

Decentralisation of Collective Bargaining in Germany – Recent Trends and Challenges

Thomas Haipeter und Sophie Rosenbohm

- Decentralisation of collective bargaining takes place in different forms: wild decentralisation and organised decentralisation. Organised decentralisation takes two forms: derogations and through the transfer of regulatory competences to the workplace level entailing a shift in responsibilities from the collective bargaining arena to works councils and codetermination.
- The relevance of these forms differs significantly between sectors in Germany as shown by the examples of the metalworking industry and the retail sector.
- Wild decentralisation poses a fundamental threat to the German system of collective bargaining. Organised decentralisation demands for a new and more active division of work between trade unions and works councils.

Aktuelle Forschungsergebnisse aus dem Institut Arbeit und Qualifikation (IAQ),
Universität Duisburg-Essen

1 Introduction

This report focuses on recent trends in the decentralisation of collective bargaining in Germany. Decentralisation can be regarded as one of the most important developments of collective bargaining in Germany as it affects the scope of the system as well as the strength and quality of the labour standards defined in collective bargaining agreements. Overall, we identify three forms of decentralisation: firstly, decentralisation through the erosion of the institutional foundations of the bargaining system and the gradual shrinkage of its scope; secondly, decentralisation within the collective bargaining system through the shift in the locus of collective bargaining regulation from the multi-employer level to the company level mainly by derogations; and thirdly decentralisation through the transfer of regulatory competences from the actors at industry level (that is, trade unions and employers' associations) to the actors at workplace level (works councils and local managements) and from collective agreement to workplace agreement. A process dubbed 'establishmentisation' or 'Verbetrieblichung' in the German industrial relations literature (Schmidt and Trinczek 1989). While the first type can be regarded as wild or uncontrolled decentralisation, the latter ones can be seen as more organised forms of decentralisation, which are agreed by the collective bargaining parties and enshrined in 'opening clauses' in collective agreements and in that way legitimised by them (Traxler 1995; see also Bispinck 2004).

We will show that decentralisation calls for new relationships between works councils and trade unions and is associated with novel challenges for these actors. On the one hand, trade unions need works councils in derogations because the latter are the link both to the employees and management. In addition, if regulatory competences are transferred to the workplace level, works councils are needed who are able and willing to step in and to implement opening clauses, which have been negotiated by trade unions at industry level. At the same time, on the other hand, works councils need trade unions both in terms of professional support to deal with their new regulatory competences and in terms of the organising and bargaining power of the unions in

order to negotiate fair derogation deals with management. Our study highlights that organised decentralisation calls for a much closer cooperation between these two actors than has been usual before.

Our report is based on the findings of a comparative research project funded by the European Commission and coordinated by the University of Amsterdam in which decentralisation of collective bargaining was studied in eight European countries and in which we have studied the German case.¹ Our study focuses both on an analysis of overall developments of decentralisation in collective bargaining in Germany and on a more detailed investigation in two sectors, metalworking and retail industry, which stand for very different dynamics of decentralisation (see also Schulten and Bispinck 2018). While decentralisation of collective bargaining in the German metalworking industry is characterized by a complex interplay of wild and organized decentralisation, decentralisation in the retail sector mainly takes the form of wild and uncontrolled decentralisation. We will try to explain these differences by taking a closer look at the actors of collective bargaining, trade unions and employers' associations, and the strategies they develop as well as the power resources they can rely on.

Our findings are based on secondary data analysis, a thorough literature review as well as interviews with representatives from employers' associations and trade unions, workshops with social partners and three company case studies in the two industries under scrutiny.

2 General developments of decentralisation

Among the three developments of decentralisation in collective bargaining, decentralisation through erosion – which referring to Traxler (1995) can also be called uncontrolled or wild decentralisation – is the main threat to the German model. The most important indicator of this is the decline in collective bargaining coverage and the increase in the proportion of companies and employees whose working conditions are no longer regulated by collective agreements (Figure 1). The decline in collective bargaining coverage is driven by two processes: firms

