – may conclude only works agreements (*Betriebsvereinbarung*), but not collective agreements. According to the Works Constitution Act (*Betriebsverfassungsgesetz*) works agreements 'may not deal with remuneration and other conditions of employment that have been fixed, or are normally fixed, by collective agreement' (Article 77, para 3). Germany has a so-called dual system of interest representation in terms of which unions conclude collective agreements, while works councils, as non-union bodies, have to regulate and monitor their implementation at company level.

Collective agreements are directly binding for all members of the bargaining parties concerned; that is, for employees who are members of the signatory unions and all member companies of

the signatory employers' associations, or a single company in the case of a company agreement. In practice, employers bound by a collective agreement usually apply the agreed provisions to all employees, regardless of whether they are trade union members or not. Collective agreements can also be extended by the Minister of Labour to include those employers and employees in the relevant sector who are not directly bound by the agreement. In practice, however, the extension of collective agreements is very rare and takes place only in a limited number of sectors (Schulten et al. 2015).

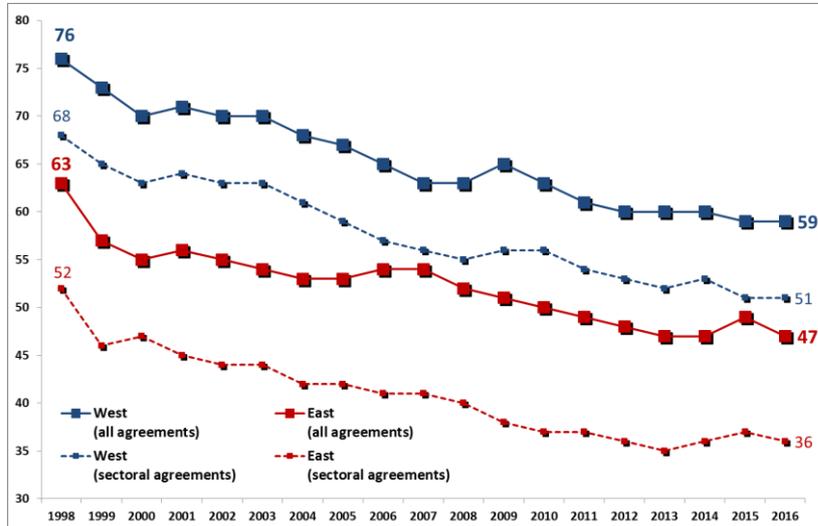
According to the 'favourability principle' (*Günstigkeitsprinzip*), departures from collectively-agreed provisions are usually possible only when these favour employees. For example, a works agreement can provide better employment conditions than a collective agreement, but may not worsen them. However, the bargaining parties may agree on so-called 'opening clauses' (*Öffnungsklauseln*) in collective agreements that allow, under certain conditions, a derogation from collectively agreed standards, even if this changes employment conditions for the worse.

There are two basic types of collective agreements in Germany: association-level or sectoral agreements (*Verbands- or Branchentarifverträge*) and company agreements (*Firmentarifverträge*) for individual companies or establishments. By the end of 2016, the German Ministry of Labour had officially registered 73,436 valid collective agreements, of which 30,463 were concluded at sectoral and 42,973 at company level (WSI 2017).

2.2 German collective bargaining: structure and trends.

Traditionally, the German model of collective bargaining was associated with a comprehensive system of sectoral agreements and a high bargaining coverage. Since the mid-1990s, however, it has undergone a series of profound changes that have led to an increasing fragmentation and partial erosion of the system (Schulten and Bispinck 2015; Addison et al. 2017). Based on the data provided by the annual IAB Establishment Panel, which is carried out by the Institute of Employment Research (IAB) of the German Federal Employment Agency, between 1998 and 2016 the proportion of workers covered by collective agreements in western Germany decreased from 76 to 59 per cent, while in eastern Germany the proportion fell from 63 to 47 per cent (Figure 1.1). The partial erosion of collective bargaining is even more pronounced with regard to sectoral agreements, the traditional core of the German bargaining model. According to IAB data the percentage of workers covered by sectoral agreements decreased from 68 to 51 per cent in western Germany and from 52 to 36 per cent in the east of the country.

Figure 1 Collective bargaining coverage in Germany, 1998–2016 (workers covered by collective agreements as a percentage of all workers)

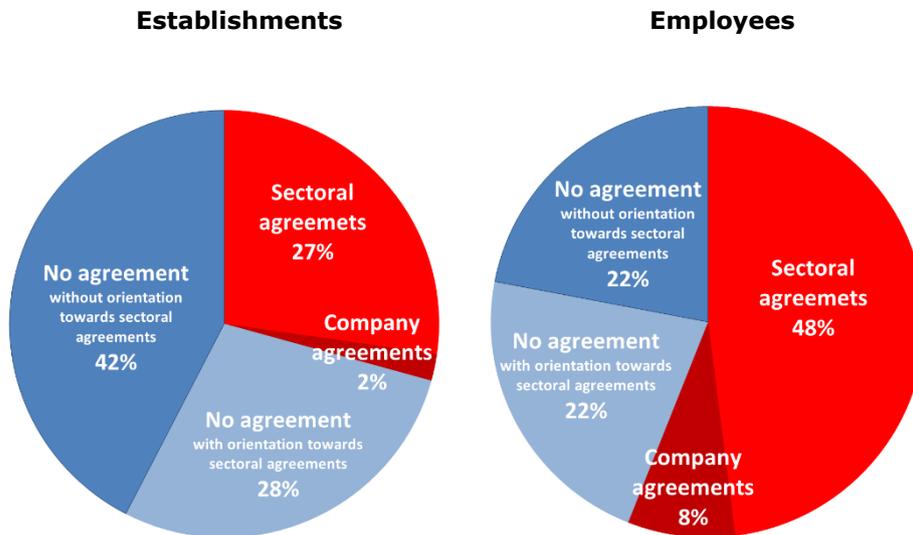


Source: IAB Establishment Panel (Ellguth and Kohaut 2017).

Among the 56 per cent of German workers who still had a collective agreement in 2016, 48 per cent were covered by a sectoral and 8 per cent by a company agreement (Figure 2). For about half of the 44 per cent of workers who are not covered by collective agreements, the companies claim that they take prevailing sectoral agreements as ‘orientation’ for their own in-house determination of wages and working conditions. The substance of the collective agreements is thus beyond the scope of formal bargaining coverage. As some recent studies have found, however, many companies that take their bearings from prevailing sectoral agreements, often provide for wages and conditions well below collectively agreed standards (Addison et al. 2016; Berwing 2016).

In general, larger companies are much more likely to be covered by collective agreements, while the majority of smaller companies have no agreement at all. Thus, the bargaining coverage of companies is rather low (Figure 2). In 2016, only 27 per cent of companies were covered by a sectoral agreement, 2 per cent had a company agreement, while the majority – 70 per cent – of all companies were not covered by collective agreements (among them 42 per cent that claim to take prevailing sectoral agreements as orientation).

Figure 2: Collective bargaining coverage in Germany as a percentage of establishments and employees, 2016



Source: IAB Establishment Panel.

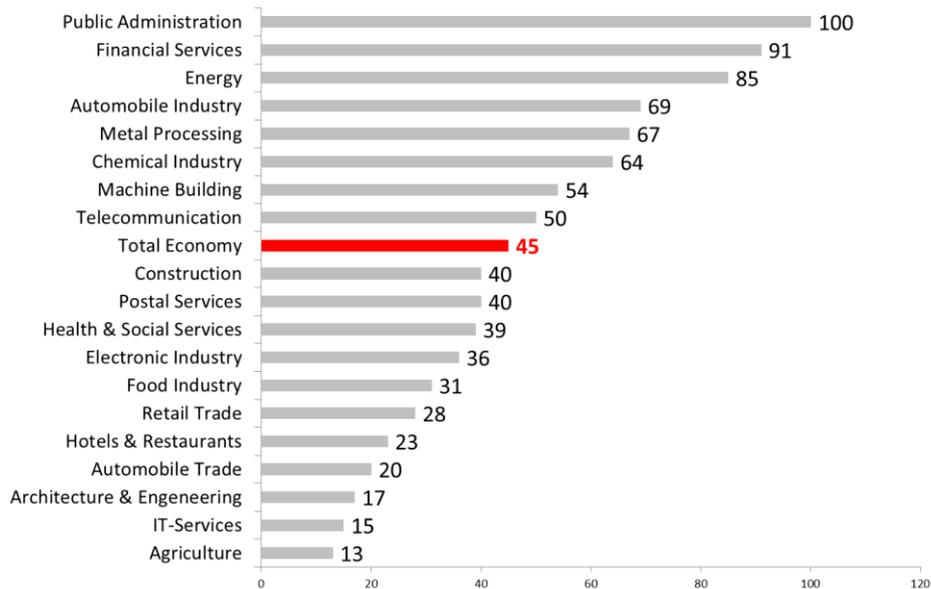
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The IAB establishment panel has been the standard source for calculating collective bargaining coverage in Germany for years. More recently, the German Statistical Office has published an alternative calculation, based on the German Structure of Earnings Survey (SES). According to the latter, overall bargaining coverage is not 56 per cent of employees (as calculated by the IAB), but only 45 per cent (Statistisches Bundesamt 2016a).¹¹⁸²

The advantage of the SES data is that they provide more detailed information on collective bargaining coverage in different sectors (Figure 3). In some branches, such as public administration, financial services or energy, the vast majority of workers – 80 per cent or more – are still covered by collective agreements. The same holds true for some core manufacturing industries, such as the automobile or chemical industries, in which around two-thirds of workers are still covered by collective agreements. Sectors such as construction, postal services and health and social services show a bargaining coverage of around 40 per cent. Finally, in a large number of private service sectors, such as retail trade, hotels and restaurants, automobiles or IT services, only a minority – less than 30 per cent – of workers are covered by collective agreements.

¹¹⁸² There is no satisfying explanation for the difference so far. Both the IAB and the SES data are representative for all groups and sizes of companies. From conversations with the data providers it emerges that, due to differences in the methodology of the surveys, IAB data might slightly overestimate and the SES data slightly underestimate bargaining coverage, so that the real figure might be somewhere in the middle.

Figure 3 Collective bargaining coverage in selected sectors, 2014 (workers covered by collective agreements as a percentage of of all workers)



Source: Statistisches Bundesamt (2016) using data of the German Structure of Earnings Survey (SES).

Finally, there is a close relationship between collective bargaining coverage and wage levels. Compared with other European countries, Germany exhibits a rather unusual pattern, whereby bargaining coverage increases with wage level. According to SES data, workers in the two lowest wage quintiles have a bargaining coverage of only 27 per cent. In contrast, 66 per cent of workers in the highest wage quintile are covered by a collective agreement (Bundesministerium für Arbeit und Soziales 2017: 74). This shows that the decline of German collective bargaining has been particularly marked in the low-wage sector, in which only a minority of workers are still protected by collective agreements. Studies have also identified the decline in bargaining coverage as the single most important reason for the growing wage inequality in Germany (Felbermayr et al. 2015).

2.3 Decentralisation of collective bargaining.

The German system of collective bargaining has always been characterised by a highly differentiated interplay between sector- and company-level regulations. Trade unions and employers' associations agree on certain minimum conditions at sectoral level in order to limit competition on labour costs and to demarcate a level-playing field. Management and works councils implement agreements at company level and typically negotiate additional social benefits. Apart from a relatively clear division of labour between the two bargaining areas, there were always some overlaps as the sectoral agreements include some opening clauses which allow room for regulation at company level. This started as early as the 1960s and 1970s with opening clauses on work organisation and additional payments and continued in the 1980s with opening clauses on working time, which were agreed in exchange for working time reductions.

The major push for the decentralisation of German collective bargaining came in the 1990s, against the background of a deep economic crisis in the aftermath of German unification. A growing number of employers started to criticise the system of sectoral collective agreements for being 'too rigid' and for not providing sufficient 'flexibility at the company level'. Originally, the demands for derogations from sectoral agreements came particularly from companies in severe economic difficulties. In a context of increasing unemployment in Germany, sectoral agreements from the mid-1990s increasingly included 'hardship clauses' whereby companies obtained the right to derogate from sectoral standards in exchange for the safeguarding of jobs. At first, such deviations were possible only under relatively strict conditions. However, over time the criteria for opening clauses were no longer restricted to the danger of bankruptcy but were widened to embrace all kinds of situations and motivations, including even 'improving competitiveness' (Bispinck and Schulten 2010).

Demands for the decentralisation of collective bargaining came first of all from the employers, with considerable support from mainstream economics (for example, Ochel 2005). There was also a strong push for decentralisation from political parties, which sometimes called for a statutory opening clause or a revision of the favourability principle (Bispinck and Schulten 2005).

