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in a European Perspective  
Continuous Erosion or Re-Stabilisation of Multi-  
Employer Agreements?**

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# German Collective Bargaining in a European Perspective Continuous Erosion or Re-Stabilisation of Multi-Employer Agreements?<sup>1</sup>

Reinhard Bispinck, Heiner Dribbusch and Thorsten Schulten

## 1. Introduction

Since the mid-1990s the German system of collective bargaining with its traditional dominance of sector-level agreements has been faced by a process of creeping erosion. While the bargaining coverage has shown a steady decline, a far-reaching decentralisation has increasingly undermined the system of multi-employer bargaining.

In the following we will discuss the changes in German collective bargaining from a perspective of trade union power resources. Drawing on concepts developed by Wright (2000) and Silver (2003) we identify two basic sources of trade union power: One is *structural power* derived from workers' location in the economic system. This can further be subdivided into *marketplace bargaining power* depending from workers' position in the labour market and *workplace power* based on the location of workers in the production process. Secondly, there is *associational power* derived from workers' collective organisation which translates into *organisational power* of unions. To this is can be added the dimension of *institutional power* (Brinkmann et.al. 2008, Brinkmann and Nachtwey 2010). This is defined by the position of unions within institutional arrangements which are the product of specific historical constellations and power relationships. With regard to collective bargaining institutional power of unions is based on the combination of a statutory monopoly to conclude collective agreements on behalf of employees and a voluntary comprehensive system of sectoral bargaining as part of a post-war arrangement between employers' associations and trade unions which developed since the 1950s.

The erosion collective bargaining hits German trade unions in a core area of their activities. It is an indicator for a partly revision of the post-war class compromise by employers since the early 1990s. It goes along with a significant weakening of organ-

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isational and structural power of unions due to a sharp decline in membership and a change in the social and economic framework conditions. Compared with other European countries, however, the development in Germany seems to be rather exceptional, as many countries were able to continue with a rather stable collective bargaining system and a relatively high bargaining coverage. This holds true also for countries where – as in Germany – the unions were faced by a significant decline of organisational power. The latter indicates that there are other political factors which seem to compensate for the decline of unions' organisational power and keep their institutional power basis relatively stable.

In discussing German collective bargaining in a European perspective it is the aim of this paper to identify the factors which support a stable and encompassing collective bargaining system. Our arguments are developed in three steps: First, we describe the recent developments in German collective bargaining and the accompanying changes in the organisational and structural power of German trade unions. Secondly, we compare the German situation with the development in other European countries and analyse the factors which are conducive for a stable bargaining system. Considering the different experiences in Europe, we thirdly discuss the possibilities for a re-stabilisation of German collective bargaining.

## **2. Erosion of German collective bargaining**

### **2.1 Erosion of institutional power**

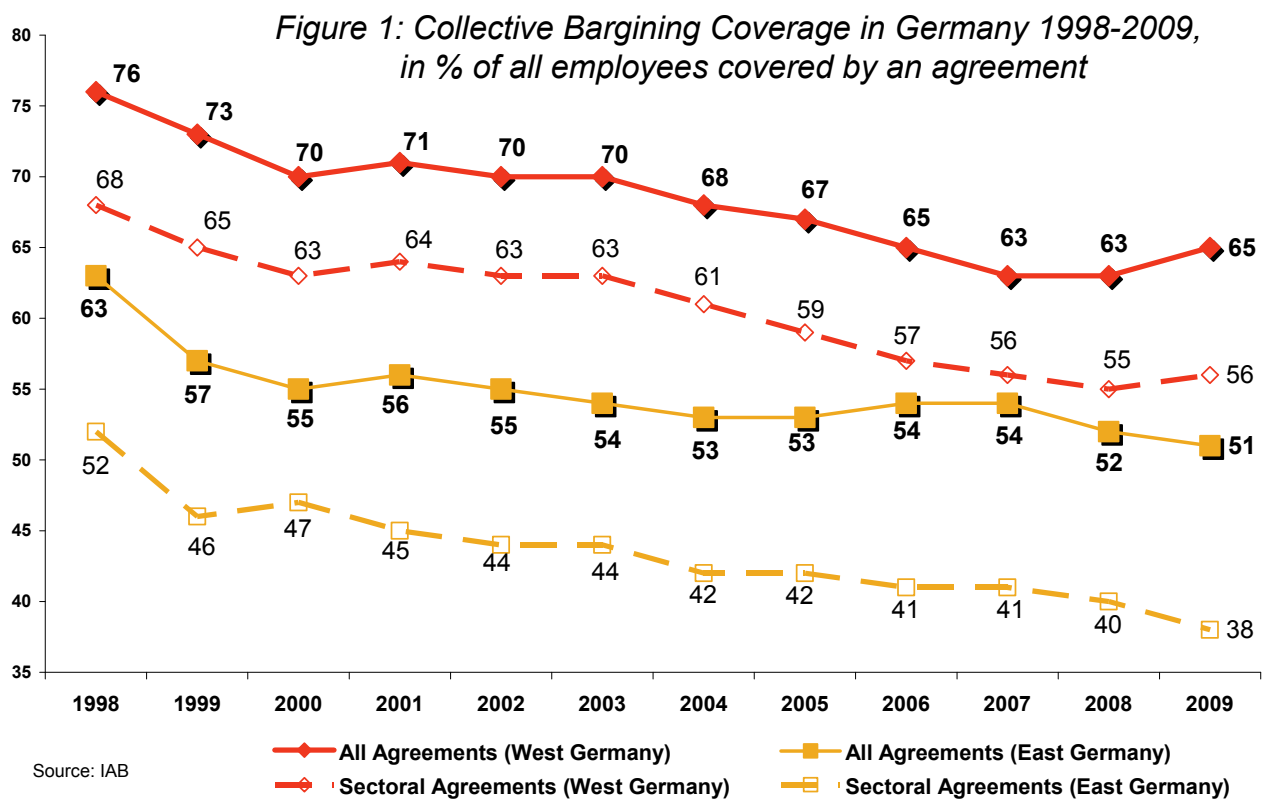
#### *Decline of collective bargaining coverage*

Over the past two decades German collective bargaining has undergone a number of profound changes which have significantly weakened the institutional power of trade unions (Bispinck and Schulten 2010a, 2010b). Firstly, there has been a significant decline in bargaining coverage (*Figure 1*). In west Germany, the total proportion of employees covered by collective agreements sank from 76% in 1998 to 65% in 2009. In east Germany, the figures for the same period show a decline from 63% to 51%. Coverage of sectoral agreements fell from 68% to 56% in west Germany and from 52% to 38% in east Germany.

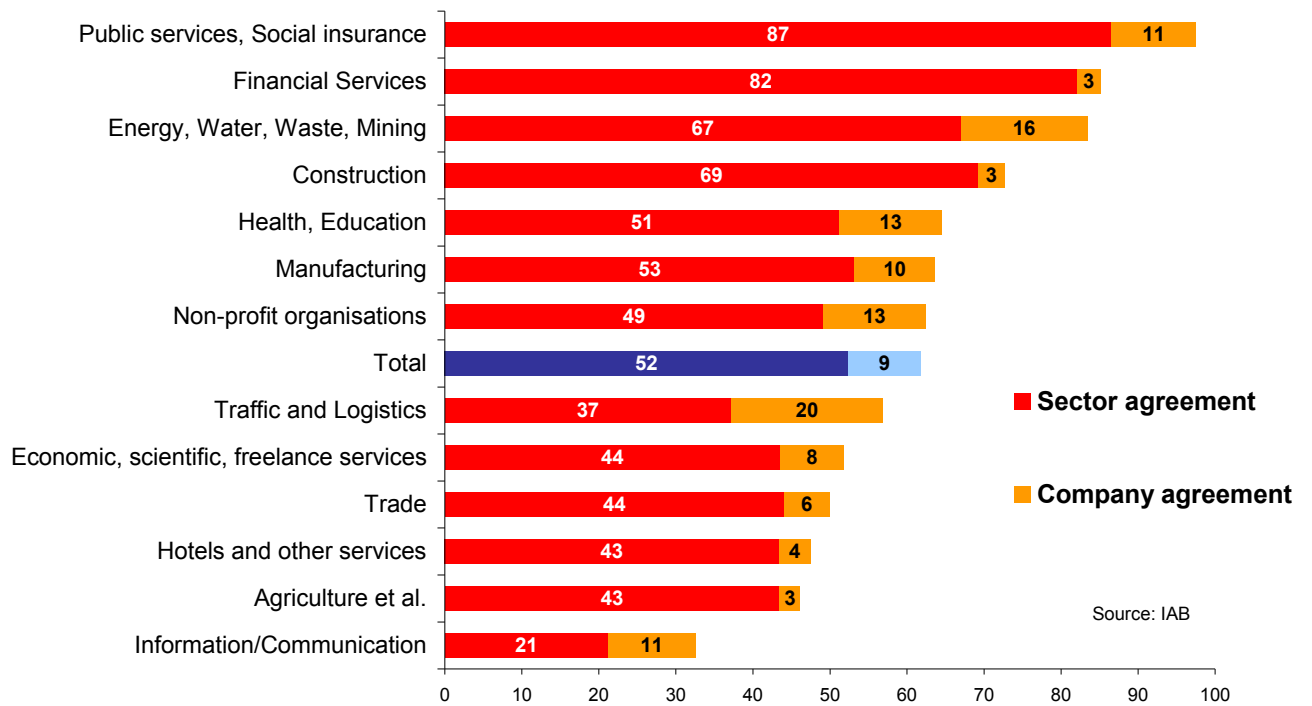
The coverage varies remarkably between sectors (*Figure 2*). The highest degree can be observed in the public service sector with 98% and the financial services with

85%. The manufacturing industry has coverage of almost two thirds, which is a little above average. Much lower figures exist in trade and in some service sectors, with information and communication representing only one third.