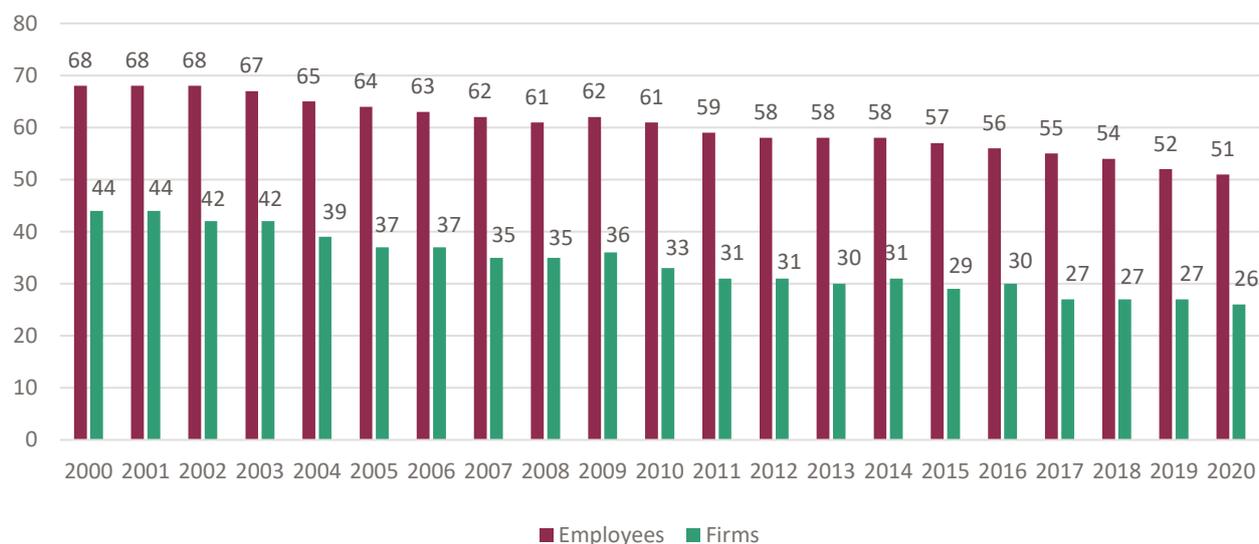
¹ More information is given on the website of the project: <https://aias-hsi.uva.nl/en/projects-a-z/codebar/codebar.html>

that opt out from employers' associations and firms that abstain from becoming members of those associations.

Between 2000 and 2020, collective bargaining coverage as measured by employees fell by 17 percentage points, with just only around one half of employees still covered by a collective agreement by 2020 (Figure 1). These data indicate total collective bargaining coverage and thus include both industry-level and company-level collective agreements. Coverage specifically by industry-level collective bargaining is even lower: by 2020 only 45 per cent of employees in Western Germany and 32 per cent in Eastern Germany were within the scope of an industry agreement.

such membership that obliges companies to comply with industry collective agreements. One explanatory factor for declining levels of organisation is structural economic change; this includes the continuing shift towards services, in which employers' associations are less anchored, the outsourcing of activities by large companies to suppliers outside the scope of collective bargaining, and the emergence of new companies in fields often untouched by organised industrial relations, such as research and development, IT or communication technologies. In addition to the problem of attracting such new companies, there is also the problem of 'flight' from collective bargaining by companies, in particular small and medium-sized enterprises (SMEs), that were previously bound by their membership of an employers'

Figure 1: Collective bargaining coverage in Germany from 2000 to 2020, in per cent of employees and firms



Source: IAB Establishment Panel, own presentation.

However, collective bargaining coverage (by employees) varies widely as between sectors (Ellguth and Kohaut 2021). In 2020, it ranged from 98 per cent in the public sector to 13 per cent in the information and communication sector. The important manufacturing sector (55 per cent) is just above the average, while most private service sectors such as retail and wholesale or the hospitality sector, but also transport and logistics, are well below the average (Ellguth and Kohaut 2021).

The decline in collective bargaining coverage is an expression of uncontrolled decentralisation. Its starting point is the decline in the level of company membership in employers' associations as it is only

association, but hope to gain cost and flexibility advantages by fleeing collective bargaining coverage, often because of the strong cost pressures exerted on them resulting from their position in value chains (Silvia 2017).