Among the German trade unions the issue of decentralisation was much more contested (Bispinck 2004a; Bahn Müller 2017). The Chemical Workers Union (IG BCE), for example, has taken a more proactive stance since the early 1990s and has agreed on some major opening clauses regarding wages, annual bonuses and working time. In this way, IG BCE was able to establish a system of controlled decentralisation whereby the union and not parties at the company have the final say on derogations. In the view of IG BCE this approach has helped the union to stabilise the entire bargaining system in the chemical sector (Erhard 2007; Förster 2008). In contrast, most other unions originally took a much more sceptical view and tried, if not to prevent at least to limit the spread of opening clauses, which were widely regarded as a fundamental threat to the concept of sectoral bargaining.

In practice, however, all unions were more or less ready to accept company deals with deviations from sectoral agreements, especially when the companies threaten the loss of employment. The debates with the unions came to a turning point in 2004 when the Metalworkers Union IG Metall concluded the Pforzheim Agreement, which includes a general opening clause and some procedural rules for controlled decentralisation.¹¹⁸³ After this milestone agreement, similar opening clauses have been concluded in almost all major sectors (Bispinck and Schulten 2010). As a result, the use of opening clauses for derogations at company level became a new norm in German collective bargaining.

2.4 The use of opening clauses in practice.

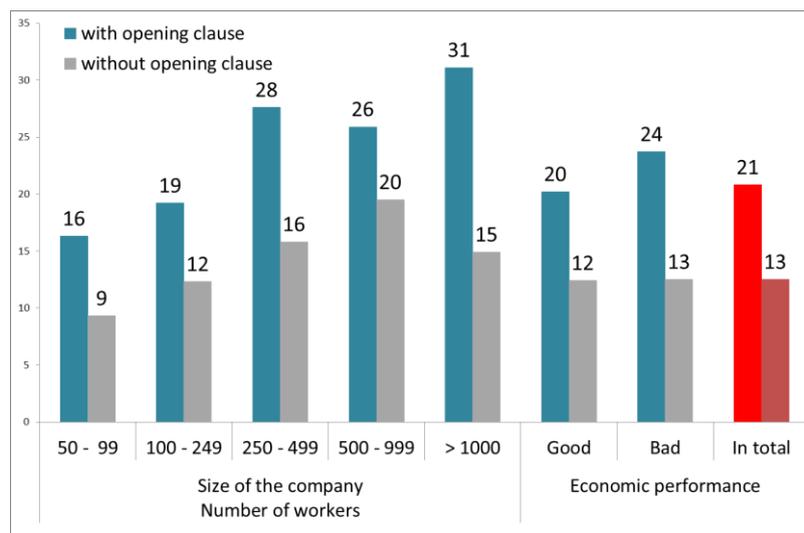
There are only a few studies and data sets with empirical information on the spread of opening clauses in German collective bargaining (Bispinck and Schulten 2003, 2010; Brändle and Heimbach 2013; Ellguth and Kohaut 2010, 2014; Amlinger and Bispinck 2016). One dataset with information on the use of opening clauses is the IAB Establishment Panel, which provides data for 2005, 2007 and 2011 (Ellguth and Kohaut 2014: 441). According to the IAB data, in 2011 20 per

¹¹⁸³ On the Pforzheim Agreement see the section on the metal industry.

cent of all establishments covered by collective agreements, representing about 35 per cent of all workers, made use of some kind of opening clauses; 13 per cent used opening clauses regarding working time; and 10 per cent on pay issues (ibid.: 442). Usually, larger establishments use opening clauses more frequently than smaller establishments. There is no clear relationship between a company's resort to opening clauses and its economic performance; it is not limited to establishments in economic trouble (ibid.: 447).

Another data source with information on the use of opening clauses is the WSI Works Council Survey, which is a representative survey of establishments with at least 20 employees and a works council (Amlinger and Bispinck 2016).¹¹⁸⁴ The results from the WSI Survey are similar to those from the IAB data. All in all, in 2015 21 per cent of all establishments were covered by collective agreements that made use of opening clauses. In larger establishments the frequency is somewhat higher than in smaller ones. There is no clear relationship to economic performance, as opening clauses were used by 24 per cent of establishments with 'bad' economic performance and by 20 per cent of those whose economic performance was 'good' (Figure 4).

Figure 4 Derogations from collective agreements at company level, with or without opening clauses, 2015 (as a percentage of all companies covered by a collective agreement)



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

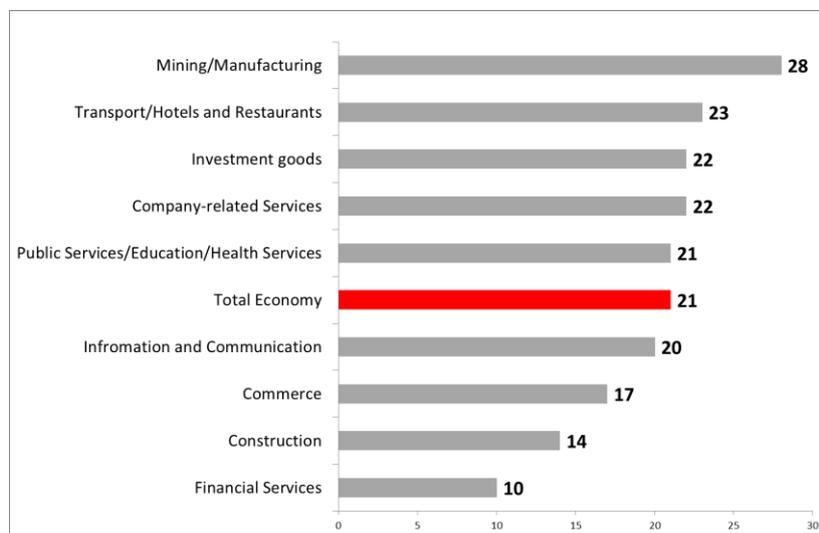
The WSI Survey also contains information on companies that derogate from collective agreements without the justification of an opening clause (Figure 4). In total, 13 per cent of all establishments declared that they practice some form of 'informal decentralisation'. This probably marks the lower extreme due to a number of undetected cases. Again such establishments might

¹¹⁸⁴ Because of changes in the questionnaire the data are not fully comparable with earlier versions of the WSI Survey. For an evaluation of the earlier version see: Bispinck and Schulten 2003, 2010.

be characterised by poor or good economic performance. The frequency of informal derogations increases with size of establishment, with the exception of very large companies (more than 1,000 employees), at which the frequency is somewhat lower.

In terms of sectors, the use of opening clauses is most widespread in manufacturing (28 per cent), transport and hotels and restaurants (23 per cent), investment goods and company-related services (both 21 per cent). Use is very much below average in construction and financial services (Figure 5).

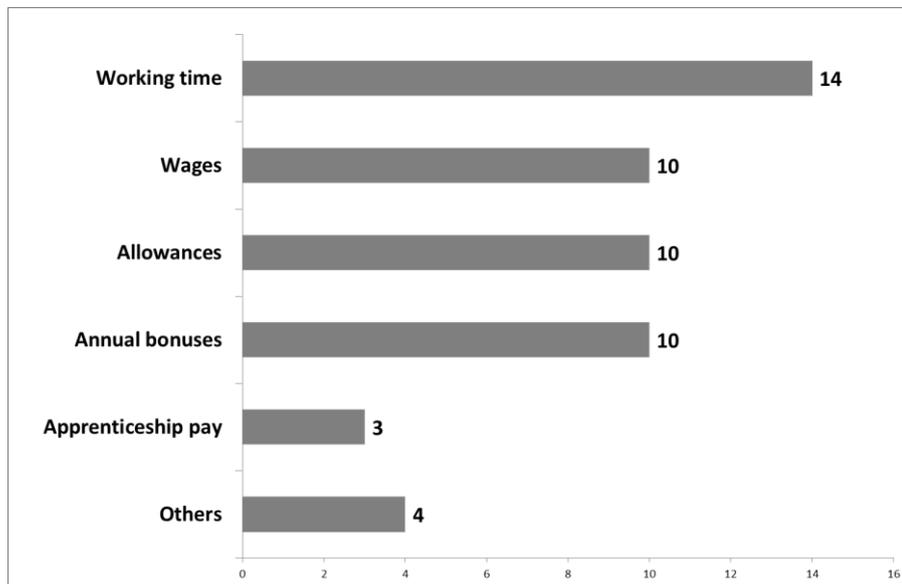
Figure 5 Use opening-clauses in various sectors, 2015 (percentage of all companies covered by collective agreements)



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

In terms of topics the opening clauses used most often concern working time, including provisions for reduction or extension of working time or for flexible working time arrangements. Of equal importance are opening clauses on wages, allowances and annual bonuses. Opening clauses are used relatively rarely with regard to apprenticeship pay or other issues (Figure 6).

Figure 6 Topics of used opening-clauses, 2015 (percentage of all companies covered by collective agreements)



Source: WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

2.5 Procedural rules on opening clauses.

There are some significant differences regarding procedural rules for opening clauses. The standard form, which was developed in the first half of the 1990s in the chemical industry (Erhard 2007), follows the following procedure. First, the union and employer association agree to introduce an opening clause, its content and concrete conditions and procedure for its adoption. The content can be conclusive or it can define scope for derogation at company level. Usually, the parties at company level – management and work council – have to make a joint application to the sectoral bargaining parties, which make the final decision on the derogation. The basic idea underlying ‘controlled decentralisation’ is that companies cannot opt for derogation as they see fit. However, sometimes the sectoral parties also delegate competence for the final decision to the parties at company level. This is the case in particular when the issue is of minor importance.

Since the adoption of the Pforzheim Agreement in the German metal industry in 2004 many sectors have agreed on general opening clauses, which mainly define procedural rules but say nothing about the content of derogation. The latter is usually the result of bargaining between the union and the company with the participation of all actors at both sectoral and company level. Concrete derogations are often laid down in a company agreement. There are some further procedural rules which usually need to be recognised when using opening clauses:

- companies have to open their books to justify the need of derogations;
- derogations have to be terminated after a certain period of time;
- companies have to offer something in exchange for derogations (usually job security or new investment).

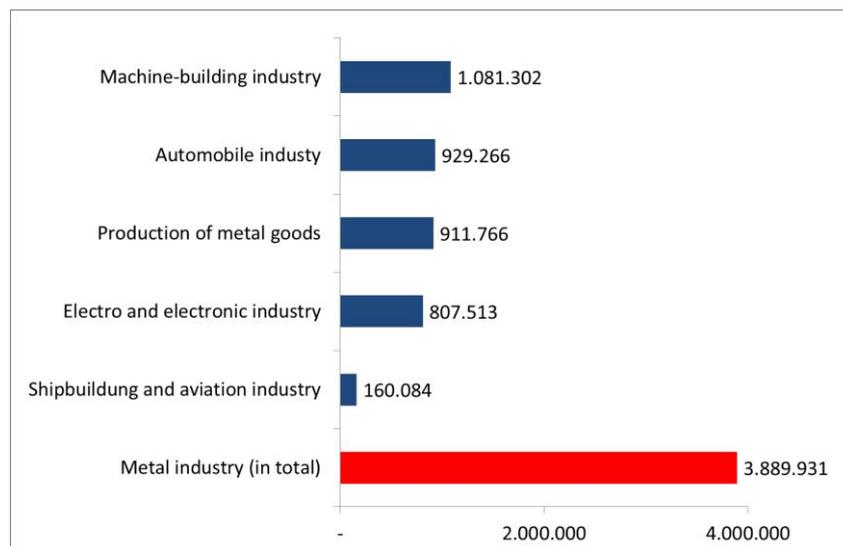
Finally, most trade unions also have internal coordination rules to control the use of opening clauses. Usually, every derogation has to be approved by a central coordination body, which has to check whether it is in line with the trade union's rules and principles and whether it has no negative consequences for other companies (for example, for the case of the Unified Services Union ver.di: Wiedemuth 2006).

3. Decentralisation of collective bargaining – the German metal industry.

3.1 Employment in the German metal industry – a sectoral profile.

The metal industry is Germany's key industrial sector with an annual turnover of more than one trillion euros. The sector comprises more than 24,000 companies with almost 3.9 million employees (Gesamtmittel 2016: 2). The largest sub-sectors within the metal industry are the machine-building industry, the automobile industry, production of metal goods and the electro and electronic industry (Figure 7).