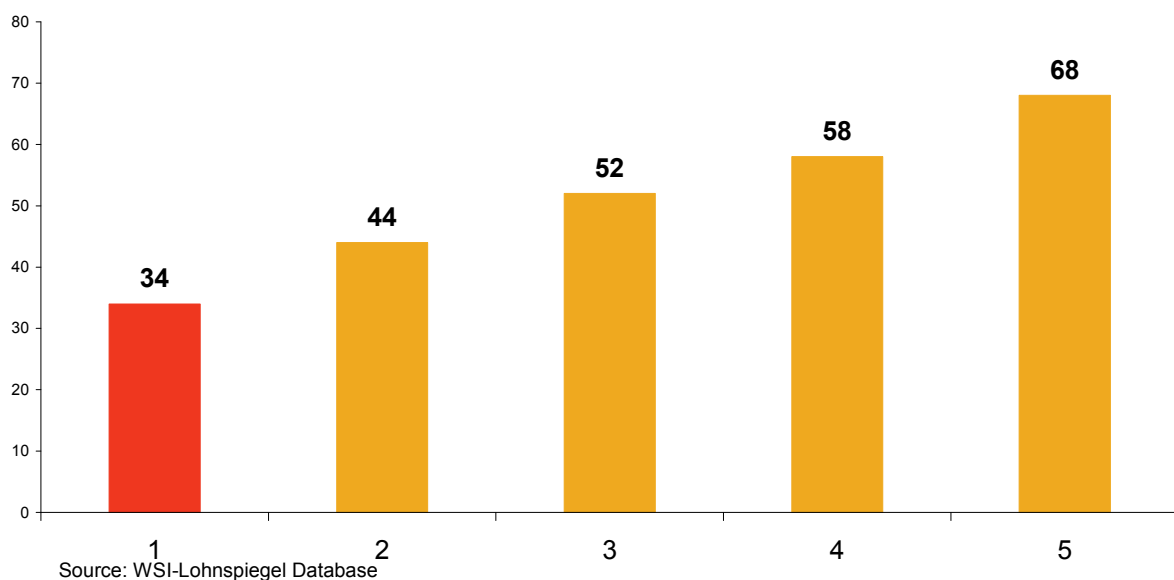
According to data of the WSI-Lohnspiegel database the collective bargaining coverage differs strongly depending of the income level. In the lowest quintile the coverage is 34 % only in comparison to 68 % in the highest quintile (Figure 3). The erosion of collective bargaining is particularly strong in the low age sectors.



*Figure 2: Collective bargaining coverage 2009 by sectors, in % of employees*



*Figure 3: Collective bargaining coverage 2008 by income quintiles in %*



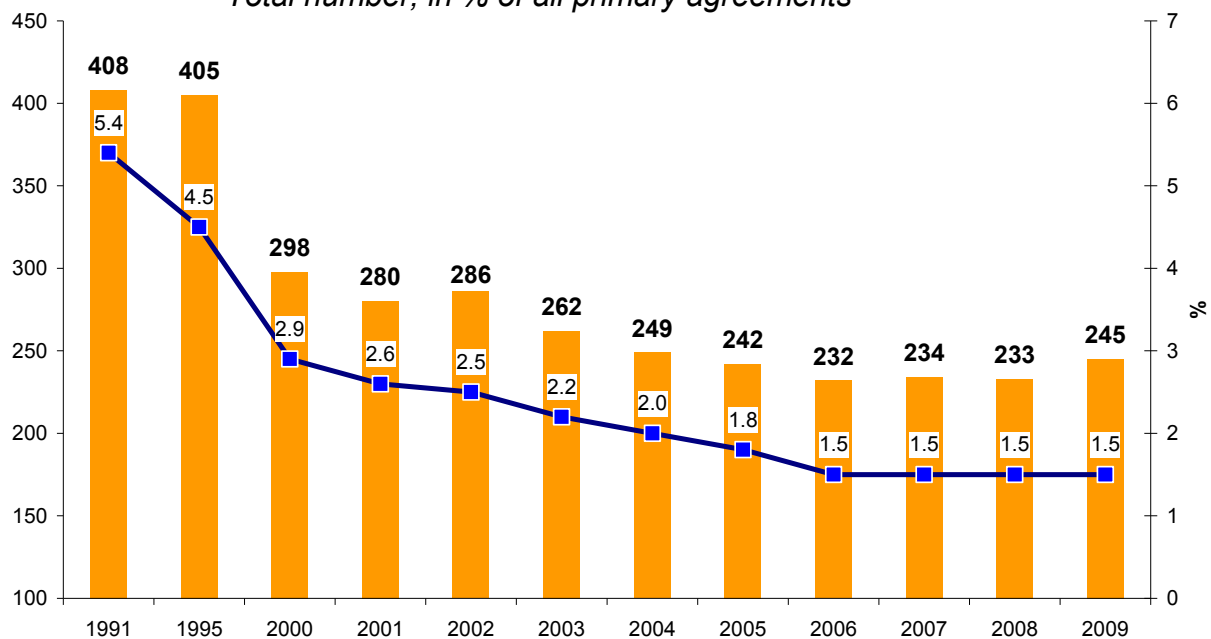
*Decline in the extension of collective agreements*

Secondly, there was a continuous decline in the extension of collective agreements (Figure 4). The Collective Agreement Act allows for an extension of collective agree-

ments to all companies within a specific sector. The precondition is that the agreement already covers 50% of the employees in the respective sector and that the extension is in the public interest. Finally, a majority of the Collective Bargaining Committee at the Ministry of Labour, which is composed of representatives of the peak trade union and employers' organisation, has to confirm the extension.

In the past, only a limited use was made of the extension of collective agreements. An increasingly restrictive attitude on the part of employers' associations in the Collective Bargaining Committee has resulted in a steady decline in the number of such extensions. By the start of 2009 only some 1.5 % of original agreements were affected. **At present only a few sectors (and even in these cases not the entire sector) are subject to extensions of wages and salary tables. These include hairdressers, building cleaners, private security personnel and construction workers.** In other sectors, such as the retail trade, in which collectively agreed pay rates have traditionally been extended to the entire sector, attempts to revitalize the extension have failed as a result of employer resistance.

*Figure 4: Extension of Primary Collective Agreements 1991-2008*  
- Total number, in % of all primary agreements -



Source: Ministry of Labour, own calculations

Since 1996 the German Posted Workers Act allows for the possibility to extend collectively agreed minimum standards to workers who are working in Germany and posted from foreign companies. At the beginning the scope of the law was restricted

to the construction industry and related sectors. In recent years it has been extended and now covers 10 branches including waste disposal, industrial cleaning, industrial laundries, security services, nursing care services and postal services. The minimum wages vary according to sector, region and skill and are between 6.50 € and 12.90 €.

