

Chapter 12

Germany: parallel universes of collective bargaining

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Until the early 1990s, the German model of industrial relations was widely regarded as a resounding success. This is because of its robustness, its potential to provide social cohesion and business competitiveness and its low record of conflict. A central pillar of the German model was the dual system of interest representation, based on works councils at company level and multi-employer bargaining at industry level by encompassing trade unions and employers' associations, which ensured high bargaining coverage and the effective implementation of collective agreements. Since then collective bargaining in Germany has undergone far-reaching changes. In addition to the neoliberal restructuring of the German model of capitalism, the main driving force of these changes has been a more assertive approach on the part of the employers. They have striven for a 'flexibilisation' of collective bargaining in order to improve cost competitiveness against a background of severe economic crisis and intensifying international competition. The introduction of new business models, such as decentralisation and outsourcing, and the political transition in central and eastern Europe have enabled the employers to increase pressure on the trade unions because they have made the threat of relocating production more credible. In their quest to improve cost competitiveness, the employers have gradually retreated from the traditional model of multi-employer bargaining, which they have increasingly perceived as a 'straitjacket' restricting their capacity to adapt to rapidly changing economic conditions.

Table 12.1 Principal characteristics of collective bargaining in Germany

Key features	2000	2017
Actors entitled to collective bargaining	Trade unions, individual employers and employers' associations	
Importance of bargaining levels	Dominance of industry level, but increasing importance of company level	
Favourability principle / derogation possibilities	Favourability principle but over time increasingly hollowed out by opening clauses in industry-level agreements	
Collective bargaining coverage (%)	68	55
Extension mechanism (or functional equivalent)	Extension possible if requested by one bargaining party and if agreement covers at least 50% of employees in the respective bargaining area	Since 2015 extension possible if requested by both bargaining parties and if in public interest
Trade union density (%)	20	15
Employers' association rate (%)	63 (2002)	58 (2011)

Source: Appendix A1.

This has contributed to the decentralisation, fragmentation and erosion of collective bargaining. This involves, first, a gradual but steady increase in the relative importance of company-level bargaining; second, a substantial decrease in bargaining coverage, from 68 per cent in 2000 to 55 per cent in 2017; and third, an increasing hollowing out of existing industrial agreements by the frequent use of opening clauses, allowing for company-level derogations (see Table 12.1). The intensity and form of these processes, however, have varied substantially across regions and industries. This has led to the emergence of parallel universes of collective bargaining, with great variation in its regulatory capacity. The key focus of this chapter is on exploring the different factors that led to this state of affairs.

Industrial relations context and principal actors

German industrial relations are an integral part of the complex political and institutional arrangements that characterise German capitalism. Traditionally, the ideological underpinning of German capitalism is provided by strong political and societal support for the concept of the ‘social market economy’, developed by the ordoliberal economist Alfred Müller-Armack after the Second World War (Müller-Armack 1947). This concept is based on the idea of combining the principle of free enterprise and free competition with that of social equity and cohesion. This implies a commitment to the concept of a capitalist market economy as the organising principle of economic activity, alongside a recognition that markets are imperfect and need to be regulated to achieve social equity and cohesion. The role of the post-war state in the traditional German social market economy is neither *laissez-faire*, as in the United Kingdom, nor statist, as in France, but is described as ‘enabling’ (Streeck 1997: 38). This means that the state defines the rules of the game to ensure competitive markets by protecting the freedom of all market participants. This also means that the state supports a dense network of institutions and civil society actors in generating ‘most of the regulations and collective goods that circumscribe, correct and underpin the instituted markets of ... the social market economy’ (Streeck 1997: 39).

This recognition of the need to rein markets in underpins the following traditional features of German capitalism (Berghahn and Vitols 2006). First, a strong focus on ‘diversified quality production’ (Streeck 1991), with a highly competitive manufacturing sector. At its core are the automotive, machine-building and chemical industries, which are the backbone of Germany’s ‘high quality/high wage’ economy and of an export-led growth model. Next, a specific form of corporate governance, which involves a dense network of cross-shareholdings and interlocking directorships between major German companies and the large universal banks, as well as the participation of the employees’ side in company decision-making through the presence of employee representatives on the supervisory board. Both factors have served to limit the influence of capital markets on company decisions and have guaranteed a high degree of stability with a focus on long-term strategic developments (Streeck and Höpner 2003). In addition to this, a relatively comprehensive public sector, including some important national monopolies. While trade surpluses traditionally were a major driver of Germany’s economic development, a relatively strong public sector, combined with continuous growth in

real wages, ensured a balance between the internationally exposed and the domestic sectors. And finally, an industrial relations system based on ‘conflictual cooperation’ (*Konfliktpartnerschaft*) (Müller-Jentsch 1999) between trade unions and employers, based on a dense legal framework that defined the rules of the game. In this model, industry-level collective agreements fulfil a protective and distributive function for employees by ensuring wage growth and a relatively even wage distribution, as well as order and industrial peace for employers, by taking wages and other working conditions out of competition (Bispinck and Schulten 1999).

Since the 1980s, however, a number of profound policy changes have been implemented in reaction to increased international competition and the new economic challenges arising from German reunification in October 1990. Germany chose to pursue neoliberal restructuring that, while not as dramatic as the neoliberal assault in the United Kingdom (see Chapter 29), has transformed some of the basic socio-economic features of German capitalism described above (Lehndorff *et al.* 2009; Streeck 2009). First, a deregulation of financial markets has prompted far-reaching changes in the ownership structure of major German companies and an increased short-term shareholder-value orientation in German corporate governance (Streeck and Höpner 2003). Second, deregulation in social and labour market policy has led to a significant weakening of social and employment protection and, as a consequence, to a strong increase in precarious employment. Third, the liberalisation and privatisation of public services led to a significant shrinking of the public sector (Brandt and Schulten 2008). Fourth, in the field of industrial relations, employers gradually retreated from the ‘conflictual partnership’ with trade unions and the corresponding forms of joint regulation of the employment relationship (Behrens 2011). All these changes to the core elements of German capitalism have contributed to the decline and fragmentation of the traditional model of industry-level collective bargaining.

In the field of industrial relations the enabling role of the state is reflected in the importance of the law (*Verrechtlichung*) in defining actors’ rights and responsibilities. The most fundamental feature of German industrial relations is its dual system of interest representation, with two distinct arenas for the autonomous regulation of the employment relationship: collective bargaining and employee representation at the workplace level.

The legal basis of collective bargaining is the Collective Agreements Act of 1949 (Tarifvertragsgesetz, TVG) and employee representation at workplace level is based on the Works Constitution Act (Betriebsverfassungsgesetz, BetrVG). These two laws establish a formal division of labour between trade unions, which, as a rule, negotiate collective agreements with employers’ associations at industry level,¹ and works councils, which are statutory, non-union bodies elected to represent employees at

1. The TVG stipulates that trade unions can conclude collective agreements with employers’ associations or individual employers which includes the possibility of company-level collective agreements. In practice, the majority of employees covered by a collective agreement were, and still are, covered by a multi-employer agreement at industry level.

workplace and company level.² In contrast to trade unions, works councils are not allowed to negotiate collective agreements. They are only allowed to conclude so-called ‘works agreements’ (*Betriebsvereinbarung*), which, according to § 77 (3) BetrVG, ‘may not deal with remuneration and other conditions of employment that have been fixed, or are normally fixed, by collective agreement’. But even though works councils are not allowed to negotiate collective agreements, they are responsible for monitoring their implementation at company level. Despite this formal legal separation between trade unions and works councils, there are close ties of mutual dependency between the two, both personally and functionally. Trade unions provide training and legal advice for works council members, most of whom are trade unionists and are often ex officio lay officials actively involved in internal union policymaking. As union members, works councillors are also often members of union collective bargaining committees (*Tarifausschuss*), which formally have to approve new collective agreements. Works councils furthermore play an important role in recruiting members for the trade union at workplace level (Jacobi *et al.* 1998: 190).

The organisational principle of German trade unions, implemented after the Second World War, is that of a ‘unitary trade union movement’ (*Einheitsgewerkschaft*) led by the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund, DGB). The DGB originally had 16 affiliates organising all workers irrespective of status, profession and political or ideological orientation. Following various union mergers in the 1990s the number of DGB-affiliated unions was halved to eight. The union mergers undermined the traditional ‘industrial unionism’ and prompted the ‘rise of conglomerate unions’ (Streeck and Visser 1997), which extend their organisational domain to various industries. The two largest DGB affiliates are the German Metalworkers’ Union (IG Metall) and the United Services Union (ver.di), which have about 2 million members each and represent together around 70 per cent of all DGB affiliated trade union members. IG Metall has its main constituency in metal manufacturing, including the automobile industry as its organisational stronghold. IG Metall also covers the steel, textile and wood processing industries. Ver.di is much more diverse and represents, apart from the public sector, about 200 industries in private services (Dribbusch *et al.* 2018; Dribbusch and Birke 2019).