Employers' associations have developed a solution to this problem, albeit one that entails new problems for the collective bargaining system. This is the creation of new employers' associations (or new membership statuses in existing employers' associations) that are free of the obligation to comply with collective agreements (so called opt-out associations, in German 'OT-Verbände', without collective bargaining coverage) (Haipeter 2011). These opt-out

associations serve two main purposes: To retain employers that are dissatisfied with the stipulations of the collective agreement and to recruit new companies that do not want to be covered by the collective agreement but are interested in the other services that employers' associations can provide (Behrens 2011; Haipeter 2016).

These developments have also been encouraged by the declining organisational strength of the trade unions. Over the past two decades, union density in Germany has fallen from just under 25 per cent to only 16 per cent in 2019, with union density in DGB-affiliated unions at 15 per cent in 2016, below the 6 million members mark (Hassel and Schröder 2018). The decline in union organising power within companies – as well as the problem of recruiting members in new companies – creates the conditions for companies to be able to exit collective bargaining, or not to enter it, as they do not have to fear opposition from the unions. This is different in well-organised companies, where unions could respond with strikes or other forms of industrial action, possibly forcing companies to conclude company collective agreements, which might be more costly than the relevant industry agreements, aside from costs inflicted by industrial action.

Wild decentralisation of collective bargaining is going along with organised decentralisation. Organised decentralisation takes two forms in the German collective bargaining system (see also Traxler 1995): (1) through the shift in the locus of collective bargaining regulation from the multi-employer level to the company level mainly by derogations; and (2) through the transfer of regulatory competences from the actors at industry level (that is, trade unions and employer associations) to the actors at workplace level (works councils and local management) and from collective agreement to workplace agreement.

The latter, which, in its original form, as outlined by Schmidt and Trinczek (1989) in the late-1980s, referred to what was then the novel delegation of authority over the organisation of working time from the industry-level negotiating parties to the company and workplace level. What the consequences of this would be was contested from the outset. Schmidt and Trinczek (1989) took a sceptical view, based on the assumption that works councils would be overburdened by the requirement to negotiate with management on new issues. Other assessments were, however, more positive, seeing the

new situation as an expression of the particular flexibility and adaptability of the German system of industrial relations (Turner 1998). There have, nonetheless, been problems in how this has operated in detail. For example, the formal agreed limits set for working time flexibility have often been exceeded at workplace level in the context of 'forced flexibilization' (Herrmann et al. 1999).

A second line of development in the process of localised bargaining arose out of company-based pacts on job security and the retention of operations that have spread since the mid-1990s. In some sectors, such as the metalworking industry, this development has been taken up in collective bargaining, with industry-level agreements concluded since the mid-1990s. In those agreements the workplace level parties were given scope to reduce the working week to 30 hours, with corresponding reductions in pay, provided that the companies promise to safeguard employment for the duration of the agreements. However, different forms of employment alliances have developed. According to a classification suggested by Rehder (2003), employment pacts can be distinguished depending on whether the thrust of the agreement is to reduce wages, to increase productivity or to redistribute labour, and whether they primarily specify job security or investment commitments as *quid pro quos*.

The second form of controlled decentralisation and, in terms of its repercussions on the collective bargaining system, refers to use of derogations. This development started in the 1990s and the first decade of the 2000s, accompanied by a radical critique of the sectoral collective agreement within some political parties, the media and also the employers' associations. A showcase of this was the Vismann company in the metalworking industry, where the job pact provided for an extension of working hours without wage compensation and was regarded as a new form of 'wildcat cooperation' between management and works councils (Bispinck and Schulten 1999).

The response of the collective bargaining parties, especially in manufacturing, was to develop organised forms of decentralisation by introducing 'opening clauses' allowing for derogations from agreed standards within collective agreements. How this was undertaken varied considerably between two of the major branches of manufacturing, the chemical industry and the metalworking industry, each of which is characterised by a different balance between the

poles of 'social partnership' and industrial conflict. In the chemical industry, the opening of collective agreements was supported by both the employers' associations and trade unions as an expression of a modernisation of the social partnership, whereas in the metalworking industry a protracted conflict developed over opening clauses allowing for derogations (see also Haipeter 2010). This conflict was only ended when the then Red-Green federal government threatened to introduce statutory opening clauses. This then formed the basis for the negotiation of the so-called 'Pforzheim Agreement' in 2004. However, there are still hardly any opening clauses allowing for derogations from collective agreements in the service sectors. This is due to the fact that ver.di, as the large service sector trade union, is officially opposed to such derogations (Wiedemuth 2006).