### *Decentralisation and fragmentation of collective bargaining*

Thirdly, there has been a marked trend towards the differentiation and decentralisation of collective bargaining through the widespread use of opening clauses in sectoral agreements (Bispinck and Schulten 2010; Bahn Müller 2010). Since the mid-1990s more and more sectoral agreements have allowed companies – under certain circumstances – to go below collectively agreed standards. The following agreements have marked important steps in the spread of opening clauses:

- A key step was taken in the mid-1980s in the metalworking industry when the employers succeeded in instituting far-reaching flexibility on working time arrangements at company level in exchange for the first step in what became a progressive lowering of the average working week to 35 hours.
- Following German unification in 1990 and the transfer of the west German collective bargaining system to the east, trade unions have had to accept so-called “hardship-clauses” that allow firms in economic difficulties to deviate from sectorally-agreed provisions. Such hardship clauses were subsequently introduced in west Germany.
- In the mid-1990s, as a consequence of the 1992/93 recession, many agreements introduced the option of temporary cuts in working time and pay in order to safeguard jobs.
- After 2000, regulations on variable profit-related pay have been introduced in some sectors, transforming some elements of what was formerly guaranteed remuneration into a sum dependent on the company’s profit and loss account.
- Since the middle of the last decade an increasing number of opening clauses have been concluded that apply not only in the event of serious economic difficulties but also to improve competitiveness, safeguard employment, and facilitate fresh investment. The most important agreement here has been the so-called “Pforzheim Accord”, concluded in 2004 in the metalworking sector.



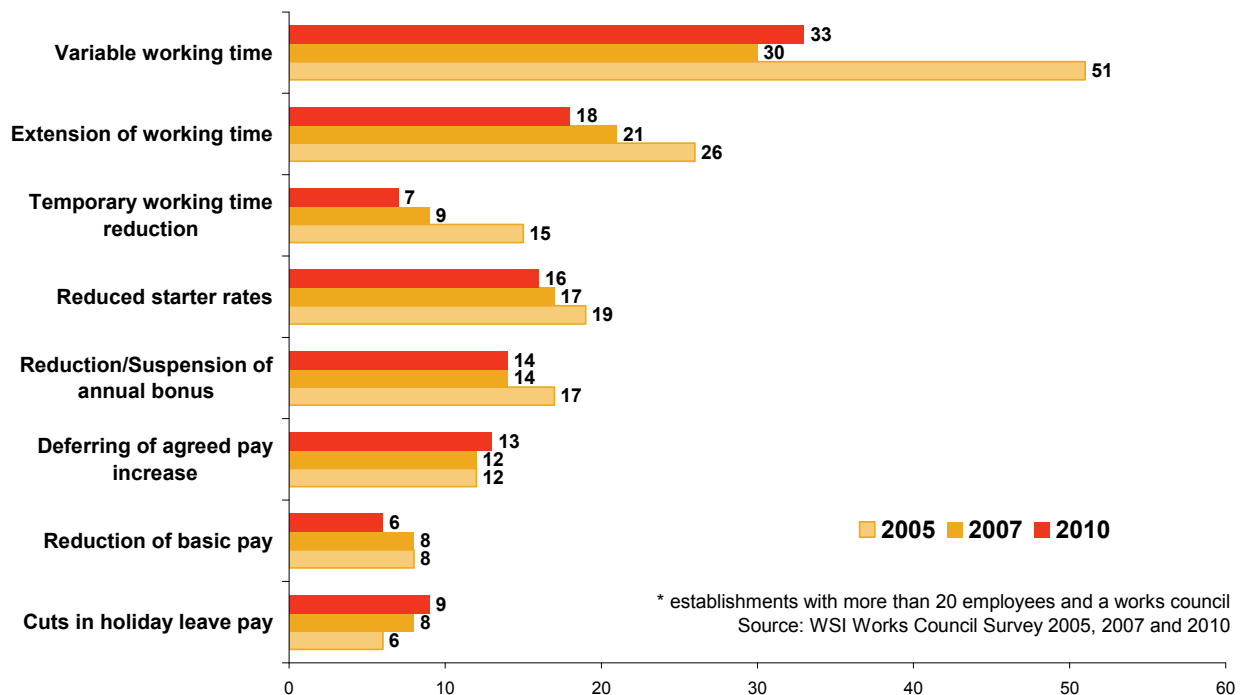
- In recent years, there has been an increase in the numbers of wage agreements that have allowed employers to postpone or cancel the payment of sectorally-agreed pay increases at company level.
- Against the background of the current crisis, the focus of the 2010 bargaining round has once again been that of safeguarding jobs. In exchange for rather low wage increases, agreements have featured a range of provisions for short-time work and other forms of working time reduction at company level (Bispinck and WSI Tarifarchiv 2009).

The use of opening clauses has been the subject of a number of empirical studies that have arrived at somewhat divergent results. Based on data from the IAB Establishment Panel, a regular survey of human resource managers in 16,000 establishments conducted by the Institute for Employment Research (IAB), Kohaut and Schnabel (2006) concluded that in 2005 13% of establishments and 29% of employees were covered by a collective agreement with scope for an opening clause. More than half of the affected establishments (53%) had actually made use of these opening clauses. And of these, 71% of companies in west Germany had adopted opening clauses on working time, but only 31% on basic pay or annual bonuses. In east Germany the figures were somewhat lower.

Data on the use of opening clauses is also regularly provided by the WSI Works Council Survey, which is a representative survey of all establishments with at least 20 employees and where a works council has been elected (Bispinck and Schulten 2003, Bispinck 2005). The data show that in 2005 75% of all establishments made use of an opening clause, while in 2007 the proportion decreased to as much as 53%.

The majority of companies have used opening clauses on the regulation of working time (*Figure 5*). In 2010 33% of the establishments that used opening-clauses introduced variable working time arrangements, 18% extended the agreed working time and 7% have temporarily reduced it. By contrast, the use of pay-related opening clauses was less widespread. In 2010 16% of establishments provided lower pay rates for job starters, 14% reduced or suspended annual bonus payments, and 13% deferred agreed pay increases. Moreover, 9% of establishments introduced a cut in basic pay.

Figure 5: Issues of used opening clauses, in % of all establishments\*



The driving forces behind this far-reaching decentralisation of German collective bargaining have been the employers. Since the early 1990s German employers' associations pressed the case for an across-the-board policy of collective bargaining decentralisation, arguing that greater flexibility in sectoral agreements was needed to respond to the greater diversity of individual company circumstances. They also attacked the principle that works council have no right to bargain on issues which are subject to collective agreements except in cases where such agreements explicitly allow it and proposed legal changes to give works agreements concluded between works councils and management precedence over collective agreements. This received strong support from the major political parties and the German government (Bispinck and Schulten 2005). In 2003, for example, the former German Chancellor, the Social Democrat Gerhard Schröder, threatened the unions with the possible introduction of a statutory opening clause that would apply to all collective agreements. Other political parties went even further: for example, one demand was that the ban on works councils concluding collective agreements proper should be lifted without, however, consequently granting works councils the right to call industrial action. More recently, the president of the Confederation of German Employers' Associations

(BDA), Dieter Hundt, has acknowledged that the German bargaining system has now become so flexible using the existing legal framework that such legal changes are no longer necessary (Hundt 2009).

In contrast, most German trade unions have been highly sceptical about collective bargaining decentralisation and originally opposed the introduction of opening clauses that allowed the undermining of agreed sectoral standards. A somewhat different attitude was adopted by the chemical workers union (IG BCE), which took the view from an early stage that a process of “controlled decentralisation” via opening clauses could help stabilise the entire bargaining system (Förster 2008). In metalworking the acceptance of derogations at company level by IG Metall was initially a more defensive reaction aimed at safeguarding jobs or preventing a relocation of operations. For its part, the ‘Pforzheim Accord’ was also a response to the political threat of even more drastic changes to the legal basis of German collective bargaining. Given the seeming irreversibility of decentralisation, IG Metall has now shifted to a new strategy which aims to build organisational strength through a more assertive bargaining policy at company level, using the scope for union monitoring and control of the trade-offs associated with agreed derogation (Wetzel 2007).

As research has shown, there are great differences in how the trend towards collective bargaining decentralisation is perceived by the actors at company level (Nienhüser and Hoßfeld 2010). The large majority of managers take a rather positive view, as, from their standpoint, decentralisation strengthens the position of both management and work councils, takes better account of the situation of the business, and weakens the power of the union at workplace level. In contrast, the majority of works councillors have a much more sceptical attitude. According to results of the WSI Works Council Survey, since the late 1990s there has been a stable majority of works council members who see bargaining decentralisation as ‘ambiguous’ or ‘generally problematic’, while only 11-18% welcome this trend. Decentralisation is seen by a large majority of employee representatives as a process which mainly strengthens the bargaining power of the employers’ side. According to the most recent survey, conducted in 2010, 37% of works councillors see decentralisation as ‘ambiguous’ while 50% view it as generally problematic. Only 11% welcome this trend (Bispinck and Schulten 2010).