In relation to its affiliated unions the DGB is relatively weak and is largely restricted to representational matters and political lobbying. The DGB does not negotiate collective agreements. Affiliated trade unions that organise workers are active at the workplace and are engaged in collective bargaining and industrial action. Total DGB membership reached its all-time high, almost 12 million members, in 1991, following the integration of East German union members, only to slump shortly afterwards (Dribbusch *et al.* 2018). In 2017, the DGB represented about 6 million members, who account for more than three-quarters of all trade union members in Germany (Table 12.2). There are two more trade union confederations in Germany: the German Civil Service Association

2. Works councils, which enjoy far-reaching information and consultation rights, can be established in any firm with at least five employees. The public sector equivalent to works councils in the private sector, although with somewhat fewer rights than works councils, are the staff councils, which are based on the Federal Staff Representation Act (Bundespersönalvertretungsgesetz, BPersVG), with supplementary Acts in the various Länder (Jacobi *et al.* 1998: 198).

Table 12.2 Trade union membership in Germany

	2001	2008	2017	2001–2008	2008–2017
Deutscher Gewerkschaftsbund (DGB) (Confederation of German Trade Unions) DGB affiliates:	7,899,000	6,265,000	5,995,000	-20.7%	-4.3%
Industriegewerkschaft Metall (IG Metall) (German Metalworkers' Union)	2,710,000	2,301,000	2,263,000	-15.1%	-1.7%
Vereinte Dienstleistungsgewerkschaft (ver.di) (United Services Union)	2,807,000	2,138,000	1,987,000	-23.8%	-7.1%
Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE) (Mining, Chemicals and Energy Industrial Union)	862,000	701,000	638,000	-18.7%	-9.0%
Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU) (Building, Agriculture & Environment Workers' Union)	510,000	336,000	255,000	-34.1%	-24.1%
Gewerkschaft Erziehung und Wissenschaft (GEW) (German Union of Education)	268,000	252,000	278,000	-6.0%	10.3%
Gewerkschaft Nahrung-Genuss-Gaststätten (NGG) (Food, Tobacco, Hotel & Allied Workers Union)	251,000	206,000	200,000	-17.9%	-2.9%
Eisenbahn- und Verkehrsgewerkschaft (EVG) (Railway and Transport Union)	306,000	219,000	190,000	-28.4%	-13.2%
Gewerkschaft der Polizei (GdP) (German Police Union)	185,000	169,000	185,000	-8.6%	9.5%
Deutscher Beamtenbund und Tarifunion (DBB) (German Civil Service Association)	1,211,000	1,280,000	1,312,000	5.7%	2.5%
Christlicher Gewerkschaftsbund Deutschlands (CGB) (Christian Trade Union Confederation of Germany)	n.a.	275,000	271,000	n.a.	-1.5%
Unions not affiliated to the DGB*	220,000	255,000	280,000	+15.9%	9.8%
Among them:					
Marburger Bund (MB) (Union of Salaried Medical Doctors)	70,000	106,000	120,000	51.4%	13.2%
In total	9,330,000	8,075,000	7,858,000	-13.5%	-2.7%
Net union density (%)	20	17*	15*	n.a.	n.a.

Note: * Estimation by WSI.

Source: Dribbusch *et al.* (2018); Dribbusch and Birke (2019) based on membership information from the respective trade unions; union density: Appendix A1 as for 2001, WSI as for 2008 and 2017.

(Deutscher Beamtenbund und Tarifunion, DBB) with 1.3 million members, including 915,000 civil servants, and the small Christian Trade Union Confederation of Germany (Christlicher Gewerkschaftsbund Deutschlands, CGB) with approximately 280,000 members. More recently, occupational unionism has enjoyed a renaissance with several organisations that do not belong to any confederation (Schröder *et al.* 2011; Keller 2018). The largest among them is the Union of Salaried Medical Doctors (Marburger Bund, MB) with around 120,000 members. Other small, but influential occupational unions are the pilots' union (Vereinigung Cockpit) with 9,300 members and the DBB-affiliated train drivers' union (Gewerkschaft Deutscher Lokomotivführer, GDL) with 34,000 members (Keller 2018).

Union density varies considerably across industries, job categories and regions. The core of the traditional metalworking industry, which is dominated by blue-collar workers, is still comparatively well organised, with some car plants having density levels of 90 per cent or more. Density levels are on average much lower in small and medium-sized enterprises. In services, the picture is equally diverse. While utilities and the former state-owned companies in the rail, telecoms and postal services are comparatively well organised, the picture is much bleaker in companies that entered the market only after the liberalisation of these industries (Dribbusch *et al.* 2018). Health care and education have seen positive membership development as nurses and child care workers have become the focus of increased union activity since the mid-2000s. In these industries, comparatively strong organising levels in metropolitan areas contrast with weaker levels in small towns, rural areas and among staff in church-owned facilities (Schulten and Seikel 2018). Public administration remains a very difficult terrain for ver.di. The same applies to retail, where organising efforts meet structural hurdles and widespread employer resistance (Dribbusch 2003).

The organisational structure on the employers' side is more complex and rests on three pillars: chambers of industry and commerce (Industrie- und Handelskammern), business associations and employers' associations (Jacobi *et al.* 1998; Schröder and Weßels 2017). Of this three types of organisation only employers' associations negotiate industry-level collective agreements with trade unions. The German Employers' Association (Bundesvereinigung der Deutschen Arbeitgeberverbände, BDA) is the national peak-level organisation, comprising 48 national industry associations and 14 regional cross-industry associations. Like the DGB, the BDA is not directly involved in negotiating collective agreements. Negotiations are undertaken by the industry-level affiliates. Information on employers' association density rates is notoriously difficult to come by because most associations treat it as confidential (Silvia 2017). The available data suggest that, despite a decline from 63 per cent in 2002 to 58 per cent in 2011 (see Table 12.1), the employers' association rate is still substantially higher than union density. In order to prevent a further membership decline about half of German employers' associations introduced a special so-called 'OT membership' (Behrens and Helfen 2019). 'OT' stands for '*ohne Tarif*', which means membership without being bound by a collective agreement. This essentially gives employers the opportunity to remain a member of the association and to choose whether they want to be covered by an industry-level agreement signed by the respective employers' association. There is little information about the actual uptake of this kind of special membership. Evidence from the metalworking industry, however, shows that the proportion of companies making use of OT membership increased from 24 per cent in 2005 to 52 per cent in 2017 (Schulten 2019).

Security of bargaining

Security of bargaining is concerned with all the factors that support negotiations between trade unions and employers and determine the unions' bargaining role. Traditionally, the most important factors that support multi-employer bargaining in Germany are the legal framework, which defines the bargaining parties' rights and obligations, and

the ideological underpinning of multi-employer collective bargaining, based on support from the state, employers and trade unions for the idea of the social market economy.

The most fundamental legal basis of bargaining security is Article 9(3) of the German Constitution (Basic Law), which guarantees freedom of association and, thus, the autonomy of the bargaining parties in regulating employment conditions (*Tarifautonomie*). Article 9(3) thus excludes direct state intervention in determining terms and conditions of employment. Article 9(3) protects *Tarifautonomie*, as one of the most important principles of collective bargaining in Germany, and all activities necessary for the conduct of collective bargaining, including the rights to strikes and lockouts (Kittner 2009). Despite the otherwise dense legal framework of collective bargaining, strikes (and lockouts) are not regulated by codified law but by case law. Against this background, the key principles of strike activity can be summarised as follows. First, a strike can be called only by a trade union, never by a works council, and must be related to an issue dealt with in a collective agreement. This means that political strikes, aimed at changes of government policies, and solidarity strikes are illegal. The same applies to ‘wildcat’ strikes. Second, for the duration of an agreement there is a peace obligation (*Friedenspflicht*). This means that strikes can only be called in the period between the expiry of an existing agreement and the conclusion of a new one and after the breakdown of negotiations has been declared. Exceptions to this rule are short warning strikes and work stoppages, which take place when the peace obligation has expired, but negotiations for a new agreement are still ongoing. Third, strikes should always be a last resort and they have to follow the principle of proportionality, meaning that strike action is legitimate only if it is not deemed excessive in relation to the issue at hand. Fourth, although in principle the same rules apply to the public sector, civil servants (*Beamte*) have no right to collective bargaining and are, therefore, excluded from the right to strike. Fifth, a strike can be called only if, in a strike ballot, at least 75 per cent of union members vote in favour of strike action.

More specific ‘rules of the game’ for collective bargaining are set out in the Collective Agreements Act (*Tarifvertragsgesetz*, TVG). According to §4(1) of the TVG, collective agreements are legally binding for all members of the bargaining parties concerned; that is, for employees who are members of the signatory trade union and all companies affiliated to the signatory employers’ associations, or a single company in the case of a company agreement. In practice, employers bound by a collective agreement usually voluntarily follow the *erga omnes* principle by applying the agreed provisions to all employees, regardless of whether they are trade union members or not.

According to §5 of the TVG, collective agreements can be extended by the federal or regional Ministries of Labour to include those employers and employees in the relevant industry who are not directly bound by the agreement.³ According to the TVG, extensions need to be based on a joint request of the bargaining parties and require the approval of the bipartite Collective Bargaining Committee (*Tarifausschuss*), which

3. Collective agreements can also be extended under the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*, AEntG). Under the AEntG, extensions are restricted to the minimum wage and other minimum standards. Extensions, furthermore, require nationwide collective agreements and are administered at national rather than at regional level (Schulten 2018).

is headed by a government representative and comprises six representatives, with the DGB and the BDA each nominating three. Until 2015, extensions under the TVG were possible only if the agreement covered more than 50 per cent of the employees in the relevant bargaining area. With the adoption of the Act on the Strengthening of the Bargaining Autonomy (Gesetz zur Stärkung der Tarifautonomie), in August 2014, this condition was dropped. Instead, since 2015 the extension of an agreement needs to be in the public interest. One important criterion for this is the ‘predominant importance’ of the agreement, which takes account of the actual coverage rate. The latter includes companies formally covered by the agreement and those that take the agreement as orientation in setting their own standards. Although the intention of this legislative change was to increase the use of extensions, in practice, extensions are still rarely used and only in a limited number of industries (see Extent of bargaining for more details).