3 Collective bargaining and decentralisation in the German metalworking industry

3.1 Wild decentralisation

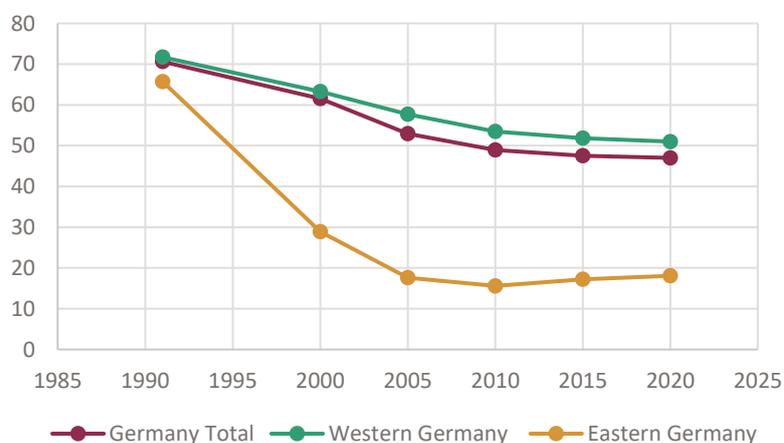
In the German metalworking sector, collective bargaining agreements – the so called 'Flächentarifverträge' – are concluded at regional level between the trade union IG Metall and the regional employers' associations, which are organised in the umbrella association Gesamtmetall. Processes of wild decentralisation have led to a shrinkage in the collective

bargaining. According to membership data from Gesamtmetall, 47 per cent of employees in the industry are covered by a collective agreement, about the same as the average for the German economy as a whole (Figure 2).

Collective bargaining coverage – and hence wild decentralisation – depends primarily on the organisational performance of the employers' associations and the motives of the companies to remain in or leave collective bargaining agreements. These may depend on their view on the services provided by the employers' associations such as consultations or the links and networking with other companies in the sector, but more and more also on reducing labour costs. Another motive has always been a response to union organisational power at the workplace; where unions have little organisational power, the easier it will be for a company to leave the employers' association without fearing opposition from the union.

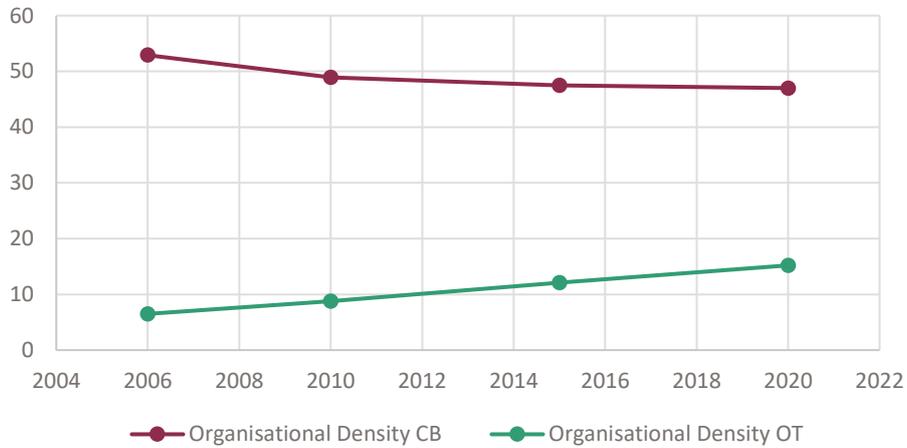
However, wild decentralisation has also been actively promoted and hence legitimised by the employers' associations in the sector. This has been done through the establishment of employers' associations whose membership does not entail compulsory collective bargaining. Such 'opt-out' associations were first set up in the metalworking industry in the second half of the 1990s (Haipeter and Schilling 2006; Haipeter 2016).

Figure 2: Organisational density / collective bargaining coverage in the metalworking industry, in per cent of employees



Source: Gesamtmetall, own calculations.