Figure 7 Number of workers in the German metal industry, 2016



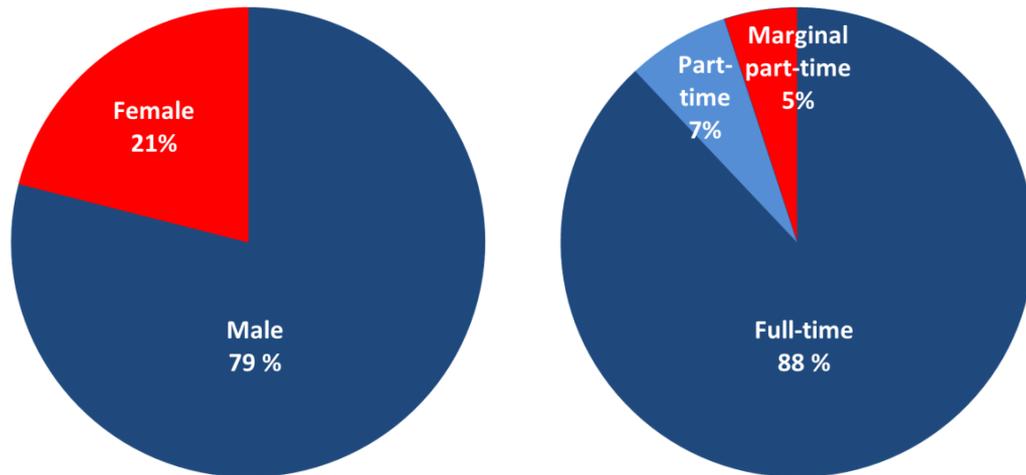
Source: Bundesagentur für Arbeit (2017), authors' calculations.

The German metal industry is heavily dependent on foreign markets as two-thirds of products and services are exported. Although there are a few large, well-known corporations, such as Volkswagen, Siemens, Bosch, Daimler and BMW, the industry is dominated by small and medium-sized enterprises (the famous *Mittelstand*). More than two-thirds of all metalworking companies have fewer than 100 employees, while only 2 per cent have a workforce of more than 1,000.

Regarding employment structure, metalworking is first of all a male-dominated sector: nearly 80 per cent of all metalworkers are men. In contrast to many other sectors the vast majority – 88

per cent – of employees work full-time, while only 12 per cent have a part-time or marginal part-time job (Figure 8).

Figure 8 Structure of employment in the German metal industry, September 2016 (percentage of all metalworkers)



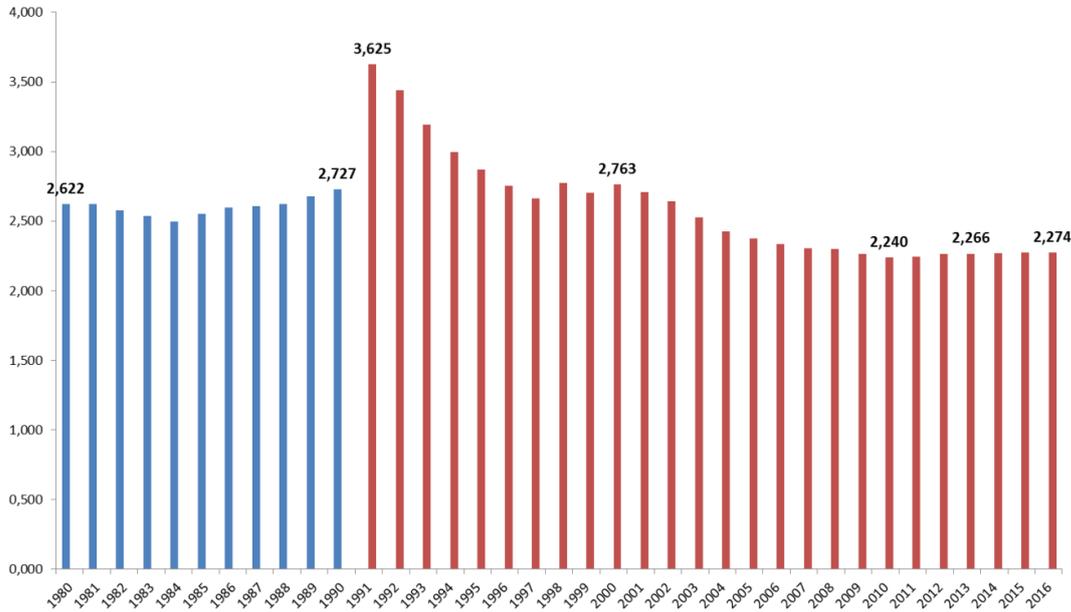
Source: Bundesagentur für Arbeit (2017), authors' calculations.

3.2 Trade unions and employers' associations in the German metal industry.

The two main collective actors in the metal industry are the German Metalworkers Union, *IG Metall*, and the Federation of German Employers' Associations in the Metal and Electrical Engineering Industries, *Gesammetall*. IG Metall is the largest affiliate of the Confederation of German Trade Unions (DGB), with about 2.27 million members in 2016. Apart from the metal industry, IG Metall also represents some other sectors, such as the metal trade, the steel industry, the wood industry and the textile industry.

After its membership had peaked in 1991 due to German unification, IG Metall was faced by a severe decline, which was largely the result of strong deindustrialisation in eastern Germany and continuous job losses in the west (Bispinck and Dribbusch 2011, Figure 9). After 2005, the metalworkers' union intensified its organising policy in order to turn the tide. In conjunction with a reviving economy the union had finally managed to slow down the decline before it was hit by the crisis of 2008/2009. After the crisis IG Metall was even able to realise a moderate increase in membership, but the absolute figures remain below the pre-unification level.

Figure 9 Membership of IG Metall, 1980–2016 (millions; until 1990: West Germany, from 1991: Germany)



Source: IG Metall.

About 30 per cent of the union's members are either unemployed or have retired. Almost 90 per cent of the active membership works in the metal industry. The union's main stronghold is the automobile industry, in which around 70 per cent of the employees are union members. At some car manufacturing plants union density remains at 90 per cent or even higher. Along the supply chain of the automobile industry, however, union density is weaker, with slightly more than 40 per cent of the employees being organised. Less organised are, for example, the electronic and IT industries, in which less than 30 per cent of employees hold a union membership card.

IG Metall's institutional strength at workplace level is also closely related to the existence of works councils. According to the representative Establishment Survey of the Institute for Employment Research (IAB), in Germany works councils exist only in 9 per cent of all establishments, representing 41 per cent of all employees. Their existence depends primarily on company size: in establishments with more than 500 employees about 90 per cent have a works council (Ellguth and Kohaut 2017). In 2014 about 71 per cent of all works council members within the organisational domain of IG Metall were members of the union, some 28 per cent were unorganised and a marginal 0.3 per cent were members of the small Christian Metal Workers' Union or CGM (Christliche Gewerkschaft Metall). In larger companies with 500 or more employees 80 per cent or more of the works councillors are members of IG Metall.

The employers' association in the metal industry, Gesamtmetall, is the largest federation in the Confederation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA), which is the peak organisation on the employers' side. Gesamtmetall is an

umbrella organisation of a large number of regional employers' associations in the German metal industry. These regional associations are the bargaining partners of regional sections of IG Metall when it comes to negotiations on industry-wide collective agreements. Traditionally, all companies that are member of the employers' association were automatically covered by the sectoral collective agreement. Since the 1990s, however, many employers' associations have introduced a special membership status, known as 'OT status' (OT = ohne Tarifbindung; 'not covered by the collective agreement'), which provides member companies with the association's full range of services, but relieves them of the duty to comply with the standards set by the industry-wide collective agreement. Gesamtmetall was initially against this type of membership but finally accepted it in 2005, acknowledging associations with 'OT' status as affiliates. Some companies take advantage of this special OT status but negotiate company-level agreements, often with the support of their employers' association. Others have withdrawn from collective bargaining, while some still take the sectoral collective agreements as orientation.

The number of member companies in Gesamtmetall with OT status has shown a continuous increase. About half of all member companies, representing about 20 per cent of the affected workers, now have OT status and thus are not obliged to accept the sectoral collective agreement in metalworking. In particular, small and medium-sized companies have used this status to withdraw from collective bargaining.

3.3 Collective bargaining in the German metal industry; structure and trends.

The dominant pattern of collective bargaining in German metalworking is sectoral bargaining. The metal industry is historically subdivided into 21 regional bargaining areas, in which the relevant employers' associations negotiate with the regional IG Metall organisations (IG Metall 2017: 12). The most prominent bargaining areas are in the federal states of Baden-Wuerttemberg and North-Rhine Westphalia, where the bulk of metalworking industry is concentrated. Collective bargaining in metalworking usually takes the form of pattern bargaining, whereby a pilot agreement is concluded in one bargaining area and then transferred – sometimes with some specific regional amendments – to the other bargaining areas. The sectoral collective agreements cover the whole range of sub-branches within the metal industry, including the automotive industry, machine-building and the electro and electronic industries. Only the iron- and steel industry, as well as the various metal trades have separate collective agreements.

The long-term development of collective bargaining coverage in the metal industry is difficult to describe as there are no consistent data series. Studies on bargaining coverage in Germany usually rely on data from the IAB Establishment Panel, which is a representative employer survey covering all branches and all sizes of company. The IAB Establishment Panel, however, does not provide figures for the metal industry but only for the whole manufacturing sector (Ellguth and Kohaut 2017). As a rough approximation to the metal industry figures are available for the sector 'capital goods and durable consumer goods', which covers most metalworking branches. On this basis, the figures indicate a relatively stable bargaining coverage of about 60 per cent during the past 8 years, which is only slightly above the national average (*Table 2.1*).

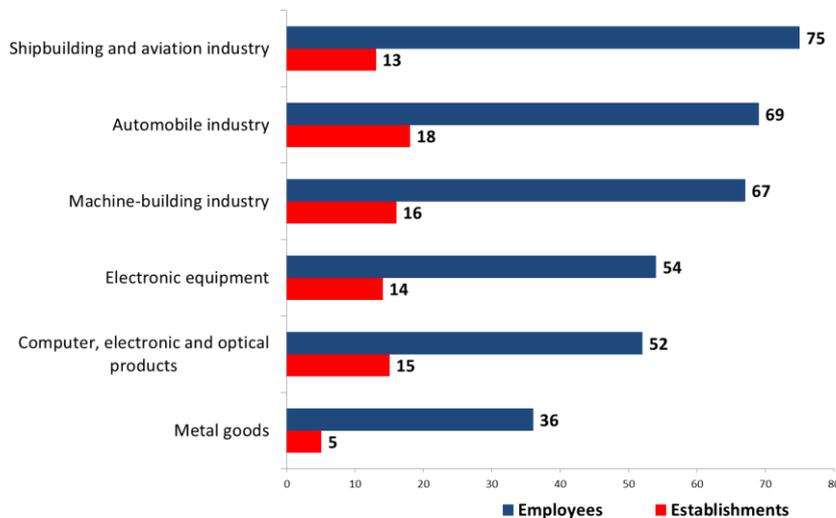
Table 1 Collective bargaining coverage in industries producing capital and durable consumer goods, 2009–2016 (% of all employees or establishments)

	2009	2011	2013	2015	2016
Employees	61	58	62	60	60
Establishments	32	24	22	26	21

Source: IAB Establishment Panel, special evaluation by the IAB for the authors.

Another source for measuring bargaining coverage is the German Structure of Earnings Survey (SES), which provides more detailed information but only for 2014 (Statistisches Bundesamt 2016). According to this, bargaining coverage of employees within the different sub-sectors of the German metal industry varies between 36 per cent in the production of metal goods and 75 per cent in the shipbuilding and aviation industry (Figure 5). In the automobile and machine-building industry coverage is 69 and 67 per cent, respectively. As bargaining coverage depends very much on the size of the company it is much lower in establishments, varying between only 5 per cent in metal goods and 18 per cent in the shipbuilding and aviation industry.