Another important legal provision in support of multi-employer collective bargaining is §4(3) TVG, setting out the favourability principle (*Günstigkeitsprinzip*). According to this, departures from industry-level agreements are possible only when these favour employees. The bargaining parties may, however, 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 (see Level of bargaining for more details).

In addition to the institutional support provided by the legal framework, bargaining security was also based on the shared understanding that multi-employer bargaining was an integral part of the German social market economy. For most of the post-war era, employers have valued multi-employer bargaining as a source of industrial peace and orderly industrial relations (Jacobi *et al.* 1998: 206). This perception changed in the 1990s, however, following German reunification and the associated transformation of the German model of capitalism more generally. At the same time, neoliberal perceptions of globalisation and intensified international competition dominated the political discourse, calling into question all labour market institutions and regulation (Schulten 2019). The clearest expression of this trend was the debate about ‘*Standort Deutschland*’ (Germany as a location for investment), which took place in the context of the severe economic crisis at the beginning of the 1990s. This debate involved a change in the employers’ view of collective bargaining. They increasingly complained that labour costs are too high, supposedly as a result of ‘overregulated’ and ‘non-flexible’ industry-level agreements (Hassel and Schulten 1998). As a consequence, the employers increasingly pushed for more decentralised bargaining and a shift from industry- to company-level bargaining by gradually increasing the scope for company-level derogations from industry-level agreements through opening clauses (see Level of bargaining). While still paying lip-service to the concept of the social market economy, employers gradually retreated from multi-employer bargaining, thus eroding the underpinning of bargaining security. In contrast to many other EU countries, in which the state actively intervened to reduce bargaining security, in Germany the key actors in undermining the regulatory capacity of collective bargaining were the employers.

Level of bargaining

The TVG stipulates that collective agreements have to be negotiated by trade unions and employers' associations or individual employers, thus explicitly allowing company-level agreements. In 2017, there were 76,043 valid collective agreements, of which 28,981 were industry-level agreements and 47,062 company-level agreements. Because company-level agreements are found mainly in smaller companies, the number of workers covered by a company-level agreement is substantially smaller than that covered by an industrial agreement. Table 12.3 illustrates that, since 2000, the contribution of company-level agreements to overall bargaining coverage has remained fairly stable at 7–8 per cent in western Germany and 10–11 per cent in eastern Germany. At the same time, the proportion of workers covered by an industry-level agreement decreased considerably between 2000 and 2017: in western Germany from 63 to 49 per cent and in eastern Germany from 44 to 34 per cent. This illustrates that, while the industry level still dominates, the relative importance of company-level agreements has increased. The increasing proportion of employees covered by company-level agreements compared with industry-level agreements illustrates the quantitative dimension of the decentralisation of collective bargaining in Germany.

Table 12.3 Relative importance of bargaining levels, 2000–2017 (percentage of employees covered by industry-level agreements (ILA) and company-level agreements (CLA))

Year	West Germany			East Germany		
	Total	ILA	CLA	Total	ILA	CLA
2000	70	63	7	55	44	11
2001	71	63	8	56	44	12
2002	70	63	7	55	43	12
2003	70	62	8	54	43	11
2004	68	61	7	53	41	12
2005	67	59	8	53	42	11
2006	65	57	8	54	41	13
2007	63	56	7	54	41	13
2008	63	55	8	52	40	12
2009	65	56	9	51	38	13
2010	63	56	7	50	37	13
2011	61	54	7	49	37	12
2012	60	53	7	48	36	12
2013	60	52	8	47	35	12
2014	60	53	7	47	36	11
2015	59	51	8	49	37	12
2016	59	51	8	48	36	11
2017	57	49	8	44	34	10

Source: WSI (2018) based on the IAB Establishment Panel.

There is also a qualitative dimension, because where industry-level agreements still exist the frequent use of opening clauses transfers regulatory capacity to the company level and may undermine the function of industry-level agreements in ensuring a level playing field for the whole industry. Overall, decentralisation of collective bargaining is not new. It can be traced to the 1960s and 1970s, with opening clauses on work organisation and additional payments, and continued during the 1980s, when employers secured more working time flexibility in exchange for a reduction in weekly working hours (Schulten and Bispinck 2018: 110). The next step in extending the catalogue of issues for which derogations are possible followed the post-reunification crisis in the early 1990s, with the introduction of so-called ‘hardship clauses’, mainly in eastern Germany. These allowed companies in financial difficulties to derogate from collectively agreed pay increases in exchange for safeguarding jobs. General opening clauses, which delegate the regulation of certain issues to the company level and specify the conditions under which this is possible, became more common in the 2000s when derogations were possible in order to ‘maintain or create employment’ or ‘to improve a company’s competitiveness’. The turning point that accelerated the use of general opening clauses was in 2004 when IG Metall, which had been very critical of opening clauses, concluded the so-called Pforzheim agreement, which for the first time contained a general opening clause for the whole metal industry and provided the blueprint for agreements in other industries (Bispinck and Schulten 2010). The Pforzheim agreement was a response to the proliferation of so-called ‘wildcat’ derogations from industry-level agreements in the 1990s and early 2000s, when more and more company-level derogations were agreed between management and works councils without the involvement of the industry-level bargaining parties (Bahnmüller 2017). The ultimate push for the agreement came from the centre-left coalition government under Chancellor Gerhard Schröder, which, in response to mass unemployment and a looming election, threatened to introduce statutory opening clauses if the bargaining parties did not agree on enhanced possibilities for company-level derogations (Bispinck and Dribbusch 2011). Thus, the Pforzheim agreement can be seen as an attempt by IG Metall and the Federation of Metal Industry Employers’ Associations (Gesamtmittel) to regain control over company-level developments and to prevent state intervention in collective bargaining (Müller *et al.* 2018). As a consequence, the use of opening clauses became a standard feature in German collective bargaining.

The use of opening clauses varies considerably across industries. In 2015, approximately one-fifth of all companies covered by a collective agreement made use of an opening clause. The use of opening clauses is most widespread in manufacturing (28 per cent) and in transport and hotels and restaurants (23 per cent). They are less common in construction (14 per cent) and financial services (10 per cent) (Amlinger and Bispinck 2016). The most common issues dealt with by opening clauses are working time (14 per cent) and quantitative issues, such as wages, allowances and additional bonuses (10 per cent each) (Amlinger and Bispinck 2016).

Usually, the establishment of an opening clause involves the following steps. It is based on a joint application by the management and works council of the respective company addressed to the industry-level bargaining parties, which take the final decision on the derogation. This joint application must be supported by comprehensive information

and documentation clearly showing why derogation is needed. If the bargaining parties agree, a company-level bargaining committee, consisting of works council members and full-time officials, negotiates a so-called ‘supplementary company agreement’ with the company, which needs the approval of union headquarters. Usually, the trade union agrees to the derogation only if it is temporary and the company offers something in return: in most cases these are job guarantees or new investment in the company (Bispinck and Schulten 2018).

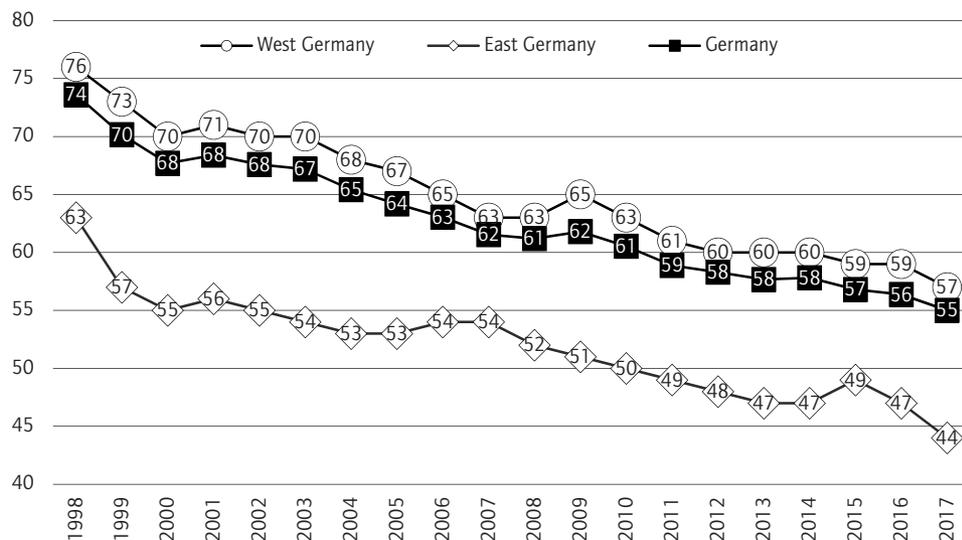
Concerning relations between different bargaining levels, the use of opening clauses has far-reaching implications for the more general architecture of German collective bargaining because the traditional division of labour between trade unions and works councils has become increasingly blurred. The opening up of industry-level agreements means that works councils are increasingly involved in negotiations on wages and working time, which previously, at least formally, was the prerogative of trade unions at industry level. This de facto transition to a two-tier bargaining system has changed the character of industry-level agreements, which increasingly function as framework agreements with reduced regulatory capacity, potentially paving the way for increased differentiation of wages and working conditions (Bahmüller 2010: 83). The use of opening clauses helped the bargaining parties in metals to regain some control over developments at company-level because the industry-level agreement defines the conditions under which company-level derogations are possible. This organised decentralisation was possible, however, only because of the close articulation between industry-level trade unions and company-level works councils in metals, where in 2014 approximately 70 per cent of all works council members within the organisational domain of IG Metall were members of the union (Schulten and Bispinck 2018: 116).