Figure 4: Organisational density of employers' associations in the metalworking industry in per cent of employees, 2006–2020 (CB = with collective bargaining coverage, OT = without collective bargaining coverage (opted-out))

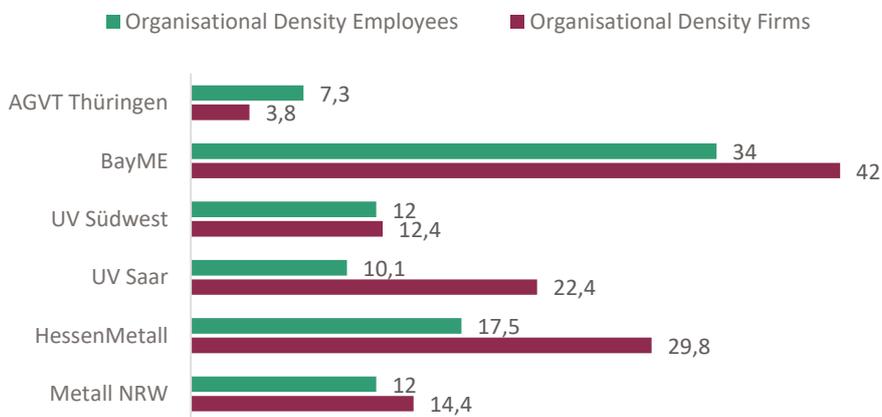


Source: Gesamtmetall, own calculations.

By 2020s, more than 13 per cent of employees in the metalworking industry worked in companies and enterprises with opt-out membership (Figure 4), a doubling since 2006 when the opt-out associations were admitted to Gesamtmetall, which publishes such membership data. The divergence between organisational density as measured in terms of companies and by employees can be explained by the fact that traditional employers' associations are mainly made up of the large companies in the sector while the opt-out associations are mainly composed of small and medium enterprises, many of which are positioned lower down in the value chains and subject to greater price and cost pressures than large firms.

However, the organisational density varies greatly between the opt-out associations. Figure 3 shows the density of six of the nine opt-out associations in the German metalworking industry. This refers to how different strategies adopted by the individual associations influence organisational density. For example, the Bavarian employers' association (BayME) uses the opt-out membership as a means of exerting pressure in collective bargaining and recommends that its members should switch to an 'opt-out status' if they are unhappy with the outcome of collective bargaining, especially regarding wage increases. In other associations, the opt-out associations are seen more as a recruitment opportunity for new members.

Figure 3: Organisational density of opt-out associations in the metalworking industry 2020



Source: Gesamtmetall; own calculations.

3.2 Shift of regulatory competences to the workplace level

Organised decentralisation in the form of shifting regulatory competences to the workplace level has taken a variety of forms in the metalworking industry, mostly in relation to the regulation of working time (Table 1).

Table 1: Shift of regulatory competences to the workplace level

Organised decentralisation: Issues
Working time accounts
Working time differentiation
Collective reduction of working times
Individual working time reductions and working time options (T-Zug)
Future collective bargaining agreements
Deviations from regular pay settings

Source: own compilation.

The oldest and still most important of these is the workplace-level regulation of flexible working hours in the form of working time accounts. These opening clauses allow works councils and management to conclude workplace agreements on fluctuations in the distribution of standard working hours and that these fluctuations must be compensated after a certain period of time. This was initially three months, but was then gradually extended and is currently one year in most collective agreements in the metalworking industry. This has, however, little practical relevance as most regulations on working time accounts now operate with upper and lower limits on working time credits rather than requiring an annual balancing.

Another concession that the employers' associations were able to push through in exchange for the reduction in weekly working hours agreed in the 1980s have been provisions on workplace quotas on extending individual agreed working hours. These refer to the proportions of employees who may extend their contractual working hours from 35 to up to 40 hours per week. Originally, the upper limits of the quotas were, depending on the collective bargaining area, 13 to 18 per cent of employees in an establishment who were allowed to agree on longer weekly

working hours. These have often been exceeded in practice in large establishments with a high proportion of highly-qualified staff, such as those working in research and development. This is one of the reasons why the employers' associations have been able to steadily raise the collectively agreed upper limits of the quotas by adding further quotas, most recently in the collective agreements of 2021. Here a collective workload model has been introduced by defining a range of 34 to 36 contractual hours per week and employee (including part time workers) on average. In case this range is exceeded, works council and management have to find ways to reduce the average working hours and procedural norms for this can be laid down in company agreements.