Figure 11 Collective bargaining coverage in sub-sectors of the German metal industry, 2014 (% of employees or establishments)

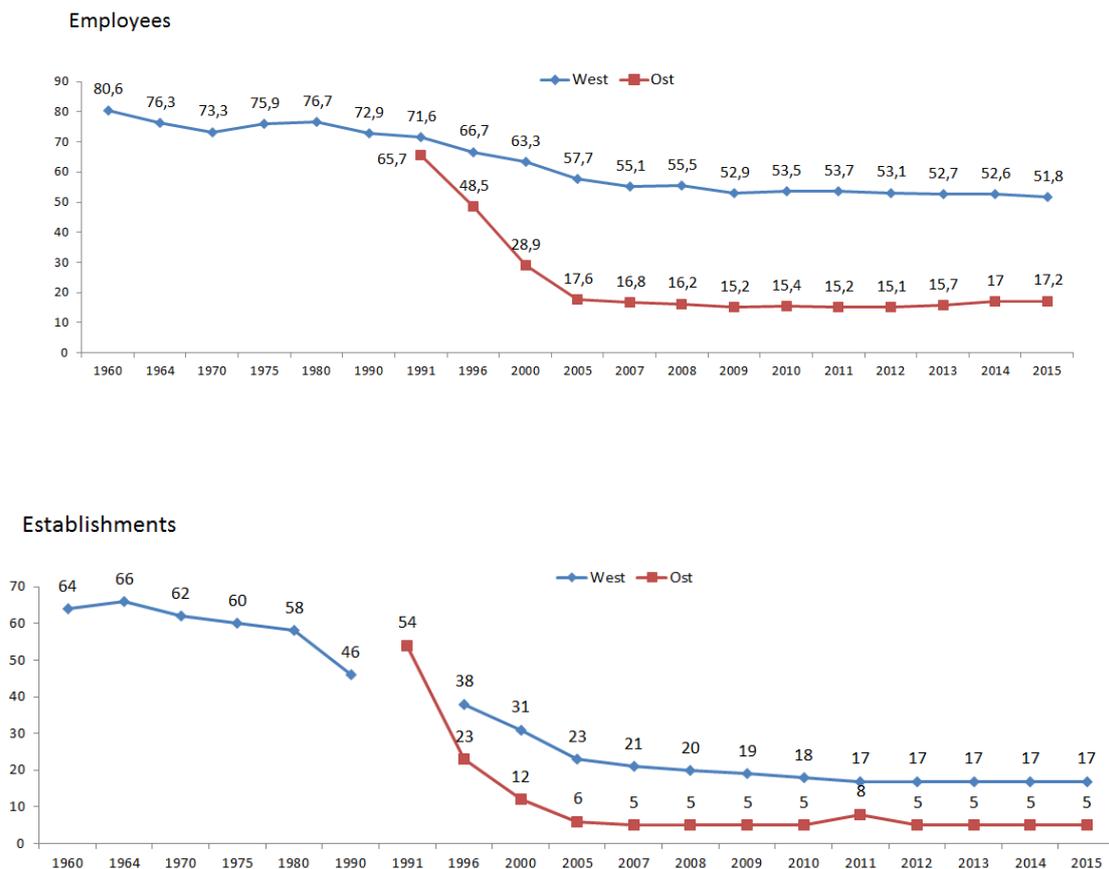


Source: German Structure of Earnings Survey (Statistisches Bundesamt 2016a).

A third source for calculating collective bargaining coverage in the metal industry is the membership data of the employers' association Gesamtmetall, which goes back to 1960. According to these figures, sectoral agreements in metalworking have undergone a remarkable decline (*Figure 11*). While in 1960 about 80 per cent of all metalworkers in western Germany were covered by sectoral agreements, that had fallen to just over 50 per cent by 2015. The decline started in the 1980s and accelerated in the 1990s. It slowed only at the end of 2000s. Since then it has remained relatively stable at a low level. In eastern Germany the situation is even more dramatic. After a sharp decline in bargaining coverage in the 1990s, only around 17 per cent of eastern German metalworkers are still covered by a collective agreement.

Turning to establishments, the figures are even more striking: only 17 per cent of western German and 5 per cent of eastern German metalworking companies are still covered by sectoral agreements. Although some establishments are covered by company agreements, the large majority of (mainly small-sized) companies in metalworking are not affected by collective bargaining.

Figure 12 Collective bargaining coverage by sectoral agreements in the German metal industry, 1960–2015 (% of all employees or establishments)



Source: Gesamtmetall, authors' calculations.

3.4 Decentralisation of collective bargaining in the metal industry.

The decentralisation of collective bargaining in the metal industry has a long history. Under the conditions of full employment in the 1960s, the trade unions demanded additional company bargaining (*betriebsnahe Tarifpolitik*) in order to obtain extra payments at company level and to regulate them within company agreements. At that time, the employers emphasised the value of sectoral agreements, which were seen as an important instrument for moderating wage increases. The picture changed with growing mass unemployment in the 1980s, when the employers started to demand more flexibility and (downward) derogations from sectoral agreements at company level.

The introduction and specific design of opening clauses as a form of 'organised decentralisation' has always been an issue giving rise to harsh conflicts and was sometimes even accompanied by industrial action. For a long time, IG Metall was very sceptical about using opening clauses, which were criticised for undermining the principal function of sectoral agreements, namely the determination of agreed standards for the whole sector and therewith the limitation of competition on wages and other labour costs (Bahnmüller 2017). In practice, however, the union was always open to negotiating special conditions for companies that were in real economic difficulties in order to safeguard employment. All in all, the process of decentralisation of collective bargaining in the metal industry stretches back over a period of more than 30 years (Bispinck 2004a; Haipeter and Lehndorff 2014). The main stages were as follows.

From 1984: Exchange of working time reductions for working time flexibility at company level

The decentralisation of collective bargaining in the metal industry started in the mid-1980s with the issue of working time. In exchange for a reduction of weekly working time, IG Metall made some significant concessions regarding more working time flexibility at company level. In the first years of working time reduction after 1984 the agreed standard of weekly working time of 38.5 hours had to be achieved only as an average. The bargaining parties later introduced a provision that up to 18 per cent of employees may, on a voluntary basis, have prolonged working time of 40 hours. In companies with a share of 50 per cent or more of high wage groups (engineering and developing companies) the 40-hour week may be applied to up to 50 per cent of employees. The same applies with regard to fostering innovation and countering shortages of skilled labour.

As a consequence, the 35-hour week, which was finally achieved in the western German metal industry in 1995, was never fully implemented for all metalworkers. For parts of the workforce it serves only as a reference value. Since 1994 the collective agreements provide additional regulations according to which working time can be reduced to 30 hours per week with corresponding lower pay in order to safeguard jobs. This was in response to the sharp economic recession in 1992/1993, which threatened employment especially in the metal industry.

1993: Hardship clauses in eastern Germany

Opening clauses concerning pay were introduced for the first time in 1993 in eastern Germany as a consequence of the deep transformation crisis that hit the metal industry in particular. After a very conflictual bargaining round with two weeks of strikes, IG Metall agreed to the introduction of a so-called hardship clause (*Härtefallklausel*) in the sectoral agreement. According to the clause, companies are allowed – under certain conditions – to deviate from collectively agreed pay. These deviations had to be negotiated not by the management and the works councils at establishment level but by the sectoral collective bargaining parties themselves. In practice, these provisions were used fairly often (Hickel and Kurtzke 1997).

From the mid 1990s: Derogations on pay in western Germany

While IG Metall rejected employers' demands for formal adoption of the eastern German hardship clause also in western Germany, from the mid-1990s it started to accept more and more company derogations also in western German collective agreements. The provisions for derogation were often relatively vague and did not contain specific procedural rules. The metalworking agreement in North Rhine-Westphalia, for example, had a provision according to which 'in case of severe difficulties – for example, in order to prevent insolvency – the bargaining parties shall make efforts to come up with special regulations.'

In the metalworking industry deviations from regional sectoral agreements became increasingly widespread during the 1990s (Haipeter and Lehdorff 2009: 33ff). While in eastern Germany the existence of the formalised hardship clause offered a defined procedure for regulating deviations at company level, in western Germany regional agreements contained only very general 'restructuring clauses' with no procedural requirements. As a result, a 'grey area' of company deviations emerged and grew (Bahnmüller 2017). Some deviations were backed by sectoral agreements; others de facto contravened collectively agreed standards, leading to a kind of 'wildcat cooperation' (Streeck 1984) at company level. Because of lack of transparency, IG Metall had de facto lost its power to control decentralisation at company level, which increasingly took on a 'disorganized' or 'wild' form.

2004: Pforzheim Agreement with the introduction of a general opening clause

The situation changed fundamentally with the adoption of the Pforzheim Agreement, which was concluded in the metal industry in February 2004. The agreement was not only the result of a conflict in German metalworking but also of a more fundamental societal conflict about the future development of the German collective bargaining system (Bispinck 2004b). In the early 2000s, Germany was widely regarded as 'the sick man of Europe' as its economic performance was comparatively weak and its unemployment one of the highest in Europe. The prevailing opinion at that time was that the economic weakness was grounded in 'overregulation' of the labour market. Thus, in 2013 the Red-Green government announced its notorious 'Agenda 2010', which contains a comprehensive programme for weakening labour market regulation. As part of his famous 'Agenda speech' in the German parliament, former chancellor Gerhard Schröder also

threatened to intervene in free collective bargaining through the introduction of a statutory opening clause if the bargaining parties themselves were not able to reach agreement on more possibilities for companies to derogate from sectoral agreements. The Pforzheim Agreement was to certain extent the price the unions had to pay to avoid those interventions.

The Pforzheim Agreement contains for the first time a general opening clause for the whole metal industry, according to which companies can derogate from sectoral agreements in order to 'secure existing employment and to create new jobs' through improvement of 'competitiveness, innovative capability and investment conditions' (see Box 1). In contrast to earlier opening clauses, the Pforzheim Agreement says little about the content of possible derogations but contains mainly procedural rules. If a company wants to deviate from the sectoral agreement, the management and the works council have to make a joint application to the sector-level bargaining parties; that is, the regional organisations of IG Metall and Gesamtmetall. If the latter agree on the derogations, IG Metall negotiates a supplementary company agreement with the company. In principle, such company agreements can deal with all kind of issues, such as 'cuts in special payments, deferral of claims, increasing or reducing of working hours with or without full wage compensation'. In practice, however, IG Metall usually accepted such company agreements only when the derogations are temporary and when the company gives a job guarantee for the period of derogation.

Box 1 Pforzheim Agreement, 2004

Collective agreement on competitiveness and securing of production sites for the metal and electrical industry, Baden-Württemberg, 25.2.2004*

§ 1 'The aim of this collective agreement is to secure existing employment and to create new jobs in Germany. This requires improvements in competitiveness, innovative capability and investment conditions. The collective bargaining parties are committed to these goals and to their of shaping the framework for enhanced employment in Germany.

§ 2 The parties at establishment-level examine whether measures under the existing provisions are exhausted to secure and promote employment. The collective bargaining parties advise – at the request of the parties at establishment level – what possibilities exist within the framework of collective agreements. If it is necessary, under consideration of the social and economic consequences, to secure a sustainable development of employment by deviating from collectively agreed regulations, the collective bargaining parties, together with the parties at establishment level, after joint examination, will agree on supplementary derogations from collectively agreed minimum standards; for example, cuts in special payments, deferral of claims, increasing or reducing working hours with or without full wage compensation (if not regulated in the collective agreement). A precondition for this is comprehensive information with associated documents. (...) In the overall assessment possible consequences on competition and employment in the sector or region, as far as establishments with the same collective bargaining coverage are concerned, should be included.'

* Since 2008 the Pforzheim Agreement has been is part of a 'collective agreement on the safeguarding and increasing of employment' (*Tarifvertrag zur Beschäftigungssicherung und zum Beschäftigungsaufbau*).

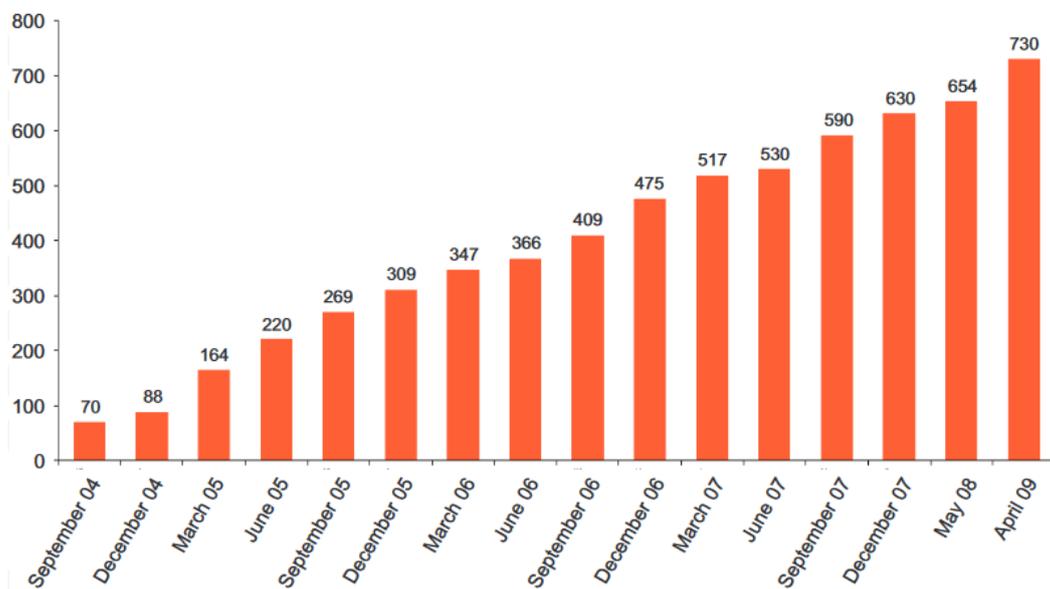
Source: Translation by the authors.