The metalworking experience illustrates that a strong union presence at the workplace, ensuring close articulation between the industry and the company level, high overall bargaining coverage and supportive employers’ associations are central prerequisites for organised decentralisation. In many other industries, particularly in private services, these preconditions are not met. In consequence, collective bargaining in Germany is characterised by the parallel existence of organised and ‘disorganised’ forms of decentralisation. The primary example of the latter is retail, where trade unions and works councils are much less prevalent and employers are increasingly abandoning multi-employer bargaining by leaving the employers’ association or opting out of the industry-level agreement. This, in turn, has led to a dramatic decline in bargaining coverage over the past 20 years (Schulten and Bispinck 2018; Ibsen and Keune 2018). There have been opening clauses in retail along the lines of the Pforzheim agreement in metalworking, but, because of the much weaker coverage and articulation in retail, ‘disorganised’ decentralisation dominates, with company-level negotiations becoming increasingly detached from industry-level bargaining.

Extent of bargaining

According to the data provided by the Establishment Survey of the Institute of Employment Research of the German Federal Employment Agency (IAB), over the past

Figure 12.1 Geographical breakdown of collective bargaining coverage, 1998–2017 (workers covered by collective agreements as a percentage of all workers)



Source: IAB Establishment Panel.

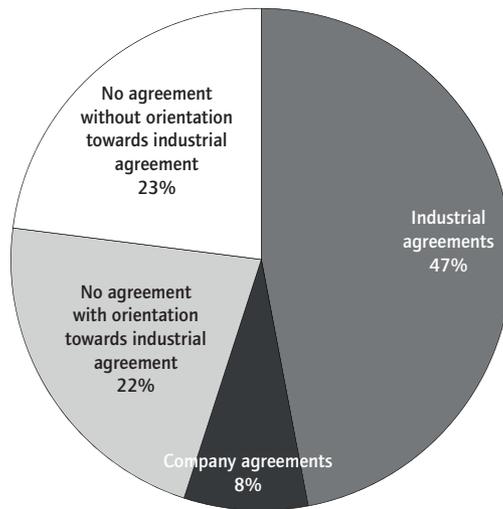
20 years Germany has experienced a dramatic decline in bargaining coverage, from 74 per cent in 1998 to 55 per cent in 2017 (see Figure 12.1). Other data sources, such as the German Socio-Economic Panel (SOEP) and the German Structure of Earnings Survey (SES), come up with even lower figures: 53 per cent in 2016 (SOEP) and 45 per cent in 2014 (SES). Considering the different results of the three sources there is a possibility that the IAB data underestimate the real decline of bargaining coverage in Germany.⁴

There are, however, considerable differences in bargaining coverage regarding region, industry and company size. As Figure 12.1 illustrates, bargaining coverage is traditionally about 15 percentage points higher in western than in eastern Germany. The decline during the past 20 years, however, has been more or less the same: in western Germany from 76 per cent in 1998 to 57 in 2017, and in eastern Germany from 63 to 44 per cent.

For about half of the 45 per cent of employees who are not covered by collective agreements, the companies claim that they regard prevailing industry-level agreements as ‘orientation’ for the determination of wages and working conditions at company level (see Figure 12.2). The regulatory capacity of collective agreements, therefore, seems to go beyond the extent of formal bargaining coverage. Recent studies found, however, that in many companies taking their bearings from prevailing industry-level agreements,

4. For a more detailed discussion of the different data sources see Schulten (2019). The following analysis will be based on the IAB data, because the IAB Establishment Survey is the only one conducted annually and therefore the only one that allows the creation of more long-term data series.

Figure 12.2 Collective bargaining coverage as a percentage of workers employed by companies covered by collective agreements, 2017



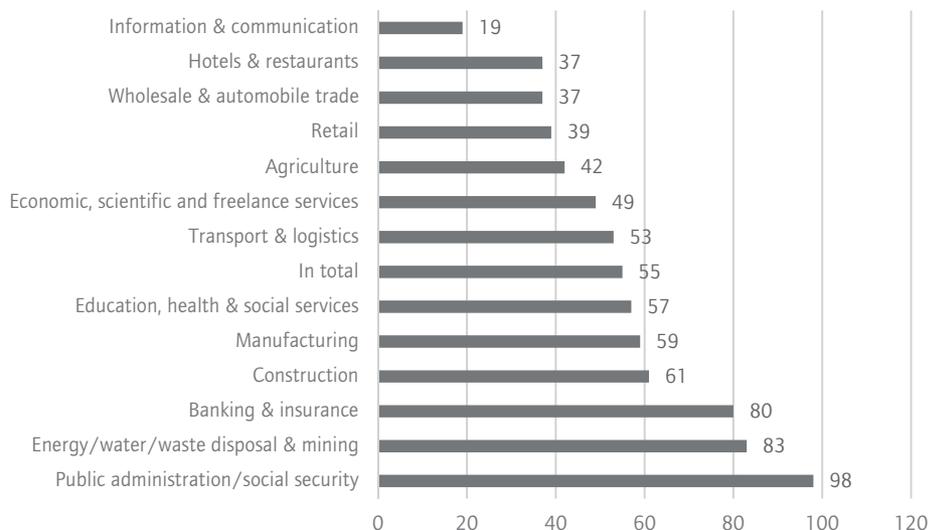
Source: IAB Establishment Panel.

wages and conditions are well below collectively agreed standards, so that ‘orientation’ is not an adequate substitute for formal coverage (Addison *et al.* 2016; Berwing 2016; Bossler 2019).

There are, furthermore, substantial differences in coverage by industry (see Figure 12.3). In some industries, 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 applies to some core manufacturing industries, such as automobiles or chemicals, in which around two-thirds of workers are still covered by collective agreements. In a large number of private service industries, such as retail, hotels and restaurants, wholesale and automobile trade or IT services, only a minority, less than 40 per cent, of workers are covered by collective agreements.

The differences by industry are closely related to the size of establishment. The industries with high bargaining coverage are in the public sector, or privatised formerly public industries, and are characterised by larger companies. In contrast, all the industries with low bargaining coverage are fragmented and compartmentalised into smaller units. This has a significant impact on the extent of bargaining. While 85 per cent of larger establishments with 500 or more employees are covered by a collective agreement, in smaller establishments with fewer than 10 employees bargaining coverage is only 22 per cent. Given that the vast majority of establishments in Germany are small or medium-sized it is no surprise that, on average, only 29 per cent of all establishment are covered by a collective agreement (Schulten 2019).

Figure 12.3 Collective bargaining coverage in selected industries, 2017 (workers covered by collective agreements as a percentage of all workers)

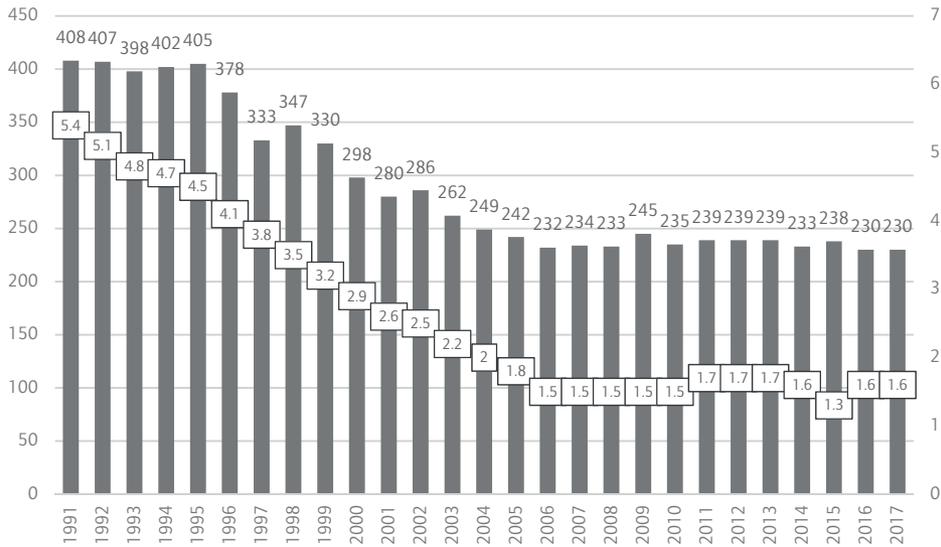


Source: IAB Establishment Panel.