## 2.2 The erosion of bargaining power

### *Weakening structural power*

The profound changes in the German bargaining system have gone along with a shift in the balance of power in favour of employers since the mid 1990s. The single most important factor was the persistently high level of unemployment which was reinforced in the economic turmoil in the aftermath of 1990 and the end of the short-lived unification boom in western Germany. Unemployment had already been on a steady increase in western Germany since the mid 1970s. From a post-war low of 0.7% in 1970 the official unemployment rate had climbed to more than 7% in the late 1980s. In the now unified economy it quickly jumped to more than 10% in the mid 1990s and peaked at 13% in 2005. There are marked regional disparities with an unemployment level in December 2009 of 12.7% in eastern Germany compared to 7% in the western part of Germany.

This weakening of their *marketplace bargaining power* (Silver 2003) made employees increasingly sensitive to employers' pressure in particular in combination with threats of withdrawal of investments, relocation or off-shoring. A representative survey (Ipsos 2004) found in 2004 that more than a third of German workers were afraid of losing their jobs because companies might shift activities to low-wage countries. Moreover, three out of four workers would have been prepared to accept a wage freeze for two years in order to keep their jobs.

Next to unemployment it is the casualisation of the work force in the form of agency work, fixed term contracts and marginal part-time jobs which negatively affects structural power of workers. Since the 1990s Germany has seen a tendency towards the development of 'non-standard' forms of employment which gained momentum in the early 2000s (Dribbusch and Schulten 2008). If we look at the statistical development of waged employment (only employees between 15 and 64 years of age, excluding those in education or apprenticeships) in the decade between 1998 and 2008 we see a rise of 5.7% to 30.1 million employees (destatis 2009). The number of employees who worked in some form of 'atypical' employment – defined as all those in a part-

time job with less than 21 hours a week, those with a so-called 'mini-job'<sup>2</sup>, employees with fixed term contracts and temporary agency workers (destatis 2009, 5) – grew in the same period by 46.2% to 7.7 million. Marginal part-time employment in the form of 'mini-jobs' even grew by 71.5%, making it the fastest growing form of employment. These jobs are particularly widespread in private service industries such as retail where they account for about a quarter of all jobs. In industrial cleaning almost half of employees are 'mini-jobbers' (Kalina and Voss-Dahm 2005).

Between 1998 and 2008 the number of employees with fixed term contracts grew by 44% - again without counting those in training or apprenticeship (destatis 2009). In 2009 almost half of all new recruits (47%) only received a fixed term contract compared to 32% in 2001 (IAB 2010).

Temporary agency work has seen a boom since it became almost completely deregulated in 2002. By 2008 some 610,000 employees were agency workers. Although agency workers represent a comparably small group in comparison to some other European countries, two thirds of all agency workers are found in manufacturing (Eichhorst et al. 2010). Particularly large shares of agency workers are found in some establishments in the metal working industry. Other forms of casual employment are hidden within self employment. Between 1991 and 2004 the number of self-employed people, including unpaid family workers, increased by 20% to then 4.2 million (Deutsche Bundesbank 2005). Casualisation supports the fragmentation of the work force. It has a strong potential to undermine workplace bargaining power by creating 'core' and 'periphery' workforces. Unions and work place representatives face new challenges in building solidarity and union organizing.

### *Decline in union membership*

Unemployment and casualisation have gone along with a loss of associational power of workers; the most prominent aspect being the decline in union membership. The erosion of union membership had already begun in the mid 1980s but it was the sharp down-turn in the mid 1990s which really shook the DGB-affiliates. In 1991 DGB membership jumped from about 8 million in the former Federal Republic to nearly 12

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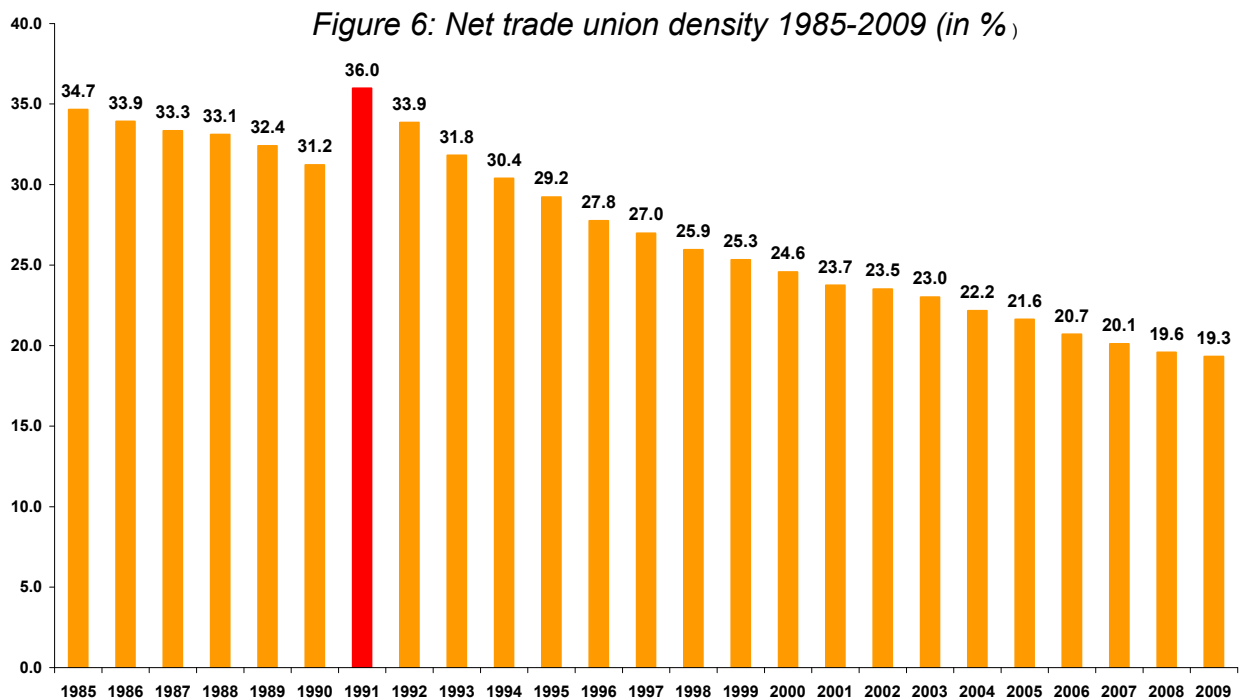
<sup>2</sup> 'Mini-jobs' are jobs paid a maximum of €400 a month, which, since April 2003, is the threshold above which jobs are liable to social security contributions.

million in unified Germany following the integration of members of the former eastern German trade unions. However, optimistic expectations on the side of some DGB-affiliates who hoped to expand their power base were quickly disappointed. Following the collapse of much of the former GDR economy and the end of the short-lived unification boom in western Germany the DGB-affiliates faced a severe decline. In 2000 the pre-unification membership level was reached, albeit now for the whole of Germany. In 2009 the combined membership of all DGB-affiliates was down to 6.3 million.

This decline affected all DGB-affiliates - although to differing degrees. The major reasons were the various restructuring and privatization processes which led to massive job cuts in union strongholds in manufacturing and the public service. To this was added the problems DGB affiliates had to organise workers in the expanding private service sectors and difficulties in appealing to non-standard workers and younger employees (Dribbusch 2003; Ebbinghaus et al. 2008; Vandaele and Leschke 2010). Those DGB affiliates with the least problems in recent years are the German Police Union (GdP) and the German Union of Education (GEW), which both focus on groups of comparatively secure public sector employees and civil servants.

In contrast to the DGB, the second largest German union confederation, the German Civil Service Association (beamtenbund und tarifunion (!), dbb), which predominantly organises public civil servants, had a positive membership development. The dbb grew from 1.1 million members in 1991 to 1.3 million in 2009.

The largely negative membership development is reflected in the decline of overall net trade union density amongst all unions in Germany. That means net union membership (excluding pensioners and unemployed) as a proportion of wage and salary earners in employment stood at 31%. By 2009 this figure was down to 19% (Figure 6).



Source: ICTWSS database, AIAS-Institute, University of Amsterdam (1985-2007); WSI (estimates for 2008 and 2009)

Note: For details of the ICTWSS database see: <http://www.uva-aias.net/208>; up to 1990 western Germany, since 1991 Germany. 2008 + 2009 estimates by WSI.

Behind these aggregates we find huge disparities. Whereas in a few sectors such as the steel industry and car manufacturing (and some occupational niches) union presence is strong it is very patchy in the chemical industry, in the construction industry and in the service sector. With regard to bargaining strength this translates into a difficult position for DGB-affiliates in large parts of the economy. In the craft trades, in most of the private service industries and in public administration unions have only limited capabilities to successfully enforce their demands by way of industrial action.