3.5 Decentralisation of metalworking collective bargaining in practice.

The main impact of the Pforzheim Agreement has been the reorganisation – to a considerable extent – of the earlier process of wild decentralisation. With the definition of a general procedural framework the sectoral bargaining parties were able to regain control of the decentralisation process. For IG Metall this meant that it had to give up its resistance in principle to widespread use of derogations at company level and to accept them as an established part of a more fundamentally revised bargaining system in the German metal industry (Bahnmüller 2017). This change of viewpoint, however, does not mean that the union automatically accepts all applications for derogation. On the contrary, decentralisation of collective bargaining often goes hand in hand often with tough conflicts at local level (see below).

As the Pforzheim Agreement gave both bargaining parties greater control over the process of decentralisation, they also have a much better knowledge of the scope of derogations. No coherent statistics are available, but from time to time both parties have published some information. According to data provided by Gesamtmetall, there was a steady rise in company-level derogations following the Pforzheim Agreement (*Figure 13*). In September 2004, only 70 cases were reported by Gesamtmetall, but by April 2009 the number had increased to 730.

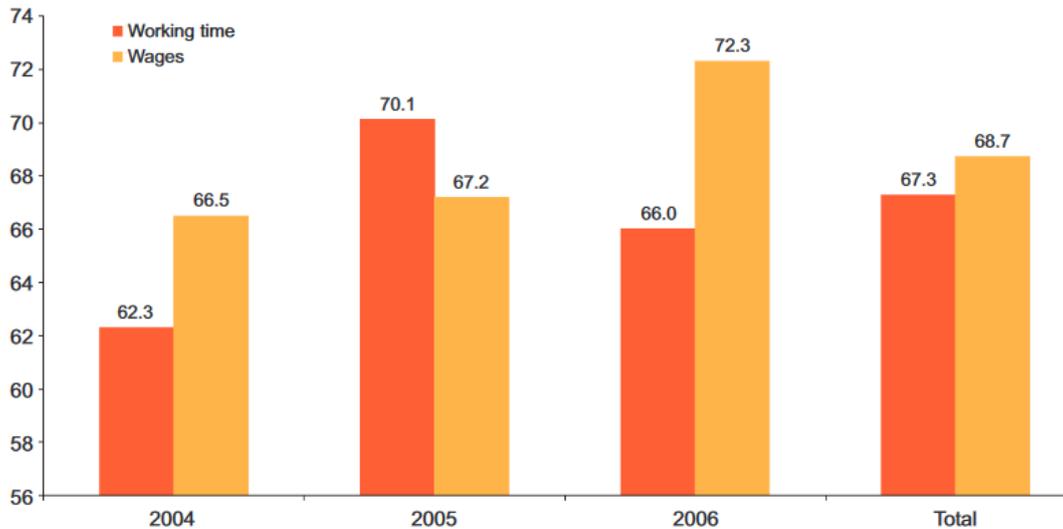
Figure 13 Number of company-level derogations from sectoral agreement in metalworking



Source: Gesamtmetall (2009).

The key topics addressed by derogation agreements were pay and working time. Between 2004 and 2006, about two-thirds of all agreements provided for company-level deviations on these two issues (*Figure 14*).

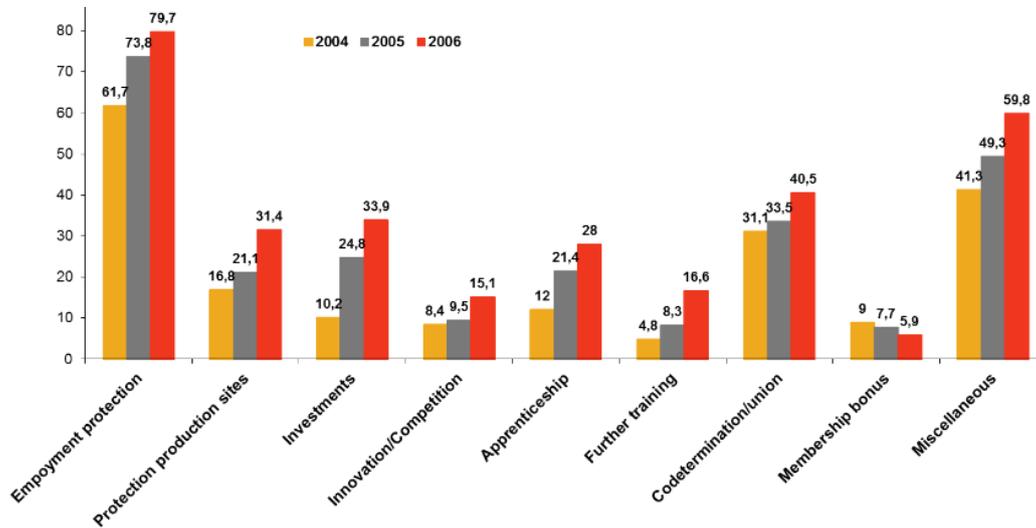
Figure 14 Issues addressed in derogation agreements in German metalworking, 2004–2006



Source: Haipeter and Lehndorff (2009: 37).

In exchange for employee concessions on pay and working time, employers have usually had to offer a *quid pro quo* (*Figure 15*). By far the most important issue for such 'counter concessions' is job protection, whereby the employer makes a commitment to refrain from compulsory economic terminations during the lifetime of the derogation agreement. In 2006, four out of five agreements contained a provision on job security (Haipeter and Lehndorff 2009: 39). Other important employer concessions have included extensions of workers' and unions' codetermination rights, and commitments to undertake new investment and retain operations at existing sites. Between 2004 and 2006, a rising proportion of derogation agreements entailed such employer commitments in return for deviations from agreed terms.

Figure 15 Share of counter-concessions by issue in all derogation agreements in German metalworking, 2004–2006

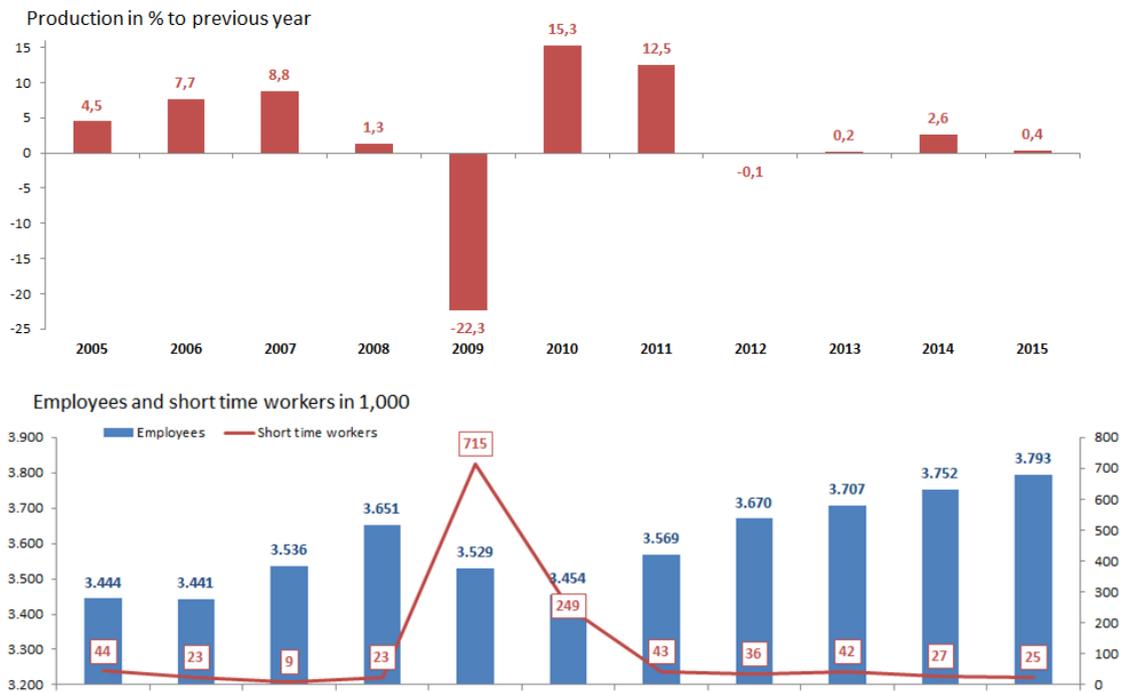


Source: Haipeter and Lehndorff (2009: 39).

Only few years after the conclusion of the Pforzheim Agreement the global financial and economic crisis hit the German economy; the metal industry was most severely affected as orders and production felt dramatically. The unions and the works councils came under pressure to give support when companies got into financial difficulties. While the employers demanded wage restraint and other concessions, for the unions employment security was the top priority. In practice, companies made excessive use of flexible working time arrangements (running down of working time accounts) and short-time work (Herzog-Stein and Seifert 2010).

Despite a sharp cut in production the employment level in the metal industry remained relatively stable (Figure 16). A similar development was observed in other sectors. This 'German jobs miracle' was interpreted as proof of the efficiency of the built-in flexibility of the labour market institutions and regulations.

Figure 16 Production and employees in M+E industry, 2005–2015



Source: Gesamtmetall (2016).

For more recent years the latest figures published by IG Metall (2016) cover 2012–2014 (2). One-third of company agreements regulate deviations from the sectoral agreements. In addition there are so-called recognition agreements (*Anerkennungstarifverträge*) that recognise the sectoral agreements, partially also with some derogations. Finally, there are regular company agreements without any relation to sectoral agreements. All in all, in 2014 nearly half of all companies under the sectoral agreement in metalworking, with about 60 per cent of the affected employees, were covered by a derogation or additional company agreement (IG Metall 2015: 126).

Table 2 Company agreements in German metalworking sector

Type of agreement	2012	2013	2014 (1st half)
With derogations from sectoral agreement	1,396	1,538	1,450
<i>% of all company collective agreements</i>	<i>32.9</i>	<i>33.9</i>	<i>33.6</i>
Recognition agreements	522	520	516
Recognition agreements with deviations	254	248	238
Regular company collective agreements	2,072	2,204	2,164
Total	4,244	4,510	4,368

Source: IG Metall (2014).

The issues regulated in the more recent derogation agreements are again at the top: working time followed by wages, bonus regulations and holiday allowance. Holidays themselves were part of the derogations only in exceptional cases.

The dominating concessions on the employers' side were regulations concerning dismissal protection, followed to a much lower degree by provisions for the protection of production sites (*Figure 17*). The duration of derogation agreements ranges from one year and less up to 5 years and more. In the first half of 2014 about half of the agreements had a duration of more than two years. After expiration the derogation agreements are in many and prolonged or renegotiated.

Opening clauses within regular pay settlements

Apart from the introduction of a general opening clause through the Pforzheim Agreement it has become more and more common to introduce also more specific opening clauses into the regular pay settlements (*Table 3*). According to these clauses companies received under certain circumstances the possibility to postpone regular wage increases or to reduce/postpone lump-sum payments. Between 2006 and 2016 opening clauses on pay were concluded in five of the eight bargaining rounds.

The use of these opening clauses at company level has usually to be approved by IG Metal or the works council. In most cases, there were only a limited number of companies which demanded the use these derogations in practice.

Table 3 Opening clauses for company derogations within pay settlements, 2006–2016

Bargaining round	Provisions
2006	One-off payment of 310 € could be reduced to 0 € or doubled to 620 €
2007	Postponing of 0.7 % additional one-off payment and the second stage of wage increase of 1.7 % by up to 4 months possible
2008/2009	Postponing of the second-stage increase of 2.1 % by up to 7 months possible, as well as reductions in the additional one-off payment of 122 €, depending on the economic situation
2010	Pay rise of 2.7 % could be postponed or moved forward by up to two months
2012, 2013, 2015	No provisions in this regard
2016	Postpone or eliminate the lump-sum payment of 150 € and postpone the second-stage pay rise of 2.0 % by up to 3 months (at the request of the employers' association and based on IG Metall's decision)

Source: WSI Collective Agreement Archive.

3.6 Outlook: Strengthening of union representation and revitalising sectoral collective bargaining.

The trend towards the decentralisation of collective bargaining has affected the German metal industry for more than three decades. For a long time the unions tried to avoid or at least to limit the trend. The conclusion of the Pforzheim Agreement marked a turning point in the debate. Since then the decentralisation of collective bargaining via opening clauses has become the new norm in the German metal industry (Bahnmüller 2017). To a certain extent the Pforzheim Agreement has helped the bargaining parties to regain control over the decentralisation process. Regarding overall collective bargaining coverage in the German metal industry, however, it has at best helped to slow down but not to stop the decline. IG Metall has drawn two conclusions from this. First, it has tried to use the decentralisation process to strengthen its membership and bargaining power at company level. Secondly, it has started a broad campaign to reinforce sectoral bargaining and increase bargaining coverage.