There are four main reasons for the decline of bargaining coverage in Germany. First, the decline of union density and power, so that unions, particularly in some private services, are too weak to force employers to the negotiation table. Second, the position of trade unions has been further weakened by labour market deregulation, which has led to a significant increase of non-standard and precarious employment (Keller and Seifert 2013). This has resulted in a growing dualism, with a relatively well protected core workforce and a much more precarious peripheral group of employees, even in industries with relatively stable collective bargaining structures, such as metalworking and the public sector (Hassel 2014). Third, the declining acceptance of multi-employer bargaining among employers and their incremental retreat from industry-level collective agreements. This involves both the withdrawal from industry-level agreements of companies that were formerly covered and the refusal of newly established companies to opt into the industry-level agreement. The German employers' associations responded to this development by offering OT membership (see above), which enables companies to remain a member of the association while at the same time avoiding coverage by an industry-level agreement. OT membership status has helped to stabilise the employers' association rate, but it has also provided institutional legitimisation for opting-out of industry-level collective agreements and thus has contributed to the decline in bargaining coverage.

This problem has been further aggravated by the lack of state support for collective bargaining, which is the fourth main reason for the decline of collective bargaining coverage. In other countries, the state has supported bargaining coverage, for instance, by the frequent use of extension mechanisms. In Germany, collective agreements are

Figure 12.4 Extended original agreements* in force, 1991–2017 (in absolute numbers and as a percentage of all original agreements)



Note: * Excluding agreements amending existing agreements.

Source: Schulten (2018).

rarely extended. Figure 12.4 shows that the low number of extensions at the beginning of the 1990s decreased further thereafter, from 5.4 per cent in 1991 to a mere 1.5 per cent in 2006 and has since stabilised between 1.5 and 1.7 per cent. The limited importance of extension for the extent of bargaining becomes even more obvious when examining the number of extensions of newly concluded agreements per year. This number dropped from around 200 at the end of the 1970s to 27 in 2016 (Schulten 2018: 74). Extensions are highly concentrated in a few industries, such as textiles and clothing, construction, hairdressing, security services and the stone industry and related trades. All these industries share the following characteristics: they are labour-intensive, cover a high number of small- and medium-sized companies and are mainly oriented towards the domestic market (Schulten 2018: 76).

One reason for the limited use of extension is that, for historical reasons, neither the trade unions nor the employers have actively promoted it in the post-war period, viewing it as interfering with the principle of free collective bargaining (*Tarifautonomie*). Another reason is the fact that within the Collective Bargaining Committee (*Tarifausschuss*) the employers' peak-level organisation, BDA, has rejected many applications for extension, although they were strongly supported by their industry-level affiliate. In some years, 2006 and 2013 for instance, almost one-fifth of all extension applications were rejected by BDA. Furthermore, in many cases applications were withdrawn in order to avoid rejection by the Collective Bargaining Committee. This means that, in some years, up to 30 per cent of all extension applications were de facto blocked by either rejections or withdrawals (Schulten 2018: 81).

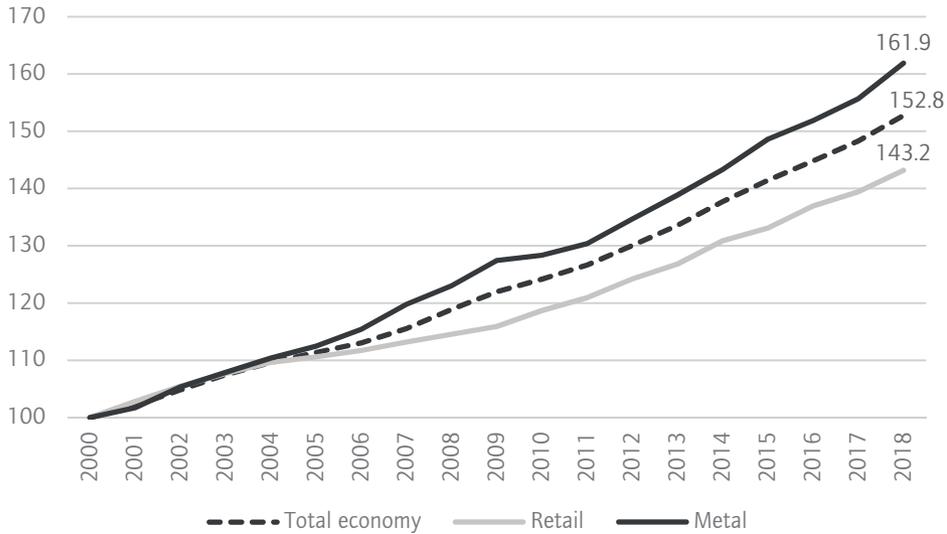
This is possible because only the peak-level organisations, DGB and BDA, are represented on the Collective Bargaining Committee, which needs to approve an extension application unanimously. This procedural rule is also the reason why the new law on the extension of collective agreements, introduced in 2014, has so far had no significant impact on the number of extensions. The new law introduced less restrictive extension criteria (see Security of bargaining), but it left the rules on the composition and role of the Collective Bargaining Committee unchanged, so that BDA can still use its de facto veto power to reject extension applications. Against this background, the trade unions keep asking for procedural changes so that an extension application can be rejected only by a majority of the votes within the Collective Bargaining Committee, which would fundamentally strengthen the position of the applicant and increase the effectiveness of extension as a tool to support the extent of bargaining.

Depth of bargaining

Depth of bargaining refers to the conduct of negotiations and the intra-organisational processes through which unions and employers formulate their bargaining strategies. Because employer-side information is not readily available, this account focuses on trade unions. The actual procedure varies between trade unions, but, in principle, the negotiation process can be divided into three phases: formulation of claims, negotiations and implementation of the agreement. Months before the agreement expires discussions are held among members, union representatives and works councils at company level about the bargaining demands. The result of the company-level discussions informs the final decision on the bargaining demands taken by the unions' Collective Bargaining Committee (*Tarifausschuss*), which consists of union representatives of the most important companies and local union branches of the bargaining region. Discussions at company level among lay unionists and works council members are an important element of preparing for the negotiations because they create a sense of ownership. This, in turn, is important for the union's capacity to mobilise their members for supportive action during the negotiations. The unions' wage claim is often based on the following elements: compensation for the expected rate of inflation, development of overall labour productivity and a redistributive component aimed at shifting the relationship between capital and labour income in favour of the latter. Usually, the unions' bargaining demands also comprise a 'qualitative' element by addressing issues such as working time reduction, occupational health and safety, early retirement, vocational education and training and work–life balance (see Scope of agreements).

In the comparative literature, Germany has been characterised as a country with cross-industrial pattern bargaining (Traxler *et al.* 2001). The German variant of pattern bargaining, however, was never as comprehensive and formalised as, for instance, in Sweden (see Chapter 28). The various unions exchange information about their bargaining strategies, but they have always insisted on autonomy in deciding their own bargaining strategy and have never ceded any coordinating competences to the DGB (Bispinck 2016: 187). The German variant of pattern bargaining has followed the 'convoy principle': the first agreement signed at regional level in one of the economically most important industries, which is usually, but not necessarily, metalworking, serves

Figure 12.5 Development of collectively agreed wages in metal, retail and the total economy, 2000–2018 (2000=100)



Source: WSI Collective Agreement Archive.

as a point of reference for the ensuing negotiations in other industries (Bispinck 1995). During the 2000s, the gap between wage development in metalworking and in some services, such as retail, grew (see Figure 12.5). This can be seen as an indicator that the convoy principle no longer works.

Once the Collective Bargaining Committee has decided on the demands, they are submitted to union headquarters for confirmation and subsequently conveyed to the employer side. The members of the Collective Bargaining Committee establish a negotiating body (*Verhandlungskommission*), which is responsible for the actual negotiations with the employers. The peace obligation ends with the expiry of the agreement so that the start of the negotiations is often accompanied by union demonstrations and short warning strikes in order to put pressure on the employers by signalling that the union demands have the full support of the membership. If the negotiations are successful, the draft agreement needs to be approved by the Collective Bargaining Committee before it can be signed by the union and the employers' association. Once a so-called 'pilot agreement' (*Pilotabschluss*) has been concluded in a certain region, it is usually transferred to the other bargaining regions negotiating at the same time. In this respect, Germany is characterised by regional pattern bargaining within the same industry. While most sectors follow this pattern, there are also some industries, such as banking and construction, in which collective bargaining takes place at national level and usually leads to the conclusion of nation-wide agreements.

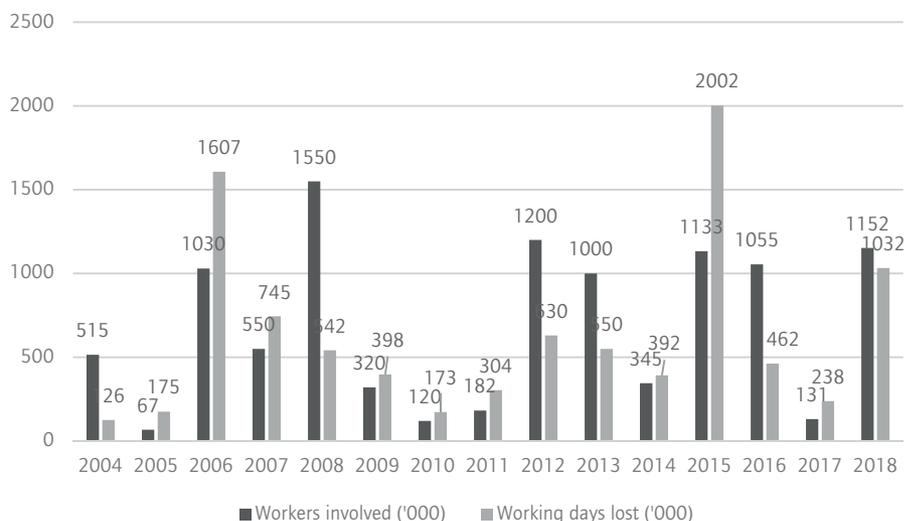
If the negotiations fail, the bargaining parties can start a mediation procedure the details of which are specified in a collective agreement between the bargaining parties.