### **3. German collective bargaining in a European comparative perspective**

In order to understand the reasons for the ongoing erosion of German collective bargaining, it seems to be useful to discuss the German development in a European comparative perspective. This led to the everlasting debate within comparative industrial relations on whether industrial relations systems tend to converge as the result of secular trends within modern capitalism, or whether there will be a continuous diversity of national systems, as changes take place within a specific national framework and follow the logic of path dependency. In the 1990s there was a strong belief that due to the changes of power relations associated with the notion of globalisation, col-

lective bargaining in Europe would follow the example of the UK with a strong trend towards decentralisation and a declining bargaining coverage (Baglioni and Crouch 1991, Ferner and Hyman 1992). Later such assumptions were identified as 'exaggerated' (Ferner and Hyman 1998: xi) and the emphasis shifted more towards the relative stability of national bargaining systems (Traxler et.al. 2001, Schulten 2005).

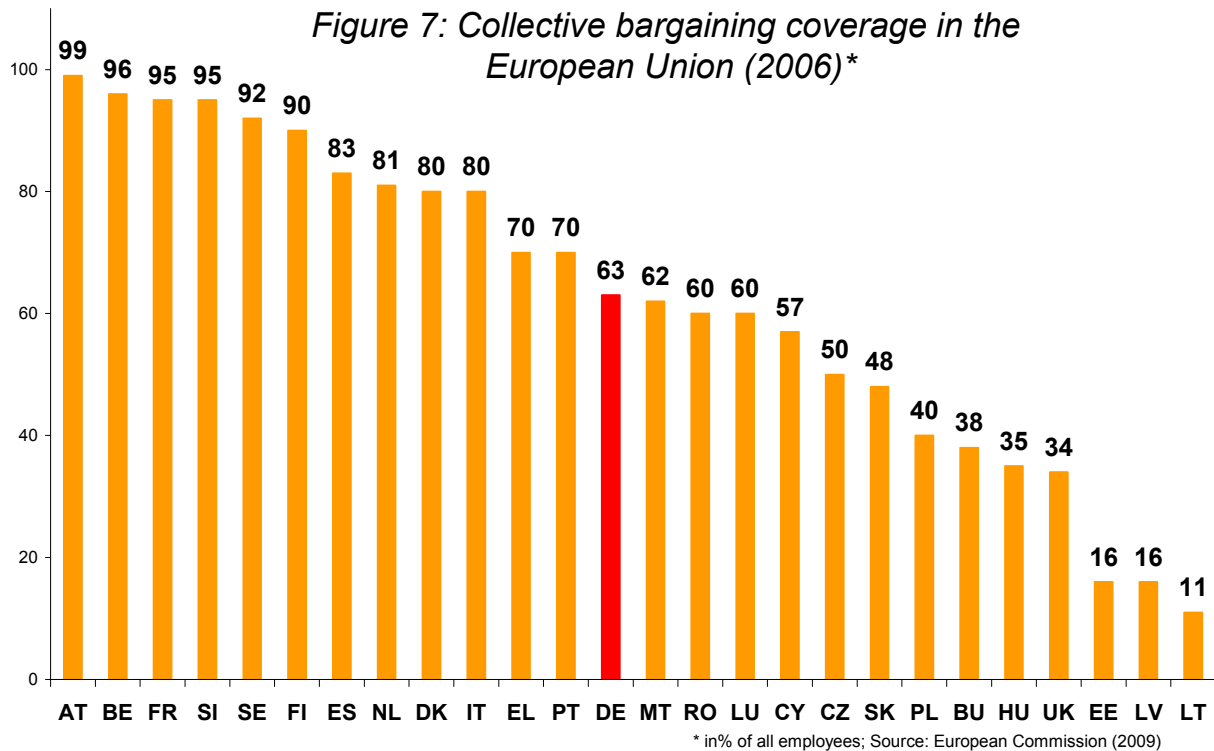
Comparing collective bargaining in Germany with the development in other European countries, it became clear at a first glance that the erosion and decline of bargaining institutions is not an inevitable process. On the contrary, the development in Germany seems to be rather exceptional as most other western European countries were able to continue with a high bargaining coverage and relatively stable bargaining institutions. In the following we will therefore focus on the political and institutional factors which allow such a high degree of stability, before we ask what Germany might learn from its European neighbours in order to re-stabilise its bargaining system.

### *Collective bargaining coverage*

Within Europe the coverage of collective agreements shows great differences ranging from nearly 100% in Austria to less than 20% in the Baltic States (*Figure 7*). In most of the 'old' EU member states from northern, western and southern Europe the bargaining coverage varies between 70% and 95%. In contrast to that most countries in central and eastern Europe have a bargaining coverage of below 50% with the exception of Slovenia and Romania.

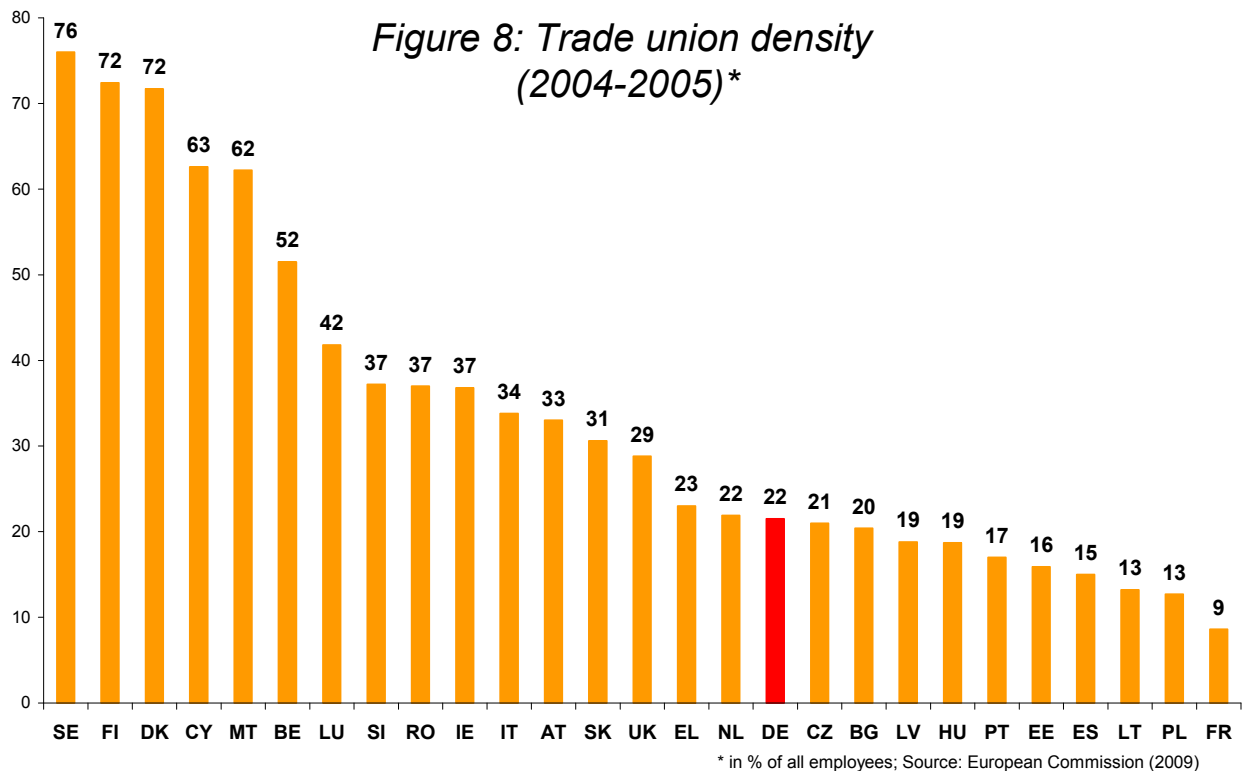
With somewhat above 60% the bargaining coverage in Germany is in the European middle. Considering only the old EU member states, however, Germany has one of the lowest levels of bargaining coverage which is under matched only by Luxembourg and the UK. While German bargaining coverage has shown a continuous decline during the past two decades, in most of the other old EU member states it has remained relatively stable (European Commission 2009: 74). Only the UK was faced by an even stronger decline as the bargaining coverage decreased from about 70% at the beginning of the 1980s towards around 35% in 2006.





### *Trade union and employers' association density*

In order to explain the various levels of collective bargaining coverage in Europe, one factor might be the different organisational power of trade unions. Indeed, trade union density in Europe also shows great differences varying from more than 70% in the Scandinavian countries to less than 10% in France (*Figure 8*). In Germany the union density stands at around 20% which is at the lower end of the European middle.