Concerning the use of opening clauses, IG Metall has developed a new bargaining strategy according to which derogations are accepted only if the union members within the company were actively involved in the negotiations and explicitly approve the results (Haipeter 2009; Haipeter and Lehndorff 2014; Wetzels 2014). Hereby, the union tries to use the company bargaining process to recruit new members and strengthen its organisational base in the company. Sometimes the derogation agreements even contain somewhat better conditions for union members. In companies in which IG Metall has no or little membership it usually rejects demands for negotiations on company derogations.

More recently, IG Metall launched a broad campaign to increase collective bargaining coverage. Hereby, the union emphasises what its current president, Jörg Hofmann, calls the 'magic triangle' of union density (*Mitgliederstärke*), participation (*Beteiligung*) and collective bargaining coverage (*Tarifbindung*) (Hofmann 2016). Elements of the new strategy include:

- the strengthening of bargaining coverage in the core of the value chain where in recent years intensive processes of outsourcing, temporary agency work and contract work have enlarged the 'white spots' on the bargaining landscape;
- specific efforts in small and medium sized enterprises where bargaining coverage is traditionally low;
- a campaign on contract work in order to prevent wage dumping. The focus here is the contract logistics sector, in which IG Metall is interested not only in concluding company collective agreements but also in pushing through for a new sector-wide collective agreement.

In 2016 IG Metall for the first time also involved companies in the bargaining round that are not formally covered by collective agreements. In every bargaining region it systematically selected companies, at which it organised protest and warning strikes for the adoption of the sectoral collective agreement. At the end of the year the union was able to force 145 new companies with around 36,000 employees to join the sectoral collective agreement in metalworking (Bier and Rio Antas 2017). In contrast to the unions in other sectors as, for example, in the retail trade, IG Metall is not demanding an extension of the sectoral agreements in metalworking by the state, but wants to increase bargaining coverage by strengthening its own organisation at workplace level.

4. Decentralisation of collective bargaining – the example of German retail trade.

4.1 Employment in the German retail trade – a sectoral profile.

With more than 3 million employees working in around 340,000 enterprises the retail trade is one of the largest branches in Germany (Handelsverband Deutschland 2016a; Glaubitz 2017). By far the largest sub-sector is food retailing, which represents more than 40 per cent of overall retail turnover (Mütze 2016). The sector is fairly polarised, with a few large corporations, especially among supermarkets, pharmacists, fashion chains and department stores, and myriad small shops and enterprises. In 2011, 90 per cent of all retail enterprises had fewer than 20 employees, while only 1 per cent had more than 100 employees (Dummert 2013).

Large segments of the retail sector are fairly price sensitive, so that economic development in the sector is shaped by strong price competition. Against the background of an ongoing extension of shop opening hours, as well as continuously growing sales floor size, fierce competition has become more and more the dominant economic pattern in the sector (Glaubitz 2017). In recent years, the competitive pressure has been further intensified by the rapid growth of e-commerce (Handelsverband 2016b: 12). The fierce price competition has also become a major influence on employment conditions and labour relations in the sector, as labour costs are the second most important cost factor, after goods.

Turning to employment structure, the retail trade is first of all a female-dominated sector; around 70 per cent of all retail trade workers are women (Figure 18). Furthermore, there is a very high proportion of part-time (35 per cent) and marginal part-time workers (27 per cent). In Germany,

the latter are also called 'mini-jobbers', with a special employment status according to which they are allowed to earn up to 450 euros a month at reduced tax and social security conditions. Finally, only a minority of 38 per cent of all retail workers are still hired on a full-time basis (Figure 18).

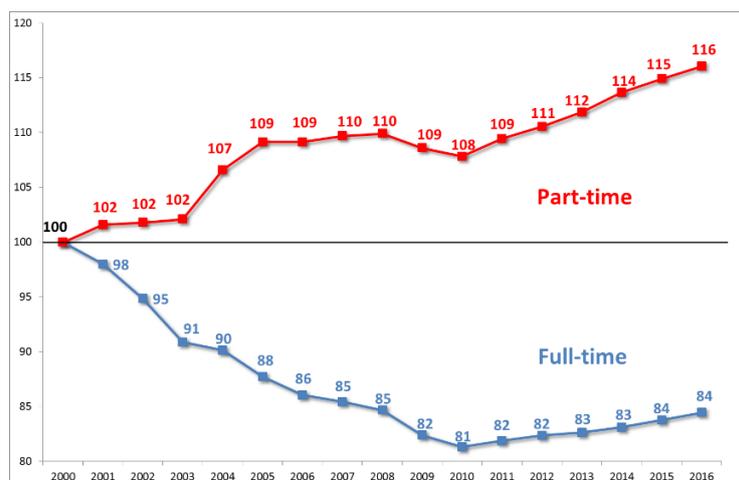
Figure 18 Structure of employment in the German retail trade, September 2016 (% of all retail trade workers)



Source: Bundesagentur für Arbeit (2017), Authors' calculations.

During the 2000s employment in the retail trade saw a significant shift from full-time to part-time work (Figure 19). Between 2000 and 2010 the number of full-time workers decreased by almost 20 per cent, while the number of part-time employees increased by around 8 per cent. Since 2010 the number of both full- and part-time workers has showed a steady increase, part-time work growing much faster than full-time. All in all, the retail trade has one of the highest proportions of (mainly female) part-time work in Germany.

Figure 19 Full- and part-time workers in the German retail trade, 2000–2016 (2000 = 100)



Source: German Statistical Office, GENESIS-Online Database (www-genesis.destatis.de), Authors' calculations.

The retail sector has a relatively high incidence of different types of precarious employment (Bundesregierung 2016, 2017; Glaubitz 2017). First of all, there is an extraordinarily high proportion of marginal part-time employment, which in many cases has replaced regular full-time or part-time jobs (Hohendanner and Stegmaier 2012). There are two main reasons for the widespread use of mini-jobbers: (i) it allows companies to save labour costs, as they only have to pay reduced social security contributions; moreover, marginal part-time workers are often ready to accept lower wages, as they do not have to pay tax for such employment. (ii) marginal part-time work gives employers much working time flexibility, which has become particularly important due to the extension of shop-opening hours. As a result, many mini-jobbers work in the evening or during the weekend or are even hired on an 'on-demand' basis (Fischer et al. 2015: 218).

A second type of precarious employment, which is being used more and more in the retail trade sector, is fixed-term employment. In recent years, the latter has become particularly widespread among newly hired employees (Table 4). In 2015, almost half of all newly hired workers in retail received only a fixed-term contract. This holds true for both female and male workers, which show no differences in this respect. In the same year, only 45 per cent of workers with a fixed-term contract were transferred to a permanent employment relationship (Bundesregierung 2017: 5).

Table 4 Proportion of newly hired workers in the German retail trade with a fixed-term contract (%)

Year	All	Women	Men
2010	38	39	37
2011	40	42	34
2012	41	44	36
2013	45	45	46
2014	49	51	46
2015	49	50	48

Source: IAB Establishment Panel, quoted from Bundesregierung (2017: 4).

4.2 Trade unions and employers' associations in the German retail trade.

The two main collective actors in the retail trade are the German Retail Federation (*Handelverband Deutschland*, HDE) and the United Services Union (*Vereinte Dienstleistungsgewerkschaft*, ver.di). The HDE is the peak business organisation in the German retail trade sector, with various regional and professional trade associations, and represents about 100,000 enterprises.¹¹⁸⁵ The latter correspond to around 30 per cent of all retail enterprises. However, as most of the larger

¹¹⁸⁵ Figures from the HDE Homepage: <https://www.einzelhandel.de/>

retail corporations are members of the HDE, the organisation represents a much higher share of the sector. The HDE is both a business organisation, which does political lobbying for the economic interests of the sector, and an employers' association which is involved in collective bargaining.

By far the most important trade union in the retail trade sector is Ver.di, which is the second largest trade union in Germany and affiliated with the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund*, DGB).¹¹⁸⁶ Ver.di represents, apart from the public sector, about 200 industries in private services and has about 2 million members (Dribbusch et al. 2017: 202). The union has a separate division for the whole commerce sector and a sub-division for the retail trade. In 2013 ver.di had about 264,000 members in the retail trade which corresponds to a union density of less than 10 per cent (Franke 2013). While union density is often somewhat higher in larger retail corporations, the union is almost absent from many of the small and medium-sized companies. The same holds true for the existence of a works council, which is often an important body for recruiting new union members. In the commerce sector overall only 9 per cent of establishments and 28 per cent of employees are covered by a works council (Ellguth and Kohaut 2017: 283). The relatively weak position of ver.di in the retail trade is partly also a result of the growing number of precarious retail workers, who are much more difficult to organise.

4.3 Collective bargaining in the German retail trade – structure and trends.

At first glance the industrial relations regime in the retail trade seems to follow the traditional German model, with multi-employer collective bargaining at sectoral level. In comparison with manufacturing, however, industrial relations in the retail trade have become much more diversified and fragmented due to the specific economic structure and the dominant pattern of economic development and employment in the sector (Kalkowski 2008; Beile and Priessner 2011; Glaubitz 2017).

Collective bargaining in the German retail trade takes place at sectoral level; sectoral agreements are concluded for different regions. Currently, there are 14 regional bargaining units, which largely corresponds to the 16 German federal states (*Bundesländer*). The only exceptions are the federal states of Saxony, Saxony-Anhalt and Thuringia, which form a joint regional bargaining unit. Negotiations are held between the regional divisions of ver.di and the HDE, which are autonomous in concluding collective agreements at regional level. In practice, however, both organisations aim to coordinate their demands and negotiations at national level. If one region concludes a pilot agreement, the other regions usually follow with the same or similar agreements.

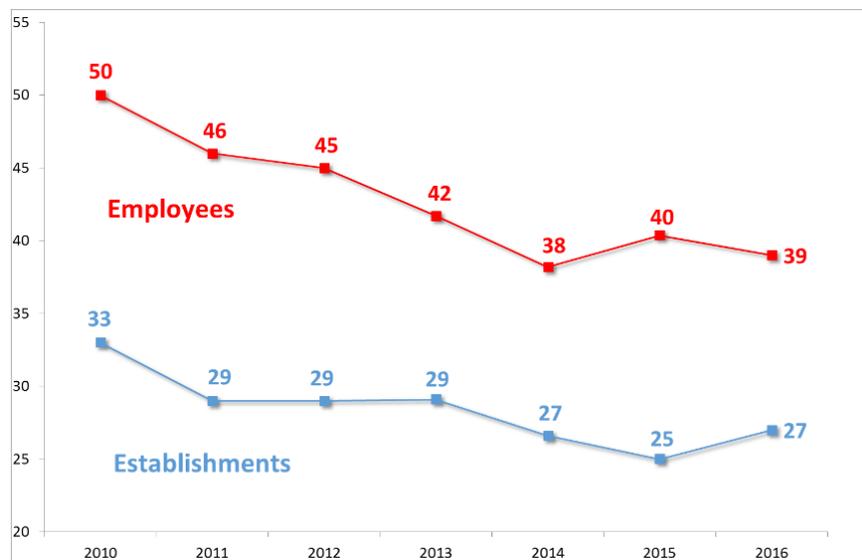
Traditionally, collective agreements in the retail trade were always declared universally binding so that they cover not only the bargaining parties but all enterprises in the sector. The practice of extension, which for a long time was supported by both the trade unions and the employers' associations, started in the mid-1950s and was carried on until the early 2000s. There was a joint belief among the bargaining parties that extension was necessary in order to create fair competition in the retail trade and to prevent downward pressure on wages and working conditions.

¹¹⁸⁶ There is a second small trade union, the DHV- Die Berufsgewerkschaft e.V., which has some influence in a few retail companies, but is only of minor importance in the sector as a whole. The DHV is affiliated to the Confederation of Christian Trade Unions (*Christlicher Gewerkschaftsbund*, CGB).

During the 1990s there was a growing dissatisfaction with the collective bargaining system among some retail companies, which left the main employers' association or became members of competing organisations. In order to keep their members, in 1999 the main employers' associations started to introduce a new membership status, according to which member companies were no longer automatically bound by the sectoral collective agreements signed by the association (Behrens 2011: 174ff.). With the so-called 'OT' membership status (OT = *ohne Tarifbindung*, which means 'not bound by a collective agreement') the HDE established an organisational logic which was in fundamental contradiction to the principle of sector-wide extension of collective agreements. Thus, from the year 2000 onwards, the employers' associations refused to accept the practice of extension so that retail agreements were no longer generally binding.

As a result of the rejection of extensions, since the year 2000 collective bargaining coverage in the retail trade has declined dramatically (Felbermayr and Lehwald 2015). In 2010, only half of the employees and one-third of the establishments were still covered by a collective agreement. Between 2010 and 2016 collective bargaining coverage declined even further, down to only 39 per cent of workers and 27 per cent of enterprises (*Figure 20*). While before 2000 the extensions had ensured that the entire sector was covered by collective agreements, now only a minority are still involved in collective bargaining.