Moreover, since 1995 collective agreements in the metalworking industry have also contained opening clauses to allow for collective reductions in working time to safeguard employment. According to these clauses, the parties on company or workplace level can agree to reduce working hours from the collectively agreed norm of 35 hours per week down to 30 hours per week, with a proportional cut in pay in return for a commitment by the employer not to introduce compulsory redundancies for the duration of the agreement which can last for 12 months at maximum. These agreements are normally used in times of economic downturns. They have been used extensively during the financial crisis in 2009 and 2010, and again during the Covid-19-pandemic as an alternative to short time work. This form of collective working time reduction was extended in the collective bargaining agreement signed in 2021 to cope with transformation processes and to safeguard employment by extending the possibility of working time reduction from 12 months up to three years. In the second and third year, working hours can be reduced up to 32 hours per week, with a wage compensation of 25 per cent for each reduced hour.

Another form of organised decentralisation was introduced in the collective agreement from 2019 by providing the opportunity for individual working time reductions. According to this agreement, individual employees may reduce their weekly working hours from 35 to 28 hours, or a figure between, for a period of up to two years with a corresponding reduction in pay but still retaining the status of full-time employees. A second element of individual working time reduction developed in this agreement is the so called "T-Zug", which introduces working time reductions through the conversion of wage components which have been introduced in the

agreement for this purpose mainly. It gives certain groups of employees – shift workers and workers who have to care for elderly or children at home – the opportunity to choose between time and money. According to data from the trade union, in 2020 about 340.000 workers have used the opportunity to take free days, and about two thirds of them for reasons of shift work (IG Metall 2021). The T-Zug regulation was then extended in the collective bargaining agreement in 2020. According to this agreement, the T-Zug from now on can be used collectively – and based on a company agreement – by all employees to avoid or postpone short time work for up to eight days. Additionally, up to six collective free days without specific motives for all workers based on the T-Zug can be agreed on in a company agreement.

In addition, the 2018 agreement on mobile work created a framework for workplace agreements by setting minimum agreed requirements. The agreement provides a definition of mobile work (“work that temporary or regularly takes place outside the establishment but that does not include working activities that have to be performed outside the establishment like service or sales activities”), requires compliance with the Working Time Law, limits when employees must be available, requires documentation of working times and stipulates what must be included in any agreements between employees and their managers. Although agreements on this issue had been concluded before the 2018 industry-level agreement, especially in larger companies, the new provision sets minimum standards for all future agreements in this area, including agreements in SMEs.

In addition to the issues noted above, most of which deal with working hours, a further form of decentralisation relates to pay. Since 2006 several – but not all – wage agreements provided for opening clauses for deviations from regular pay settlements, which offer the possibility for companies to postpone regular wage increases for a couple of months or to reduce or postpone agreed lump sum payments. In any case, such deviations must be agreed with the works councils and the IG Metall.

There is little doubt that the dynamics and extension of this kind of decentralisation has generated new challenges for works councils, calling on them to develop new capabilities and bargaining power to ensure they can come to acceptable arrangements with management. Empirical evidence suggests that

the quality of workplace agreements will vary depending on these conditions, with close collaboration between unions and works councils constituting a key prerequisite for effective codetermination (Haipeter 2021). Unions can support works councils and contribute to the development of their capabilities through training and advice and through building their capacity to deal with new topics such as digitalisation or decarbonisation. As already noted, a high level of union organisation at a company will also strengthen the bargaining power of works councils in local negotiations. These relationships play an even more important role in the context of derogations which will be analysed in the following section.