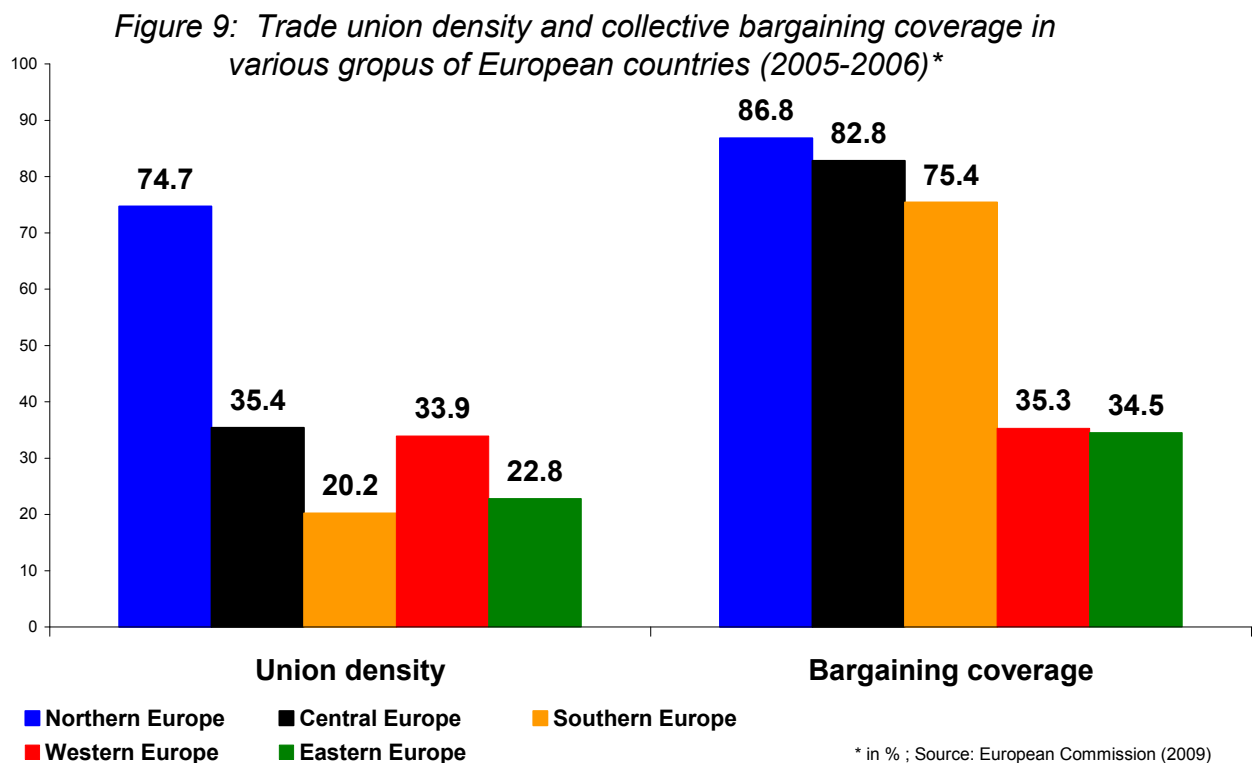


At a first glance it became obvious that in many countries there is a strong correlation between bargaining coverage and union density. This holds true for the Scandinavian countries with both a relatively high union density and a high bargaining coverage, as well as for most of the Central and Eastern European countries in which both levels are rather low. There is also a close correlation of union density and bargaining coverage in the UK.

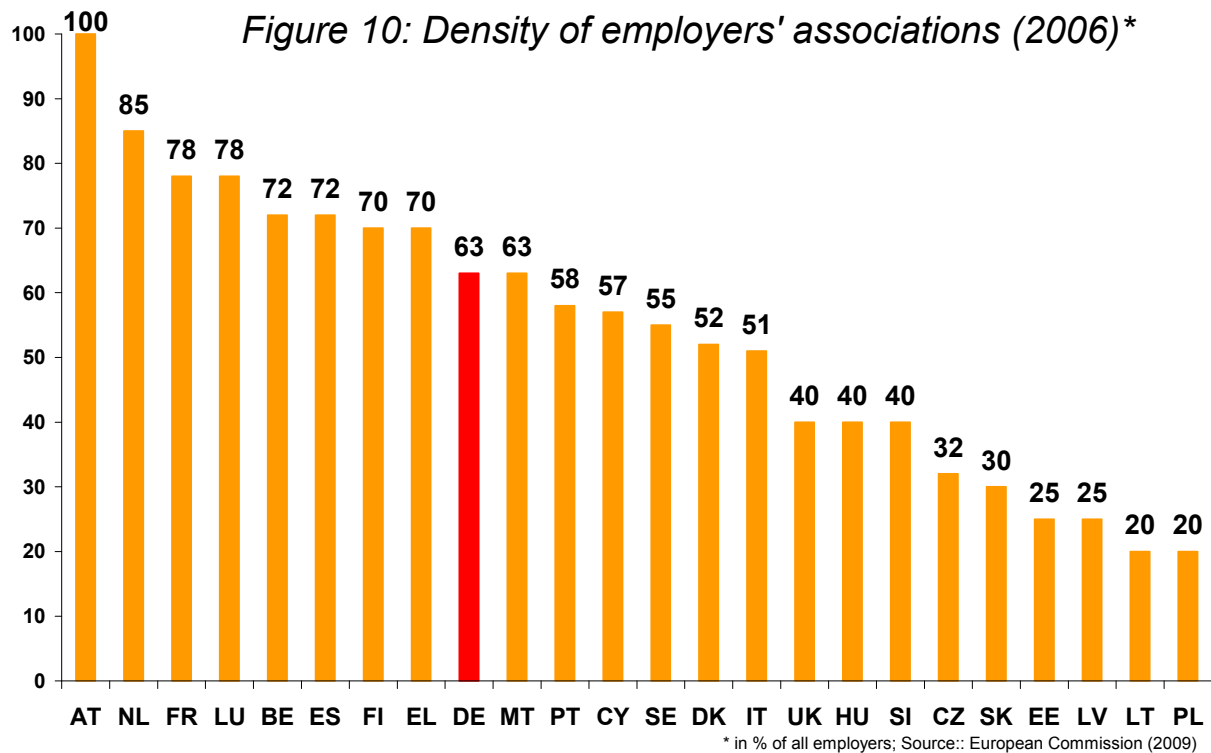
In all European countries the bargaining coverage is at least somewhat higher than the union density which means that also non-union members are covered by collective agreements. In some countries, however, the differences between both values are rather high. The most striking discrepancy exists in France where the union density is only 9% while more than 95% of all employees are covered by collective agreements. A rather high bargaining coverage with a comparatively low union density can also be found in Spain, Portugal and the Netherlands. Finally, even in Germany the bargaining coverage is three times higher than the union density.

In its 'Industrial Relations Report 2008' the European Commission has identified five different groups of countries within the EU of which three show a rather close correlation between bargaining coverage and unions density (*Figure 9*). Among them are the northern European, the western European and the eastern European states. In

the central and the southern European countries, however, the bargaining coverage is much above the union density.



A correlation also seems to exist between the bargaining coverage and the density of employers' associations, which is in all countries above the level of union density with the exception of the Scandinavian countries (*Figure 10*). As a rule in most countries a higher level of employers' association density leads to higher bargaining coverage. In Germany the bargaining coverage also corresponds exactly with the employers' organisational scope. There are, however, a couple of countries where the bargaining coverage is even significantly higher than the density of employers' associations, which is an indication for further political and institutional factors which support the bargaining system.



### *Levels of collective bargaining*

As in Germany sector-wide bargaining is still the dominant form of collective bargaining in most of the countries from northern, western and southern Europe (Schulten 2005, Carley 2008; Table 1). The major exception here is the UK where since the 1980s the company has become the dominant bargaining level. In contrast to that most central and eastern European countries have predominately company bargaining with the exception of Slovenia which has established a sector-level bargaining system (Kohl 2009).

There is a close correlation between the degree of centralisation in collective bargaining and the bargaining coverage. In all countries with a sector-wide multi-employer bargaining system a majority of employees is covered by collective agreements, while in countries with a dominance of company bargaining it is only a minority. In more decentralised bargaining systems the bargaining coverage depends much more on the unions' organisational power. Usually, only those companies have collective agreements, which have a strong trade union representation at shop floor level. In more centralised bargaining systems the relation between bargaining coverage and union power is somewhat decoupled as trade unions can use highly organ-

ised companies to push for an agreement which later also becomes valid for companies with a weaker union representation.