Figure 20 Collective bargaining coverage in the German retail trade, 2010–2016 (% of establishments and employees)



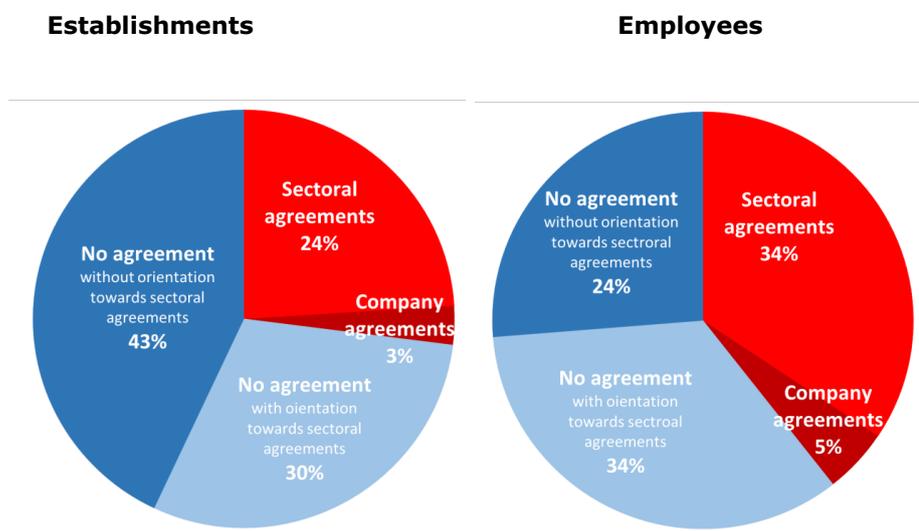
Source: IAB Establishment Panel.

In 2016, the sectoral collective agreement in the retail trade covered only 34 per cent of the employees and 24 per cent of the establishments. In addition, 5 per cent of the employees and 3 per cent of the establishments had a company agreement, while a large majority – 58 per cent of

the employees and 73 per cent of the establishments – were not covered by any collective agreement (Figure 4).¹¹⁸⁷

Among the latter a significant number of companies declare that they take the existing sectoral agreements as 'orientation'. In practice, however, this does not mean that they provide the same conditions as laid down in the collective agreements. According to studies by Addison et al. (2016) and Berwing (2016) companies that argue that collective agreements are taken as orientation, nevertheless often have much lower wages and working conditions than companies directly covered by the agreements.

Figure 21 Collective bargaining coverage in the German retail trade, 2016 (% of establishments and employees)



Source: IAB Establishment Panel.

In Germany, there is usually a strong correlation between size of company and bargaining coverage. Smaller companies are less likely to be covered by collective agreements, while it is rather rare that larger corporations are not covered (Ellgüt and Kohaut 2017). In the retail trade the picture is somewhat more differentiated. On one hand, it confirms the general trend as the majority of small and medium-sized companies have no collective agreement. In addition, however, a significant number of large retail corporations have decided to withdraw from collective bargaining (Glaubitz 2017). Among them are some big players in e-commerce, such as Amazon or Zalando, in which ver.di has not been able to reach an agreement so far (Boewe and Schulten 2017). Other large companies, such as the warehouse chain Karstadt or the fashion store Esprit, also withdrew from collective agreements, but came back into the fold after a long struggle with

¹¹⁸⁷ According to data from the German Structure of Earnings Survey overall bargaining coverage in the retail trade is only 28 per cent (Statistisches Bundesamt (2016a). For a discussion of the different data sources see footnote 1.

the union. In contrast to that, C&A – the largest fashion chain in Germany – continues to reject demands for a collective agreement.

Finally, even significant parts of food stores and supermarkets have no collective bargaining. Although the two largest food chains EDEKA and REWE are formally covered by the retail trade agreements, most supermarkets that run under their brand names belong to formally independent merchants many of whom refuse to accept collective agreements (Verheyen and Schillig 2017).

4.4 Decentralisation of collective bargaining in the German retail trade¹¹⁸⁸

As in other sectors, the debates and conflicts about stronger decentralisation and differentiation of collective bargaining started in the retail trade in the 1990s. Within Ver.di, as well as in its predecessor in the retail trade, the Union for Commerce, Banking and Insurance (*Gewerkschaft Handel Banken Versicherungen*, HBV),¹¹⁸⁹ the issue of decentralisation has always been very much contested. In general, the union has been more reluctant to accept employers' demands for opening clauses or other forms of decentralisation in order to derogate from standards laid down in the sectoral collective agreements at company level. The rationale for the union's scepticism is grounded chiefly in two considerations. First, the union emphasised that working conditions and, especially, pay were at a much lower level than in, for example, manufacturing, so that further cuts would not be acceptable. Secondly, it was afraid that decentralisation would further weaken the position of the workers considering the relatively low union density and low level of works council representation in the retail trade.

Despite the union's scepticism, some first attempts towards an 'organised decentralisation' of collective bargaining in the retail trade date back to the 1990s (Bispinck and WSI-Tarifarchiv 1999). Most of them, however, were limited to eastern Germany, where after unification the economy got into great difficulties, with unemployment rates often twice as high as in western Germany.

From the second half of the 1990s onwards one major instrument for differentiation was the introduction of a special clause for small and medium-sized companies (the so-called *Mittelstandsklausel*) which still exists in all eastern German retail agreements. According to this clause, retail companies up to a certain size are allowed to provide a basic payment which is below the standard level agreed in the sectoral agreements. The retail pay agreement from 2015 for the Federal State of Brandenburg, for example, allows firms to reduce basic payments by 4 per cent in companies of up to 25 employees, by 6 per cent in companies of up to 15 employees and by 8 per cent in companies of up to 5 employees. All other eastern German agreements contain the same or similar provisions, but not those in western Germany, where they were never introduced.

Almost all regional retail agreements in both eastern and western Germany have some opening clauses on working time. While the regular collectively agreed working time varies between 37 and 39 hours per week (Bundesregierung 2017: 7), most regional agreements allow the extension

¹¹⁸⁸ This section is based on an evaluation of original collective agreements in the retail trade provided by the WSI Collective Agreements Archive.

¹¹⁸⁹ Ver.di was created in 2001 as a result of a merger of five trade unions, one of which was the HBV.

of regular weekly working time up to 40 hours (or even 42 hours for special professions) at company level. The company has to compensate for basic pay, but does not have to pay overtime. Usually, the working time extension needs to be concluded in a works agreement between the works council and the management. Some regional agreements also allow for working time extension on an individual basis when there is no works council in the company.

After the conclusion of the famous Pforzheim Agreement in 2004, which includes a broad framework for company-level derogations in the German metal industry, there was general pressure on the unions in other sectors to accept similar agreements. In 2006 most regional bargaining units in the retail trade concluded so-called 'collective agreements to safeguard employment' (*Tarifverträge zur Beschäftigungssicherung*), which under certain circumstances allow temporary derogations from the sectoral collective agreements at company level. In order to avoid a difficult economic situation which might lead to job losses these agreements allow the works council and the management at company level to make a joint demand for such derogations. In this case, the parties at sectoral level – the union and the employers' associations – are obliged to negotiate about possible derogations, while the companies need to open their books in order to prove the state of their economic circumstances. If an agreement could be reached the unions and the company finally sign an additional company-level collective agreement which determines temporary derogations.

Similar to the Pforzheim Agreement the Agreements to safeguard employment in the retail trade only regulate the procedure for derogations, but say nothing about its concrete content where the bargaining parties are almost free to negotiate all kind of issues regarding pay, working time and annual bonuses. In practice, however, they usually follow the pattern of traditional concession bargaining, in which the union agrees on a reduction of labour costs in exchange for a certain job security. Before the union is allowed to sign such an agreement, however, it also has to follow its internal coordination procedures. Within Ver.di there is an internal rule that all collective agreements on derogations need to be approved by the unions' national collective bargaining department (Wiedemuth 2006).

In practice, the use of opening clauses and other forms of organised decentralisation is much less common in the retail trade than in other sectors (Amlinger and Bispinck 2016: 217). In contrast, the dominant form of decentralisation in the sector is still a more 'disorganised' decentralisation, where companies simply withdraw from the collective agreement. Attempts to achieve more organised forms of decentralisation were not able to stop the general trend toward a decline in collective bargaining. For a majority of the enterprises in the retail sector, however, it currently seems to be more attractive to abstain from collective bargaining, while the union often lacks the power to force these companies to the bargaining table.

Only in a few cases – in some larger retail companies – were the unions able to conclude so-called 'phase-in agreements' (*Heranführungs- oder Anerkennungstarifverträge*) where the company agreed to improve its conditions towards the sector-wide standards within a transition period and after that be fully covered by the sectoral agreement. Current examples are the fashion stores Esprit and Primark and the supermarket chain Real.

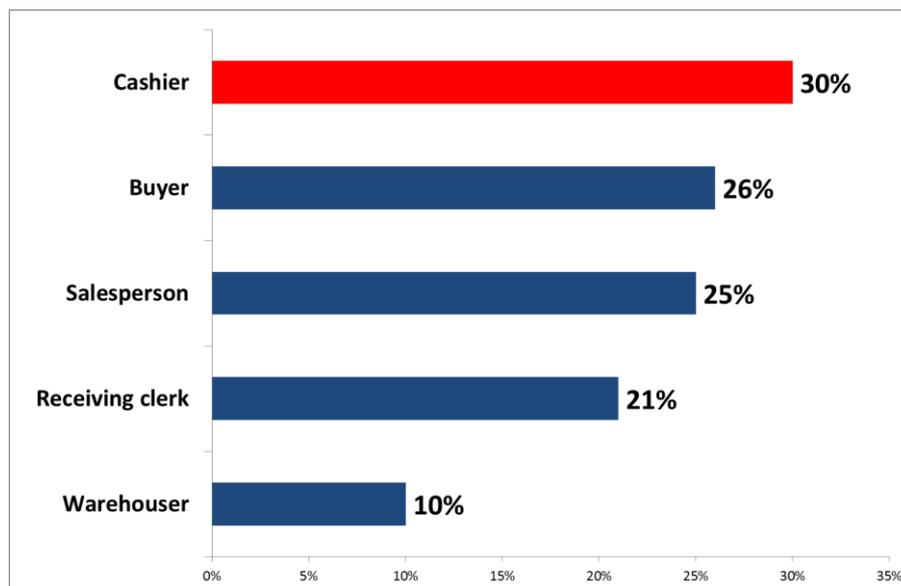
In the case of the large warehouse form Karstadt, which withdrew from collective bargaining in 2013 after getting into serious economic difficulties, a new company agreement was signed in

2017, according to which the company will again be covered by the sectoral collective agreements in the retail trade. However, for the next four years wage increases will not follow the sectoral agreements but will be related to company performance. In exchange, the company has guaranteed all current jobs and warehouses during the same period (ver.di 2017).

4.5 Impact of the erosion of collective bargaining in the German retail trade.

The erosion of collective bargaining in the German retail trade has had an enormous impact on the working conditions and especially the wages of the affected workers. According to a study by Felbermayr and Lehwald (2015) workers covered by collective agreements earn, on average, between 20 and 30 per cent more than workers who are not covered. The average wage gap is particularly high among cashiers (30 per cent), followed by buyers (26 per cent), salespersons (25 per cent) and receiving clerks (21 per cent) (*Figure 22*). It is also much higher in small and medium-sized companies than in larger corporations (*ibid*: 39). Apart from pay, there are often significant differences regarding other working conditions, such as working time and annual bonuses, which further deepens the collective bargaining gap.

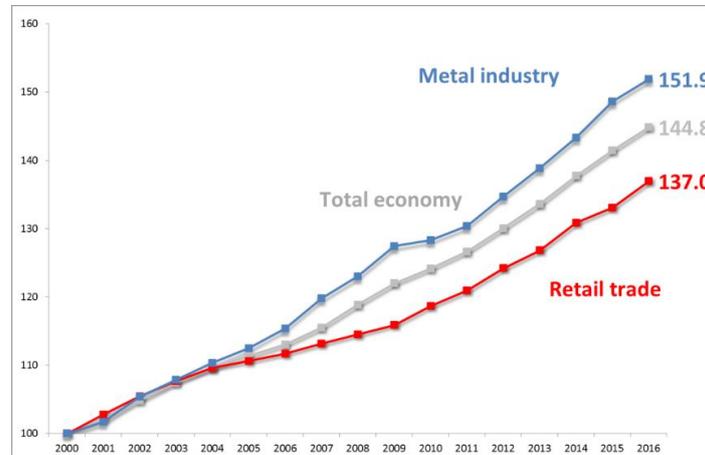
Figure 22 Average wage gap between retail workers covered and not covered by collective agreements, 2010 (%)



Source: Felbermayr and Lehwald (2015: 39).