3.3 Derogations

Derogations in the metalworking industry are regulated in the so called ‘Pforzheim Agreement’ from 2004, which in 2008 was, together with the stipulations on collective working time reductions, included in the ‘Agreement on the safeguarding and increasing of employment’. The ‘Pforzheim Agreement’ introduced for the first time a general opening clause (see also Schulten and Bispinck 2018). The agreement specified that derogation agreements would be permitted provided that jobs would be safeguarded or created as a result and additionally that they would help to improve competitiveness, promote innovation, and encourage investment. The agreement said little about the contents of derogations, but it contained a number of provisions on procedural norms: that companies had to provide comprehensive information on their economic situation; that the union had the right to check this in the light of spill-over effects to other companies, and that derogations would have the status of collective bargaining agreements and could only be negotiated by the recognised parties to collective bargaining, the trade union and the employer or the employers’ association.

However, the procedural arrangements laid down in the Pforzheim Agreement quickly proved unsuitable to the exercise of control over collective agreements and derogations. Soon after the agreement was signed it became evident that the employers’ associations themselves had no interest in controlling derogations and in many cases were merely acting as advisers to companies engaged in negotiations. Consequently, it fell to the trade union to exercise control. However, IG Metall’s faith in its own ability to control derogations had already received a bitter

blow, as a result of cases in which works councils had already agreed to management's demands before the union had been even asked for its opinion or taken any part in the negotiations.

The union's executives concluded from this experience that effective control required tighter procedural standards than those laid down in the collective agreement. As a consequence, in 2005 IG Metall drew up a set of coordination guidelines centred on the following points: that applications to negotiate derogations had to be submitted to the union's area headquarters; that these – the Bezirke – could give local union branches authority to conduct negotiations, and that negotiations were to be supported by firm-level collective bargaining committees, whose role was to ensure that union members took part in the negotiations, were informed and participate in decision making.

Evidence on the current outcomes of derogations is rare. According to the figures of the IAB Establishment Panel for the economy as a whole, in 2011 around 10 per cent of companies had used opening clauses dealing with pay, 13 per cent opening clauses regarding working time and 20 per cent had used an opening clause on 'some issue' (Ellguth and Kohaut 2014). The figures from the WSI Works Council Survey are higher; in this case works council members are asked not only about the use of collectively agreed opening clauses but also about 'differentiation clauses' that deal with issues other than agreeing standards below industry norms. The WSI study found that the incidence across the whole economy averaged 21 per cent, with manufacturing (together with mining) at 28 per cent and capital goods at 22 per cent (Amlinger and Bispinck 2016). There are hardly any published figures from IG Metall. One exception is an evaluation by the NRW district of IG Metall, which noted 150 ongoing derogation agreements in 2016, corresponding to 12 per cent of the companies covered by collective bargaining in that district (Bahn Müller 2018). If the conceptual imprecision between opening clauses and derogations is taken into account, it seems that between 10 and 20 per cent of the companies bound by collective agreements or of the companies with works councils make use of such opening clauses for derogations.

Although derogations in the metalworking industry are defined as collective agreements and therefore fall within the scope of the trade union as one of the parties entitled to conclude such agreements, the cooperation between the union and works councils

is critical in the success of negotiating and implementing such provisions. There is no prospect of a successful negotiation without or in opposition to works councils. From the works council perspective, having the union take the lead in negotiations can be a great help, relieving them of the challenge of facing management, who will have to sit down with the union's typically highly experienced negotiators, and benefiting from the power resources that the union can mobilise during the negotiation process (Haipeter 2010).

In addition, derogations in the metalworking industry have another core element: participation by union members. This was included by the trade union as a requirement in its 2005 coordination rules and is intended to foster a closer relationship between the union and its members, as well as employees more generally, when engaged in negotiations over derogations, given that, in contrast to bargaining over pay increases, these can entail a lowering of terms and conditions, at least temporarily.

The core idea of participation was that members would be more likely to accept an outcome if they were involved in the process. Three important forms of participation were developed in the initial years in which derogations were negotiated (see also Haipeter 2010): Ongoing information of trade union members through meetings of members during negotiations; participation of members in the union's company bargaining committees and, above all, votes by members on whether to start negotiations and whether to accept a negotiated outcome.