There are neither statutory rules nor compulsory mediation in Germany. The mediation agreement usually stipulates that one of the bargaining parties can invoke the mediation commission (*Schlichtungskommission*) which consists of an equal number of representatives of the bargaining parties and one or two neutral chair(s). The task of the chair is to find a compromise acceptable to both bargaining parties.

If the trade union declares that the negotiations have broken down, it can call a strike, which needs the approval of 75 per cent of the union members in a secret ballot. The negotiations continue during the strike. If the bargaining parties come to an agreement, the draft agreement needs the approval of 25 per cent of the union membership in a secret ballot and for the strike to end. Most agreements are concluded without mediation and strikes. Germany is one of the least strike-prone countries in the EU (Vandaele 2016). The reasons for Germany’s low strike rate include the fairly restrictive strike law, including the prohibition of political strikes; the unitary trade union movement, with a limited number of industrial unions; and the dominance of industry-level collective agreements (Dribbusch 2017).

Over the past 20 years, the development of strike activity has been characterised by three interlinked processes (Dribbusch and Birke 2019). First, German industrial relations have become more conflictual as regards the number of days lost and the number of employees involved (see Figure 12.6), even though in the European context this is still at a fairly moderate level. Second, strike activity has shifted increasingly to the service sector, which since the mid-2000s accounts for more than two-thirds of the working days lost. Most of these conflicts are about the conclusion of company-level agreements, prompted by the employers exiting the industry-level agreement or not joining it in

Figure 12.6 Development of strikes, 2000–2018 (workers involved and number of working days lost)



Source: Dribbusch (2019).

the first place. Third, strikes are spreading to new groups of employees, which used to be less involved in strike activities. With the increasing importance of company-level agreements, strikes can be expected to remain at a higher level.

Degree of control of collective agreements

Degree of control refers to the extent to which collective agreements determine the employees' actual terms and conditions of employment. It therefore concerns the implementation and monitoring of collective agreements, as well as the various mechanisms for dealing with conflicts about the interpretation of an agreement, such as mediation and arbitration.

In contrast to many other EU Member States, Germany has no comprehensive labour inspectorate responsible for ensuring compliance with collective agreements. Instead, there is a fragmented structure of different control authorities that monitor compliance in specific areas of activity.⁵ According to the Works Constitution Act (BetrVG), works councils are responsible for monitoring compliance with collective agreements at company level. Within the German dual system of interest representation this means that there are two important preconditions for effectively ensuring a high degree of control of collective agreements: first, high works council coverage and second, close articulation between works councils at company level and trade unions at industry level.

According to the Works Constitution Act (BetrVG) works councils are mandatory in all private firms with five or more employees. The proportion of establishments that have a works council, however, is traditionally very low and has decreased over the past 20 years, from 12 per cent in 1996 to 9 per cent in 2017 (Bellmann and Ellguth 2018:7). Even more important for ensuring a high degree of control, however, is the presence of a works council in companies covered by a collective agreement. The proportion of employees covered by both a works council and a collective agreement has decreased by 15 percentage points over the past 20 years, from 44 per cent in 1998 to 29 per cent in 2017. At the same time, the proportion of employees working in an establishment without a works council and without being covered by a collective agreement increased from 24 per cent in 1998 to 41 per cent in 2017 (Dribbusch and Birke 2019: 19). This growing representation gap means that the prerequisites for ensuring a high degree of control of collective agreements have deteriorated considerably. Regional and industrial data illustrate that the presence of works councils and collective agreements as the core institutions of the German dual system of interest representation essentially only still exist in the western German manufacturing sector, with the automobile and chemical industries as its core. In eastern German manufacturing and private services as a whole the conditions for ensuring the efficient implementation and monitoring of collective agreements are much less favourable (see Table 12.4).

5. Monitoring compliance of minimum wages with the law and collective agreements, for instance, is the responsibility of the department of the German customs authority dealing with undeclared and illegal employment (Finanzkontrolle Schwarzarbeit).

Table 12.4 Workers covered by a works council and a collective agreement in manufacturing and private services, 2017 (as percentage of all workers)

	Western Germany			Eastern Germany		
	Private sector	Manufacturing	Private services	Private sector	Manufacturing	Private services
WC and CA	31	53	24	22	30	23
WC but no CA	9	13	8	11	19	11
No WC but CA	21	9	27	16	5	19
Neither WC nor CA	39	26	42	51	46	46

Notes: WC = works council; CA = collective agreement.

Source: IAB Establishment Panel (Ellguth and Kohaut 2018).

Scope of agreements

The scope of agreements is determined by the specific type of collective agreement. There are four broad categories. First, wage agreements (*Lohn- und Gehaltstarifverträge*), which cover the bread-and-butter issue of wage increases. Second, wage framework agreements (*Lohn- und Gehaltsrahmentarifverträge*), which define wage grades and the overall wage structure, as well as general rules on performance-related pay. All these issues can be dealt with more specifically at company level, but the wage framework agreements lay down some ground rules that need to be complied with. In a nutshell, they specify who receives how much and for what. The third type are collective agreements on working conditions (*Manteltarifverträge*), which essentially cover the qualitative issues dealt with in collective bargaining, such as some ground rules on hiring and firing, the duration and allocation of working time, the conditions for night and shift work and holiday entitlements. This type of collective agreement also covers broader social policy issues, such as early retirement and continued payment of wages in case of illness and invalidity. The fourth category of collective agreements comprises more specific regulations on the issues dealt with at a more general level in the *Manteltarifvertrag*. In some industries these more specific rules are already included in the *Manteltarifvertrag*. Until the 1990s most wage agreements had a standard duration of 12 months. Since then there has been a clear tendency towards a much longer duration. In 2018, the average duration of newly concluded wages agreements reached a new peak of 26.5 months (Schulten and WSI-Tarifarchiv 2019: 3). The other three types of collective agreements are usually valid for several years.

When considering the issues covered by collective agreements it is important to note that bargaining rounds are rarely purely about wages, but usually contain a qualitative dimension. This is not a new phenomenon. Collective bargaining on qualitative issues dates back to the 1980s, when the reduction of working time and protection against the negative impacts of restructuring linked to the introduction of new technologies were key issues (Bispinck 2019). In the 1990s, an important issue was continued payment in case of illness because the state reduced the statutory continued payment in 1996. In view of the economic crisis at the beginning of the 2000s, the key issue at the time was employment protection. The 2000s also saw a complete overhaul of wage framework

agreements in key industries, such as metalworking and the public sector with the objective of establishing uniform wage structures and criteria for blue- and white-collar workers. New issues in the 2010s were the revaluation of work in the social care industry and the introduction of individual options between wage increases and more time-off, to improve the work–life balance.

The scope of collective bargaining therefore has remained fairly stable over time and comprises a whole package of quantitative and qualitative issues. The choice of qualitative issues is determined either by the political agenda, because the trade unions see a need to correct policy measures, or by members' preferences as a result of large-scale surveys conducted by union headquarters or discussions among members, local union representatives and works council members at company level (see Depth of bargaining).

Conclusions

Writing more than 20 years ago, Jacobi *et al.* (1998: 191) described relatively centralised collective bargaining with high coverage as one of the main features of German industrial relations. Since then, collective bargaining has undergone fundamental changes that have led to an increasing decentralisation, fragmentation and erosion of the bargaining landscape. This is now characterised by the gradual emergence of parallel industrial and geographical universes of collective bargaining. The different universes differ fundamentally regarding the regulatory capacity of collective bargaining, captured by Clegg's analytical dimensions: in particular, level, extent and security of bargaining and the degree of control of collective agreements. Analysis illustrates that the traditional world of collective bargaining, with industry-level agreements and relatively high bargaining coverage, underpinned by supportive employers and strong and well-articulated company-level representation structures, is largely restricted to the core of the western German manufacturing sector, and even there, outsourcing and the use of atypical employment have left their mark in terms of an increasing differentiation of working conditions.

More generally, the past 20 years have been marked by the development of parallel universes of collective bargaining in western and eastern Germany and in manufacturing and private services. Collective bargaining in eastern Germany and in private services is characterised by a lower significance of industry-level bargaining and a higher degree of employers' discretion due to lower bargaining coverage, lower union density and less prevalent company-level representation structures. The reasons for this development are manifold, but one factor stands out and that is the diminishing support from the employers and their retreat from multi-employer bargaining as one of the core institutions of the traditional German social market economy.

More recently, however, after more than two decades of erosion and fragmentation, the negative consequences of this development in terms of the dramatic increase in in-work poverty and various forms of inequality seem to have triggered new thinking. It seems to be dawning even on employers and political actors that the neoliberal transformation

of collective bargaining has probably gone too far and that something needs to be done to stabilise bargaining coverage. The discussions among trade unions, employers and political actors about the revitalisation of collective bargaining are focusing on three different approaches (Schulten 2019). The first, which can be called ‘revitalisation from below’, focuses on strengthening trade union presence and power at company level in order to force employers into collective bargaining. The second, which can be called ‘revitalisation from above’, is concerned with strengthening political support for collective bargaining. The third, which is mainly promoted by the employers, can be called ‘revitalisation through flexibilisation’ and focuses particularly on making collective bargaining more attractive to companies.