The decline of collective bargaining in the retail trade has also contributed to the fact that wages in the retail trade have lagged significantly behind overall wage developments. Between 2001 and 2016 collectively agreed wages in the retail trade grew by about 37 per cent in comparison with 44.8 per cent in the economy as a whole and 51.9 per cent in the metal industry (*Figure 23*).

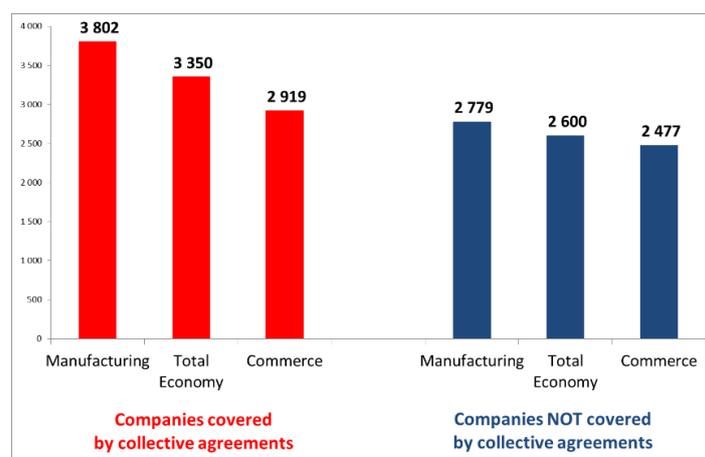
Figure 23 Collectively agreed wages in the German retail trade, metal industry and total economy, 2001–2016 (2000 = 100)



Source: WSI Collective Agreement Archive.

All in all, wage levels in the retail trade are significantly below wage levels in manufacturing, but also below the average wage level in the economy as a whole (Figure 24). The wage gap is particularly pronounced in companies covered by collective agreements, which underlines the weakness of collective bargaining in the retail sector. Concerning gross monthly median wages in companies with collective agreements, wage levels in the commerce sector as a whole (that is, retail trade plus wholesale trade and garages) are on average 23 per cent below the level in manufacturing and 11 per cent below the level in the economy as a whole. In companies without collective agreements the respective wage gaps are 12 and 5 per cent.

Figure 24 Gross monthly median wages in German commerce* manufacturing and total economy, 2014 (full-time workers, euros)



Note: * Commerce = Retail trade, wholesale trade and garages.

Source: Statistisches Bundesamt (2016b), German Structure of Earnings Survey 2014.

The retail sector also has a relatively large proportion of low-wage earners (Bundesregierung 2016: 16; 2017: 98f.). In 2014, about 22 per cent of all retail workers earned less than 8.50 euros per hour, so that they benefited considerably from the introduction of a national statutory minimum wage in January 2015 (Mindestlohnkommission 2016: 43).

4.6 Outlook: Collective bargaining in the retail trade at a crossroads: further erosion or stabilisation?

Developments in the retail trade constitute an extreme example of the general decline in German collective bargaining. After the retail employers' associations started to reject the long-standing practice of extension of collective agreements in 2000, collective bargaining coverage dropped sharply, so that currently only a minority – about 40 per cent – of retail trade workers are still covered. The erosion of collective bargaining has largely contributed to a significant change in economic development in the sector, which is now dominated by fierce competition. As collective bargaining is no longer able to take wages and working conditions out of competition by setting sector-wide minimum standards, there is strong pressure on labour costs, which has led to a deterioration of working conditions and an increase in precarious employment. All this gives companies a strong incentive to withdraw from collective agreements.

Therefore, collective bargaining in the retail trade is now at a crossroads. If the erosion continues, bargaining coverage may fall below the critical mass needed for sector-wide agreements. The result, sooner or later, would be a complete breakdown of sectoral bargaining, so that collective bargaining would remain only at company level in (mainly) larger retail corporations.

The alternative would be a re-stabilisation of collective bargaining in the sector. One approach to this end might be to strengthen the more organised forms of decentralisation in order to give companies more flexibility within collective agreements. Since the mid-2000s the retail sector has also had its 'Pforzheim agreements', with far-reaching possibilities for derogations at company level. The establishment of more organised decentralisation, however, was not able to stop the general decline in collective bargaining.

Another approach would be the reintroduction of collective agreement extension in the retail sector so that agreed minimum standards could become generally binding. The trade union *ver.di* is currently campaigning for this, which is now seen as the key to restabilising the collective bargaining system in the retail trade (Nutzenberger 2017).¹¹⁹⁰ The employers' association HDE, however, has so far rejected the demand for a reintroduction of extension and has claimed that it has 'no acceptance' among its members. The HDE criticised, in particular, what it characterises as the 'old-fashioned' wage systems in the sectoral agreements, which the employers' association regards as a major obstacle to increasing bargaining coverage in the sector (HDE 2017).¹¹⁹¹

Moreover, the HDE is opposed to the extension of collective agreements in principle as this would call into question its OT status. However, some HDE member companies take a different view. The head of the Schwarz Corporation, for example, which represents, among others, the second largest German discount chain, Lidl, has openly called for the retail sectoral agreements to be

¹¹⁹⁰ For more information on the *ver. di* campaign for the extension of collective agreements in the retail trade: <https://handel.verdi.de/themen/tarifpolitik/ave-kampagne>

¹¹⁹¹ Negotiations on a 'modernisation' of the wage systems in retail trade have taken place since the 2000s (Kalkowski 2008).

declared generally binding, so that all companies are competing on a level playing field (Stockburger 2017).

The coming years will show whether the erosion of collective bargaining in the retail trade will continue or whether the bargaining parties will be able to restabilise the system. With regard to the latter, it is becoming obvious that a strategy directed towards organised decentralisation is not sufficient as it is much easier for companies to withdraw from collective bargaining than to follow a regulated derogation process. For the moment, the reintroduction of extension might be the only instrument able to stop further erosion and to stabilise the bargaining system. The latter, however, needs much broader acceptance among retail employers, which it will probably obtain only with 'modernisation' of collectively agreed wage structures in accordance with employer preferences.

5. Conclusion.

The trend towards decentralisation has fundamentally changed the German system of collective bargaining. It comprises various developments in different sectors and companies, making the overall picture fairly diverse. On one hand, there are sectors in which the bargaining parties have established new forms of organised decentralisation. Here, sectoral bargaining is still dominant and the derogations are under the control of bargaining parties at sectoral level. The metal industry and even more the chemical industry are the most prominent examples of this. The chemical industry may come closest to the ideal type of organised decentralisation: the use of opening clauses is fairly limited and has clearly helped to stabilise collective bargaining in the sector.

Experiences in the metal industry, however, are much more ambiguous. On one hand, the collective bargaining parties were to a certain extent able to regain control over the decentralisation process, as the Pforzheim Agreement established new binding coordination procedures. On the other hand the decline of bargaining coverage in metalworking continued, while derogations at company level became so widespread that sectoral agreements often determine only a framework but not actual pay and conditions.

Finally, the retail trade sector is an example of the dominance of unorganised decentralisation. After the employers had withdrawn from the regulated system of extended collective agreements, bargaining coverage declined dramatically. Today, only a minority of retail workers are still covered by a collective agreement. Although the sector has created all the instruments needed for a more organised form of decentralisation, they are rarely used in practice.

The different paths towards decentralisation in Germany reflect the different economic conditions, the different structures of companies and employment and – not at least – the different power relations in the various sectors. The majority of German workers are experiencing decentralisation as a further weakening of their position. As Nienhüser and Hoßfeld (2008, 2010) have shown, there are wide differences in how the trend towards collective bargaining decentralisation is perceived by the actors at company level (Table 5). The large majority of managers take a fairly positive view, as, from their standpoint, decentralisation strengthens the position of both management and works councils, takes better account of the business situation and weakens the power of the union at workplace level. In contrast, the majority of works councillors are much more sceptical. For them, the main winners of bargaining decentralisation are management; only a minority of works councillors believe that this process strengthens their own position. Only 32

per cent of employee representatives consider that decentralisation could help to secure jobs, as against 82 per cent of managers. A large majority of 78 per cent of works councillors, but also 40 per cent of managers, believe that the decentralisation of collective bargaining leads to more conflicts at company level.

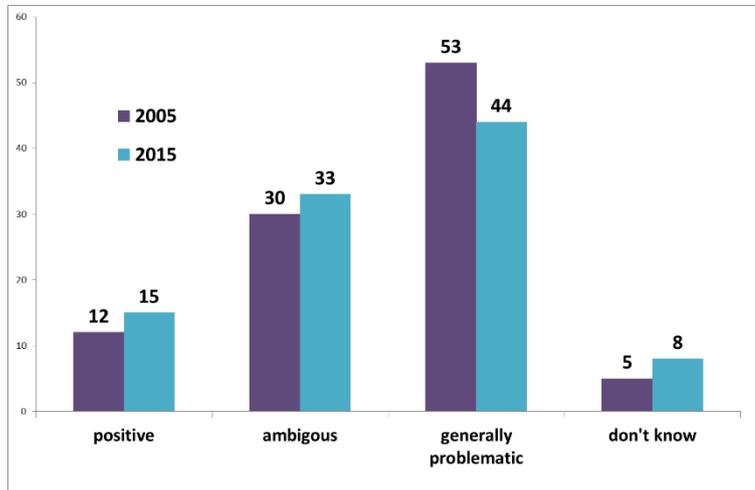
Table 5 Decentralisation of collective bargaining as seen by managers and works councillors (%)

Deviations from sectoral agreements	Managers	Works councillors
strengthen the influence and power of the management	95	91
strengthen the influence and power of the works council	89	43
take into account better the situation of the establishment	93	51
can help to secure jobs	82	32
lead to lower wages	33	79
take up unnecessary time and resources	33	67
lead to more conflicts	40	78
overburden the management	14	39
overburden the works council	42	64
strengthen the power of the unions at the establishment	21	13
weaken the power of the unions at the establishment	69	83

Source: Nienhüser and Hoßfeld (2010).

The sceptical or even negative view of the employees has also been confirmed by data from the WSI Works Council Survey (Figure 25). Since the late 1990s a stable majority of works council members have seen bargaining decentralisation as 'ambiguous' or 'generally problematic', while only 12–15 per cent welcome this trend. Again, decentralisation is seen by a large majority of employee representatives as a process that mainly strengthens the employers' bargaining. According to the survey, conducted in 2015, 33 per cent of works councillors see decentralisation as 'ambiguous', while 44 per cent view it as generally problematic. Quite often works councillors have felt 'blackmailed' by their companies to accept concessions, and, as they could no longer refer to binding standards at sectoral level, have lost an important instrument of resistance.

Figure 25 View of the works councillors on the decentralisation of collective bargaining
Decentralisation of collective bargaining is regarded as ...



WSI Works Council Survey 2015 (Amlinger and Bispinck 2016).

Three decades of experience with collectively agreed opening clauses have changed the basic structure of collective bargaining in Germany. The widespread introduction of these clauses triggered a process of decentralisation that has shifted an increasingly large part of bargaining responsibilities to company level. This has led to a significant loss of regulatory power on the part of both employers' associations and trade unions. Collectively agreed standards, once seen as formally inviolable norms, have now become objects of renegotiation at company level, with varying degrees of involvement on the part of the signatories of sectoral agreements. As a consequence, unions must now engage much more directly with the needs and requirements of companies, and works councils have less scope to take refuge in the mandatory character of sectoral regulations when confronted by management calls for local concessions. This requires more coordinating efforts from the unions in order to avoid the erosion of standards in individual sectors. The functional differentiation between unions and works councils, which has been fundamental to the German dual system of interest representation, has become increasingly blurred.

Despite the hazards and side-effects of decentralisation, trade unions have sought to use the process as a starting point to build organisational power at workplace level through greater involvement of rank-and-file members in the process of renegotiation. Research shows that there are positive results in some cases, but little evidence that this strategy has been realised across-the-board (Haipeter 2009; Haipeter and Lehndorff 2014; Bahnmüller 2017).

Moreover, only about 9 per cent of all establishments, with around 41 per cent of all employees, currently have a works council (Ellguth and Kohaut 2017: 283). There is an important 'representation gap', in particular in small and medium-sized firms, depriving unions of a vital prerequisite for a proactive workplace strategy. Without adequate employee representation at the workplace and company level, however, there is a clear danger that the decentralisation of collective bargaining will de facto strengthen unilateral decision-making by management.

Finally, the decentralisation process has increasingly undermined the effectiveness of sectoral collective agreements and their basic function: namely, to take wages and other working conditions out of competition. At the same time, it is questionable whether decentralisation has stabilised the German bargaining system. While this might be the case in some sectors, overall there is a parallel trend of decentralisation and further decline of bargaining coverage. Therefore, the current debate in Germany on strengthening collective bargaining is not about decentralisation but about strengthening union power, on one hand, and increasing the political support for the bargaining system (for example, through more extensions), on the other.

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