Although many European countries have been faced with a trend towards decentralisation of collective bargaining since the 1990s, in contrast to Germany this development has usually not led to a decline in the bargaining coverage. One major reason for this is the fact that decentralisation took place mainly in an 'organised' or 'controlled' form and remained embedded within a two-level bargaining system of sectoral and company bargaining (Stokke 2008). Moreover, most other European countries have a so-called 'monistic' system of representation with a trade union bargaining monopoly at sectoral and at company level. This allows unions to act within a two-level bargaining system without losing their bargaining power (Ilsøe u.a. 2007). In contrast to that, in Germany with its so-called 'dual' system of representation the decentralisation of collective bargaining often strengthens the bargaining role of the works council. Since the latter is not a union body, decentralisation has led to a significant weakening of unions' bargaining power and was not able to contribute to stabilising the overall bargaining system (Bispinck and Schulten 2010):

#### *Political support for collective bargaining*

In most European countries the collective bargaining system is seen as a core institution of the national social and economic model. While collective bargaining is based on autonomous self-regulation between employers and trade unions, it is the role of the state to guarantee the legal and political functioning of the bargaining system. However, there are great differences in the form and intensity of how the state directly or indirectly influences collective bargaining.

An important indirect form of support for the collective bargaining system is the legal privileging of certain organisations. On the employees' side, in particular, most European countries gave the exclusive right of bargaining to trade unions (Schulten 2005). In addition to that, many European states provide specific institutions which support the bargaining parties. A prominent example can be found in the Scandinavian states where the unions are allowed to manage the unemployment funds. This gives employees a strong incentive to become union members. On the employers' side the most prominent example is Austria where the obligatory membership of

companies within the Austrian Economic Chamber guarantees an extremely high employer density.

A more direct form of political support is the extension of collective agreements to parties not involved in collective bargaining (Traxler and Behrens 2002, Stokke 2010). On the employees' side many European states have a so-called *erga omnes* regulation, according to which in those companies covered by an agreement, the agreements are automatically valid for all employees regardless of whether they are union members or not (*Table 1*). Moreover, in countries such as Germany, where the legal coverage of collective agreements is restricted to union members, in practice the companies usually provide the same conditions for all employees.

On the employers' side, most countries allow sectoral collective agreements to be extended also to companies which are not members of the signing employers' association by declaring an agreement as generally binding (*Table 1*). There are only five countries within the EU (Denmark, Sweden, Malta, Cyprus and the UK) where such extension provisions do not exist. In two countries (Ireland and Italy) there are functional equivalents as the labour courts can *de facto* contribute to an extension of agreements. In Austria there is the legal possibility of extension, but because of the high density of employers' associations there is only little scope for it to be used.

The remaining 18 EU member states can be divided into two groups of countries which use the extension provisions rather frequently or rather rarely. Among the countries with the legal possibility of extension but who make little use of it in practice are most of the central and eastern European countries, although more recently the instrument has gained somewhat more importance in the Czech Republic and in Slovakia (Kohl 2009). As discussed above Germany also belongs to that group - with extension provisions being rarely used.

Among the countries where the use of extension provisions is of high importance are Belgium, Finland and the Netherlands as well as the southern European countries France, Spain, Portugal, Greece and Romania. In France more than 1,000 collective agreements were declared as generally binding in 2008 which accounted for around 90% of all newly concluded agreements (Ministère du Travail 2009). In Finland there are about 150 extended sectoral agreements which correspond to 80% of all agreements at sectoral level. In the Netherlands the extension was used for about 70% of all sectoral agreements (SER 2007).

Table 1: Extension of collective agreements

| Collective agreement on covered companies is valid | Employees                    |                   | Employers                         |                                  |
|--|------------------------------|-------------------|-----------------------------------|----------------------------------|
|  | only for trade union members | for all employees | Extension of collective agreement | Use in practice                  |
| Belgium  |                              | X                 | possible                          | frequently                       |
| Finland*   | X                            | X                 |                                   |                                  |
| France   |                              | X                 |                                   |                                  |
| Greece   |                              | X                 |                                   |                                  |
| Netherlands  |                              | X                 |                                   |                                  |
| Portugal   |                              | X                 |                                   |                                  |
| Romania  |                              | X                 |                                   |                                  |
| Spain  |                              | X                 |                                   |                                  |
| Bulgaria   | X                            |                   | possible                          | rarely                           |
| Czech Republic                                     |                              | X                 |                                   |                                  |
| Estonia  | X                            |                   |                                   |                                  |
| Germany  | X                            |                   |                                   |                                  |
| Hungary  |                              | X                 |                                   |                                  |
| Latvia   | X                            |                   |                                   |                                  |
| Lithuania*   | X                            | X                 |                                   |                                  |
| Poland   |                              | X                 |                                   |                                  |
| Slovakia   |                              | X                 |                                   |                                  |
| Slovenia   |                              | X                 |                                   |                                  |
| Austria  |                              | X                 | possible                          | rarely;<br>functional equivalent |
| Ireland  |                              | X                 | not possible                      | functional equivalent            |
| Italy  |                              | X                 | not possible                      | functional equivalent            |
| Cyprus   |                              | X                 | not possible                      |                                  |
| Denmark  |                              | X                 |                                   |                                  |
| Sweden   | X                            |                   |                                   |                                  |
| Malta  |                              |                   |                                   |                                  |
| UK   | X                            |                   |                                   |                                  |

\* Some collective agreements are valid for trade union members only, while other agreements have an *erga omnes* clause and are valid for all employees.

Source: Schulten (2010)

By using the extension provisions, the coverage of a collective agreement is usually extended to all companies within a certain sector. In addition to that, some countries such as France or Spain even have the possibility to enlarge collective agreements

to sectors which have no agreement at all (Rebhahn 2002). To sum up, the broad use of extension provisions is in many European countries a major instrument to support the collective bargaining system and to provide a high bargaining coverage even when the union density is rather low. At the same it gives an important incentive for employers to organise as the employer density is particularly high in countries with a more frequent use of extension provisions (Traxler 2004).

## **4. Re-Stabilisation of the bargaining system**

The erosion of the collective bargaining system is not an inevitable process - as the developments in other European countries show. This requires political intervention in favour of a re-stabilisation of the bargaining system. We distinguish two necessary approaches. The first is a 're-stabilisation from below' which aims at strengthening union power in order to defend existing bargaining coverage, to re-establish such a coverage where it has been lost and to win new agreements where collective bargaining does not exist. The second is what we call a 're-stabilisation from above'. It focuses on the institutional strengthening of sectoral collective bargaining.

### **4.1. Re-Stabilisation from below**

Against the background of diminishing political and bargaining power, German unions have started to discuss and develop new political strategies which aim at a revitalisation of the union movement. Two strategic approaches in particular are under discussion within the union movement generally, and in IG Metall and ver.di in particular (Urban 2005).

The first has a kind of 'back-to-the-roots' attitude and wants to concentrate the union activities on the 'core businesses', i.e. collective bargaining and workers interest representation at company level. Its basic assumption is that unions will only overcome their crisis if they regain strength at company level. In contrast to that, the second approach wants to strengthen the union voice in the overall political arena by promoting social movement unionism and seeking new alliances with other social movements (Uellenberg 2009, Urban2010). Both approaches do not necessarily compete with each other but could form complementary parts of a comprehensive strategy.



### *Defending collective bargaining*

As decentralization went on, the union have been forced to develop a new balance between sector-related bargaining and company-related implementation of opening-clauses and the like. To defend the collectively agreed standards and to regain grounds regarding bargaining coverage the IG Metall launched a campaign for 'active collective bargaining' ("*Tarif – aktiv!*") (Wetzel 2007). Combined with organising activities to increase membership levels it was about mobilising members and activists with the aim to monitor closely that agreed wage increases were effectively implemented. Where employers withdrew from agreements the goal was to regain coverage. The union reported some success in cases of company-oriented bargaining conflicts about possible deviations from the sector-agreement, but up to now it is far from being a comprehensive campaign.

Since 2005 ver.di, IG Metall and the building workers union IG BAU have also picked up elements of Anglo-Saxon campaigning and organising models (Bremme et al. 2007; Wetzel 2009). IG Metall launched a number of trans-sectoral campaigns with a strong emphasis on strengthening the union at the workplace by involving and mobilising members. These new approaches are not undisputed in the union. One campaign labelled 'better instead of cheaper' (*Besser statt billiger*) focuses on innovation and demands prior expert counselling on alternatives if companies want to implement cost-cutting programmes and make use of opening clauses to deviate from collective agreements. Critics see a potential danger that this furthers the erosion of sectoral collective agreements whereas the defenders of the campaign argue that deviations take place anyway and that is better to deal with them openly and combined with a mobilising strategy than under the table and in back-room negotiations. The union reports rising union density in establishments where mobilising concepts have been followed (Huber et al. 2006). Case studies show that these and similar approaches can be instrumental in controlling the erosion of the bargaining system but that they are not applicable everywhere as to be effective they require a certain level of organising density and bargaining strength (Haipeter 2010).