‘Revitalisation from below’ is essentially the trade unions’ response to the employers’ incremental withdrawal from multi-employer bargaining either by opting out of industry-level agreements or by not joining them in the first place. Revitalisation from below, therefore, involves unions entering into ‘house-to-house fighting’ (*Häuserkampf*) either to defend or to newly establish collective bargaining coverage. The success of this strategy depends largely on the unions’ organisational strength at company level and their ability to mobilise their power resources. The ‘house-to-house fighting’ approach requires enormous financial and personnel resources and might overtax unions in industries such as hotels and restaurants or retail characterised by SMEs and low union density. Increasing bargaining coverage, in particular in private sector services, therefore, cannot solely rely on building union power at company level, but requires other forms of political support.

The mobilisation of political support for collective bargaining is the objective of the second approach, ‘revitalisation from above’. Compared with other EU countries, state support for collective bargaining has been more restricted and more or less limited to ensuring the principle of bargaining autonomy. This changed to a certain extent in 2014 with the adoption of the Act on the Strengthening of Bargaining Autonomy, which included the introduction of a statutory minimum wage and less restrictive rules on the extension of collective agreements. Because the latter reform failed to achieve the stated objective of increasing the number of extensions, trade unions are demanding further measures to promote multi-employer bargaining, including a change in the decision-making procedure in the Collective Bargaining Committee to remove the employers’ power to veto extension applications (DGB 2017). There are a number of other proposals. First, the introduction of special clauses in public procurement that make awarding public contracts conditional on being covered by a collective agreement. Second, extending the validity of collective agreements after their expiry (*Nachwirkung*) in order to make it less attractive for employers to withdraw from collective bargaining. Third, the more widespread use of optional provisions that allow derogations from labour law through collective agreements (*tarifdispositive Regelungen*). And fourth, introducing some kind of tax relief for companies covered by collective agreements. All this illustrates the more general shift in the unions’ view of the role of the state in the direction of more active intervention in order to reverse the decline of multi-employer bargaining.

The employers, however, are still more critical of any kind of state intervention in collective bargaining. For the employers, the most promising way to increase bargaining coverage is to create positive incentives for companies by making collective agreements more flexible. They therefore suggest ‘revitalisation through flexibilisation’. This would involve using opening clauses even more frequently and pursuing a ‘modularisation of collective agreements’ (Dulger 2018; Kramer 2018). The idea behind modularisation is that employers should no longer be obliged to apply the whole collective agreement, but should have the opportunity to choose only those ‘modules’ of the agreements which they find acceptable for their specific circumstances (Schulten 2019). For the unions, this proposal is not acceptable. It would fundamentally change the character of collective agreements as a tool to set binding minimum working standards. Moreover, the past 20 years have shown that increasing the flexibility of industry-level agreements through opening clauses has not prevented a decline in bargaining coverage.

Improving the regulatory capacity of collective bargaining requires a combination of the first two approaches: revitalisation from below and from above. An important additional factor, however, are the employers’ associations, which have manoeuvred themselves into a fundamental dilemma because their organisational strength depends more and more on ‘OT’ membership status that, at the same time, significantly weakens collective bargaining. To overcome this dilemma, employers’ associations need other forms of organisational support. Experience from other European countries suggests that more widespread use of extensions could be one way to strengthen both the employers’ associations and bargaining coverage. It would therefore be in the employers’ own interests to take a more positive stance towards state support for collective bargaining.

References

- Addison J.T., Teixeira P., Evers K. and Bellmann L. (2016) Is the erosion thesis overblown? Alignment from without in Germany, *Industrial Relations*, 55 (3), 415–443.
- Amlinger M. and Bispinck R. (2016) Dezentralisierung der Tarifpolitik – Ergebnisse der WSI Betriebsrätebefragung 2015, *WSI-Mitteilungen*, 69 (3), 211–222.
- Bahn Müller R. (2010) Dezentralisierung der Tarifpolitik: Re-Stabilisierung des Tarifsystems?, in Bispinck R. and Schulten T. (eds.) *Zukunft der Tarifautonomie – 60 Jahre Tarifvertragsgesetz: Bilanz und Ausblick*, Hamburg, VSA-Verlag, 81–113.
- Bahn Müller R. (2017) Von der Erosion des Flächentarifvertrags zur Chance gewerkschaftlicher Erneuerung, in Schulten T., Dribbusch H., Bäcker G. and Klenner C. (eds.) *Tarifpolitik als Gesellschaftspolitik: Strategische Herausforderungen im 21. Jahrhundert*, Hamburg, VSA-Verlag, 34–47.
- Behrens M. (2011) *Das Paradox der Arbeitgeberverbände*, Berlin, Sigma.
- Behrens M. and Helfen M. (2019) Small change, big impact? Organisational membership rules and the exit of employers’ associations from multiemployer bargaining in Germany, *Human Resource Management Journal*, 29 (1), 51–66.
- Bellmann L. and Ellguth P. (2018) Zum Rückgang der betrieblichen Mitbestimmung, IAB-Stellungnahme 4/2018, Nürnberg, Institut für Arbeitsmarkt- und Berufsforschung. <http://doku.iab.de/stellungnahme/2018/sn0418.pdf>

- Berghahn V.R. and Vitols S. (eds.) (2006) *Gibt es einen deutschen Kapitalismus?*, Frankfurt am Main, Campus Verlag.
- Berwing S. (2016) *Tariforientierung in Deutschland – zwischen Tariflandschaft und Tarifödnis*, Schriften der FBS, Mannheim, Forschungsstelle für Betriebswirtschaftslehre und Sozialpraxis.
- Bispinck R. (1995) *Tarifpolitik in der ersten Hälfte der 90er Jahre: eine zwiespältige Bilanz*, in Bispinck R. (ed.) *Tarifpolitik der Zukunft: was wird aus dem Flächentarifvertrag?*, Hamburg, VSA-Verlag, 9–27.
- Bispinck R. (2016) *Tarifpolitik vor alten und neuen Herausforderungen*, in Bäcker G., Lehndorff S. and Weinkopf C. (eds.) *Den Arbeitsmarkt verstehen, um ihn zu gestalten: Festschrift für Gerhard Bosch*, Wiesbaden, Springer VS, 181–198.
- Bispinck (2019) *70 Jahre Tarifvertragsgesetz – Stationen der Tarifpolitik von 1949 bis 2019*, Elemente qualitativer Tarifpolitik Nr. 85, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI). https://www.boeckler.de/pdf/p_ta_elemente_85_2019.pdf
- Bispinck R. and Dribbusch H. (2011) *Collective bargaining, decentralisation and crisis management in the German metalworking industries since 1990*, WSI Discussion Paper No. 177, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI). https://www.boeckler.de/pdf/p_wsi_disp_177.pdf
- Bispinck R. and Schulten T. (1999) *Flächentarifvertrag und betriebliche Interessenvertretung*, in Müller-Jentsch W. (ed.) *Konfliktpartnerschaft – Akteure und Institutionen der industriellen Beziehungen*, München, Rainer Hampp Verlag, 185–212.
- Bispinck R. and Schulten T. (2010) *Sector-level bargaining and possibilities for deviations at company level: Germany, Dublin*, Eurofound. https://www.eurofound.europa.eu/sites/default/files/ef_publication/field_ef_document/ef1087en4.pdf
- Bossler M. (2019) *The rise in orientation at collective bargaining without a formal contract*, *Industrial Relations*, 58 (1), 17–45.
- Brandt T. and Schulten T. (2008) *Liberalisierung und Privatisierung öffentlicher Dienstleistungen und die Erosion des Flächentarifvertrags*, *WSI-Mitteilungen*, 61 (10), 570–576.
- DGB (2017) *Positionen zur Stärkung der Tarifbindung*, Berlin, 28 February 2017. <http://www.dgb.de/themen/++co++dfdaadb8-ff1f-11e6-a620-525400e5a74a>
- Dribbusch H. (2003) *Gewerkschaftliche Mitgliedererwerb im Dienstleistungssektor: ein Dreiländer-Vergleich im Einzelhandel*, Berlin, Sigma.
- Dribbusch H. (2017) *Arbeitskämpfe in schwierigen Zeiten – zur Streikentwicklung im Dienstleistungssektor*, in Artus I., Birke P., Kerber-Clasen S. and Menz W. (eds.) *Sorge-Kämpfe: Auseinandersetzungen um Arbeit in sozialen Dienstleistungen*, Hamburg, VSA-Verlag, 301–331.
- Dribbusch H. (2019) *WSI-Arbeitskampfbilanz 2018: Deutlicher Anstieg des Arbeitskampfvolumens*, Policy Brief WSI 3/2019 Nr. 31, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI). https://www.boeckler.de/pdf/p_wsi_pb_31_2019.pdf
- Dribbusch H. and Birke P. (2019) *Gewerkschaften in Deutschland: Herausforderungen in Zeiten des Umbruchs*, Berlin, Friedrich Ebert Stiftung. <http://library.fes.de/pdf-files/id/ipa/15308-20190418.pdf>
- Dribbusch H., Lehndorff S. and Schulten T. (2018) *Two worlds of unionism? German manufacturing and service unions since the Great Recession*, in Lehndorff S., Dribbusch H. and Schulten T. (eds.) *Rough waters – European trade unions in a time of crisis*, 2nd ed., Brussels, ETUI, 197–220.
- Dulger R. (2018) *100 Jahre Stinnes-Legien-Abkommen*, Speech at the Gesamtmetall conference on 'Die Zukunft der Tarifautonomie in Deutschland', Berlin, 21 November 2018. <https://www.>