Rebuilding this bargaining strength is the aim of an organising drive of IG Metall in the automotive trades, notably in car repair and service. In 2008, the union representing this trade, which is characterised by a great number of small and medium-sized

enterprises, was faced with a challenge: employers in North-Rhine Westphalia, the largest federal state in Germany and an important bargaining region, completely withdrew from the sectoral agreement and sought cooperation with the CGB. In a first step - partly by way of industrial action- IG Metall managed to secure the old standards by way of company level agreements. The middle range strategy of IG Metall is now to rebuild the union presence by way of establishing works councils where there are not any and to increase union density in the trade with the ultimate aim of re-establishing a sectoral agreement.

In 2010 the union started a campaign to organise employees in the fast growing 'green' economy - notably in the wind turbine industry, where both union presence and bargaining coverage are scarce. Bargaining is largely restricted to some companies which have their origins in traditional metal manufacturing, whereas new entrants in the market abstain, or are hostile to, collective bargaining. It is too early to tell whether the union will finally manage to win a sectoral agreement. In some sectors IG Metall and the chemicals workers' union IG BCE will have to settle disputes over organising territories.

### *Mobilising for collective bargaining in the service sector*

Mobilising members and workers with the aim of strengthening union's bargaining power has also been a major element in a partly revised bargaining strategy of the United Services Union, ver.di since 2006. This has included an extended involvement of members in industrial action, and a closer consultation of the rank and file on collective bargaining results. An important part of it is a 'fight-back strategy' towards employers who want to withdraw from existing agreements or avoid collective bargaining (Dribbusch 2009). However, the fact that the annual number of industrial disputes ver.di was engaged in quadrupled within five years from 36 in 2004 to 163 in 2009 reflects not only a greater militancy of the union but is also an indicator for an increasing aggressiveness of employers (Dribbusch 2010).

### *Coalition building*

Ver.di organises service industries such as retail which are marked by powerful companies and a scattered workforce who are spread over a myriad of comparatively

small workplaces and a shop-by-shop approach is often hardly feasible. The union therefore combines its organising and bargaining strategy with public campaigns aimed at winning the sympathy of customers and the wider public. A successful example of mobilising not only employees, but also the wider public, was the campaign to secure bargaining coverage at the leading drugstore discount chain *Schlecker*. Since the 1990s the union had established a substantial presence despite very unfavourable circumstances and considerable conflict in a company with a notorious record of anti-union behaviour (Dribbusch 2003, 145; Bormann 2007). In Mai 2009 the company announced a restructuring of the organisation. It planned to concentrate business in a new format of comparatively large stores – the so-called *Schlecker XL* – and to close many of its small outlets. The new stores would be established as a new legal entity thus avoiding the collective agreements concluded with ver.di. Furthermore, employees from *Schlecker* outlets that were closing down could only be transferred if they accepted employment in a *Schlecker*-owned temporary work agency which would hire them out to *Schlecker XL*. Pay levels would almost be halved. This caused a public outcry when plans were revealed by ver.di and consequently the union campaign immediately received exceptional media coverage. Even the Ministry of Labour felt forced to denounce the company's blunt approach. Nevertheless it finally took a year of extensive campaigning before the company gave in during June 2010 and signed a new package of agreements - thereby for the first time recognising the sectoral agreements for the retail industry. The key to the success was that local organisations of ver.di successfully managed to mount public pressure by way of a large variety of actions which were often based on a broad coalition of employees and external supporters.

### *Limits of a re-stabilisation from below*

The vice chair of IG Metall, Detlef Wetzel, who in 2007 established the first organising and campaigning department in IG Metall emphasises that: 'The days of Rhenish Capitalism with its social compromise which was so long instrumental for us, are over, and they will not return either.' [our translation] (Wetzel 2009, 352). This does not mean that he is against any cooperation with employers – quite the contrary – but he insists that this must be built on organisational strength at the workplace in order to avoid situations of sheer subordination. However, although the DGB-affiliates have

realised that their bargaining strength is challenged in a large range of industries they have not yet managed to turn the tide in membership development. Furthermore, it is easier for unions to stabilise or strengthen their organisational base in establishments and industries where there is already at least some kind of union presence to build on. It is much more difficult and time consuming to establish a presence in green-field sites and sectors with only marginal union structures and traditions. This, however, is the situation where bargaining coverage is at its weakest - that is in many trade and craft sectors and in most of the private service industries. Given their limited resources and the structural difficulties of organising these industries, it must be assumed that unions cannot stabilise the bargaining system on their own. This requires political and parliamentary efforts which materialise in institutional securities - that is 'stabilisation from above'.

#### **4.2. Re-Stabilisation from above**

A high level of collective bargaining coverage which is enforced primarily by the organisational power of trade unions requires a level of union density comparable to Scandinavia which for the foreseeable future is not very likely to be the case in Germany. The unions therefore have to look for alternative strategies which primarily address the state and politicise the conflict of the future of the German collective bargaining system while aiming a 're-stabilisation from above'.

Considering the particularly low bargaining coverage in the low-wage sectors the unions have started to campaign for the introduction of a statutory minimum wage (Bispinck and Schulten 2008). Although this campaign has not succeeded yet, the idea of a statutory minimum wage has gained broad support among the German public and continues to be on the political agenda. It has also contributed to the introduction of collectively-agreed minimum wages in around 10 sectors which were extended on the basis of the German Posted Workers law.

Statutory minimum wages can set a wage floor which in some sectors might be a basis for a re-introduction of collective bargaining. Considering the experiences of many other European countries, however, the core instruments to support a high level of bargaining coverage are efficient extension provisions. Without a reform of

the rather restrictive German extension practice a u-turn in the development of the bargaining coverage is far from being possible.

Currently, the biggest obstacle for a more frequent use of extension provisions is the position of the German peak employers association BDA, which has often used its veto power within the Collective Bargaining Committee at the Ministry of Labour and has blocked the extension, sometimes even against the position of their own sectoral member organisations. For the BDA the extension of collective agreements is a problematic offence against the principle of free collective bargaining and, therefore, can be supported only in exceptional cases (BDA 2009). As the BDA has also blocked the extension of sectoral minimum wages in construction and other industries, the German government changed the Posted Workers law so that the final decision on the extension of sectoral minimum wages was no longer through the Collective Bargaining Committee but the Ministry (Dombre 2007). However, the procedure used to introduce - in special cases - the extension of sectoral minimum wages could also be used for the general extension of collective agreements as a way to circumvent the employers' veto power.

A more fundamental reform of the extension provisions in Germany would have to make possible that as, for example, in the Netherlands a majority of sectoral agreement can be declared as generally binding (Zachert 2003, 2004). The experiences of the Netherlands confirm the positive results of a more frequent use of extensions in order to stabilise the collective bargaining system and to create a level playing field on wages and working conditions. The latter is also recognised by the Dutch employers - a great majority of whom supports the principle of extension (Heijnen and van Rij 2003).

## **5. Prospects**

The experiences of many European countries have shown that the erosion of collective bargaining is not an inevitable process but that politics matter. Much depends on trade unions and whether they manage not only to stabilise their existent power bases but to build new bargaining strength in the expanding service sector and in newly emerging industries. The strengthening of organisational power is necessary but it would be unrealistic to assume that this alone will be sufficient. To secure a

comprehensive bargaining coverage requires an institutional stabilisation through the state via the use of extension provisions or functional equivalents.

A re-stabilisation of German collective bargaining through a fundamental reform of extension provisions, however, would be heavily contested. It would need strong political actors to push for it and the question arises how German unions can win the political and parliamentary support necessary. The success of the campaign for a statutory minimum wage gives some hints.

The DGB-unions won the overwhelming public support for a national minimum because they managed to successfully intervene in the public discourse. The campaign addressed a broad sense of injustice with regard to income disparities. The fear of a general social decline and a concern about the negative consequences of a growing social inequality is shared far beyond traditional union constituencies. The minimum wage, therefore, became a fundamental question of social justice. The public outcry when Schlecker tried to circumvent collectively agreed retail wages by way of transferring employees to a company owned agency company points in a similar direction. The public solidarity the Schlecker employees received in their campaign shows that unions can succeed, even if their organisational power is limited, when their demands hit a nerve in the predominant societal discourse. In this sense union strategies for a re-stabilisation of the bargaining system 'from below' and campaigns in favour a re-stabilisation 'from above' are not mutually exclusive but complementary.

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