- gesamtmetall.de/sites/default/files/downloads/rede_gesamtmetall_praesident_dulger_zu_100_jahre_stinnes_legien.pdf
- Ellguth P. and Kohaut S. (2018) Tarifbindung und betriebliche Interessenvertretung: Ergebnisse aus dem IAB-Betriebspanel 2017, WSI-Mitteilungen, 71 (4), 299–306.
- Haipeter T. (2017) OT-Mitgliedschaft und OT-Verbände, in Schroeder W. and Weßels B. (eds.) Handbuch Arbeitgeber- und wirtschaftsverbände in Deutschland, 2nd ed., Wiesbaden, Springer VS, 305–317.
- Hassel A. (2014) The paradox of liberalization – understanding dualism and the recovery of the German political economy, *British Journal of Industrial Relations*, 52 (1), 57–81.
- Hassel A. and Schulten T. (1998) Globalization and the future of central collective bargaining: the example of the German metal industry, *Economy and Society*, 27 (4), 484–522.
- Ibsen C. and Keune M. (2018) Organised decentralisation of collective bargaining: case studies of Germany, the Netherlands and Denmark, OECD Social, Employment and Migration Working Papers No. 217, Paris, OECD Publishing.
- Jacobi O., Müller-Jentsch W. and Keller B. (1998) Germany: facing new challenges, in Ferner A. and Hyman R. (eds.) *Changing industrial relations in Europe*, 2nd ed., Oxford, Wiley Blackwell, 190–238.
- Keller B. (2018) Professional unions in Germany: theoretical explanations and practical consequences for industrial relations, *Transfer*, 24 (4), 437–450.
- Keller B. and Seifert H. (2013) Atypical employment in Germany. Forms, development, patterns, *Transfer*, 19 (4), 457–474.
- Kittner M. (2009) *Arbeits- und Sozialordnung*, Frankfurt am Main, Bund-Verlag.
- Kramer I. (2018) Mehr Tarifbindung nur mit neuer Tarifpolitik!, *Frankfurter Allgemeine Zeitung*, 11 October 2018.
- Lehndorff S., Bosch G., Haipeter T. and Latniak E. (2009) From the 'sick man' to the 'overhauled engine' of Europe? Upheaval in the German model, in Bosch G., Lehndorff S. and Rubery J. (eds.) *European employment models in flux: a comparison of institutional change in nine European countries*, Basingstoke, Palgrave Macmillan, 105–131.
- Müller-Armack A. (1947) *Wirtschaftslenkung und Marktwirtschaft*, Hamburg, Verlag für Wirtschaft und Sozialpolitik.
- Müller-Jentsch W. (ed.) (1999) *Konfliktpartnerschaft – Akteure und Institutionen der industriellen Beziehungen*, 3rd ed., München, Rainer Hampp Verlag.
- Müller T., Dølvik J.E., Ibsen C. and Schulten T. (2018) The manufacturing sector: still an anchor for pattern bargaining within and across countries?, in *European Journal of Industrial Relations*, Vol. 24 (4), 357–372.
- OECD (2017) *Collective bargaining in a changing world of work*, in OECD, *Employment Outlook 2017*, Paris, OECD Publishing, 125–186.
- Schröder W., Kalass V. and Greef S. (2011) *Berufsgewerkschaften in der Offensive. Vom Wandel des deutschen Gewerkschaftsmodells*, Wiesbaden, Springer VS.
- Schröder W. and Weßels B. (2017) Die deutsche Unternehmerverbändelandschaft: vom Zeitalter der Verbände zum Zeitalter der Mitglieder, in Schröder W. and Weßels B. (eds.) *Handbuch Arbeitgeber- und Wirtschaftsverbände in Deutschland*, 2nd ed., Wiesbaden, Springer VS, 3–28.
- Schulten T. (2018) The role of extension in German collective bargaining, in Hayter S. and Visser J. (eds.) *Collective agreements: extending labour protection*, Geneva, International Labour Organization, 65–92.
- Schulten T. (2019) German collective bargaining – from erosion to revitalisation?, in WSI-Mitteilungen, Special English edition, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI).

- Schulten T. and Bispinck R. (2018) Varieties of decentralisation in German collective bargaining, in Leonardi S. and Pedersini R. (eds.) *Multi-employer bargaining under pressure: decentralisation trends in five European countries*, Brussels, ETUI, 105–149.
- Schulten T., Eldring L. and Naumann R. (2015) The role of extension for the strength and stability of collective bargaining in Europe, in Van Gyes G. and Schulten T. (eds.) *Wage bargaining under the new European economic governance*, Brussels, ETUI, 361–400.
- Schulten T. and Seikel D. (2018) Upgrading German public services. The role of trade union campaigns and collective bargaining with regard to working conditions in day care centres, primary education and hospitals, WSI Study No. 12, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI). http://www.boeckler.de/pdf/p_wsi_studies_12_2018.pdf
- Schulten T. and WSI-Tarifarchiv (2019) *Collective bargaining report 2018. Large pay rises and more employee choice on working hours*, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI). https://www.boeckler.de/pdf/p_ta_jb_2018_english.pdf
- Silvia S.J. (2017) Mitgliederentwicklung und Organisationsstärke der Unternehmerverbände, in Schröder W. and Weßels B. (eds.) *Handbuch Arbeitgeber- und Wirtschaftsverbände in Deutschland*, 2nd ed., Wiesbaden, Springer VS, 249–266.
- Streeck W. (1991) On the institutional conditions of diversified quality production, in Matzner E. and Streeck W. (eds.) *Beyond Keynesianism: the socio-economics of production and unemployment*, Aldershot, Edward Elgar, 21–61.
- Streeck W. (1997) German capitalism: does it exist? Can it survive?, in Crouch C. and Streeck W. (eds.) *Political economy of modern capitalism: mapping convergence and diversity*, London, Sage, 33–54.
- Streeck W. (2009) *Re-forming capitalism: institutional change in the German political economy*, Oxford, Oxford University Press.
- Streeck W. and Höpner M. (2003) *Alle Macht dem Markt? Fallstudien zur Abwicklung der Deutschland AG*, Frankfurt am Main, Campus Verlag.
- Streeck W. and Visser J. (1997) The rise of conglomerate union, *European Journal of Industrial Relations*, 3 (3), 305–332.
- Traxler F., Blaschke S. and Kittel B. (2001) *National labour relations in internationalized markets: a comparative study of institutions, change and performance*, Oxford, Oxford University Press.
- Vandaele K. (2016) Interpreting strike activity in western Europe in the past 20 years: the labour repertoire under pressure, *Transfer*, 22 (3), 277–294.
- WSI (2018) *WSI-Tarifarchiv 2018 – Statistisches Taschenbuch Tarifpolitik*, Düsseldorf, Wirtschafts- und Sozialwissenschaftliches Institut (WSI). https://www.boeckler.de/pdf/p_ta_tariftaschenbuch_2018.pdf

All links were checked on 10 May 2019.

Abbreviations

AEntG	Arbeitnehmer-Entsendegesetz (Posted Workers Act)
BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände (German Employers' Association)
BetrVG	Betriebsverfassungsgesetz (Works Constitution Act)
CGB	Christlicher Gewerkschaftsbund Deutschlands (Christian Trade Union Confederation of Germany)
DBB	Deutscher Beamtenbund und Tarifunion (German Civil Service Association)
DGB	Deutscher Gewerkschaftsbund (Confederation of German Trade Unions)
EVG	Eisenbahn- und Verkehrsgewerkschaft (Railway and Transport Union)
GDL	Gewerkschaft Deutscher Lokomotivführer (Train Drivers' Union)
GdP	Gewerkschaft der Polizei (German Police Union)
Gesamtmittel	Federation of Metal Industry Employers' Associations
GEW	Gewerkschaft Erziehung und Wissenschaft (German Education Union)
IAB	Institut für Arbeitsmarkt- und Berufsforschung (Institute of Employment Research)
IG BCE	Industriegewerkschaft Bergbau, Chemie, Energie (Mining, Chemicals and Energy Industrial Union)
IG BAU	Industriegewerkschaft Bauen-Agrar-Umwelt (Building, Agriculture & Environment Workers' Union)
IG Metall	Industriegewerkschaft Metall (German Metalworkers' Union)
MB	Marburger Bund (Union of Salaried Medical Doctors)
NGG	Gewerkschaft Nahrung-Genuss-Gaststätten (Food, Tobacco, Hotel and Allied Workers Union)
SES	Verdienststrukturerhebung (Structure of Earnings Survey)
SOEP	Sozio-oekonomisches Panel (Socio-Economic Panel)
TVG	Tarifvertragsgesetz (Collective Agreements Act)
ver.di	Vereinte Dienstleistungsgewerkschaft (United Services Union)
WSI	Wirtschafts- und Sozialwissenschaftliches Institut (Institute of Economic and Social Research)