This practice has now been established as the arrangement in negotiating derogations. Experience has shown that members who are involved are much more likely to agree with the outcome of the process. There has also been a further, and largely unexpected, effect, however. In many cases, the union has been able to recruit new members as employees have wanted to participate and have a voice (Haipeter 2010). Today, the question of organising power is posed at the beginning of every negotiation over derogations. Based on insights from our case studies in the metalworking industry, three reasons can be identified. Firstly, organisational power is an important precondition for employee bargaining power, that is the capacity to use a high degree of union organisation at company level to resist pressure for derogations and press for appropriate *quid pro quos* from employers. Secondly, a high organisational density legitimises trade union action as the

union can speak for a larger proportion of the employees. And thirdly, it becomes a criterion in deciding when the union should devote scarce resources to bargaining at a company: the current basic guideline is that the union will not engage in bargaining in the absence of a convincing sign of willingness on the part of the workforce, with a minimum requirement of 50 per cent employee union membership.

In the collective bargaining agreement from 2021 a new opening clause for collective bargaining at company level was introduced. This opening clause provides for so called ‘Agreements for the Future’ at company level. In contrast to derogations, these agreements are not about concessions but rather promote joint initiatives to modernise firms, to increase their competitiveness and to safeguard employment. In short, to develop processes and instruments to cope with the digital and ecological transformation. Under the industry agreement, management and works councils can develop joint analyses of the current position of and future challenges to the company.

As yet, there have been very few instances of this procedure in practical operation. However, there are a number of challenges that can be identified in advance. The first is that the companies may have little interest in negotiating on the issue of transformation as such negotiations touch on traditional managerial prerogatives. This might lead to the second challenge: that employers could demand concessions for giving the employee side a say in those issues. In this case such ‘Agreements for the Future’

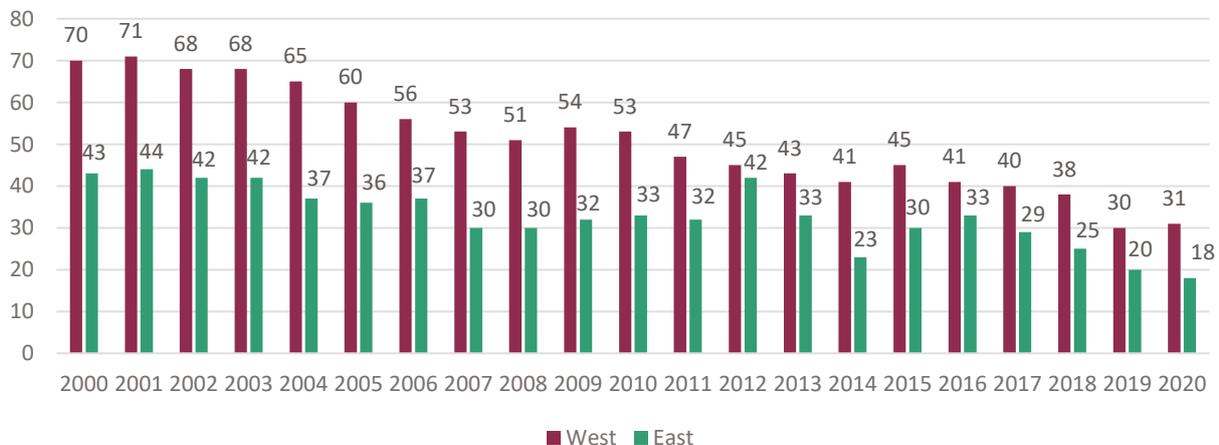
would differ only very little from more innovative derogations that have also included investment commitments. And finally, even if an agreement will be reached at company level, this would mean a huge new workload for both the works council and the union who would become drawn into managerial processes and would need the competences, skills and resources to play a role in this. However, should these problems be solvable, ‘Agreements for the Future’ would seem to offer a very promising perspective for a more proactive practice of codetermination by works councils than has been the case in the past, and moreover one that is backed up by collective bargaining and an active role on the part of the union at company level.

4 Collective bargaining and decentralisation in the German retail sector

4.1 Wild decentralisation

In the German retail sector wild decentralisation is the dominating trend of decentralisation in collective bargaining. As in metalworking, collective bargaining agreements are concluded at regional level between the recognised collective bargaining parties, namely the regional branches of the trade union ver.di and the respective regional employers’ associations, which are affiliated to the national umbrella organisation Handelsverband Deutschland

Figure 5: Collective bargaining coverage for the German retail sector from 2000 to 2020, in per cent of employees



Source: IAB Establishment Panel, own presentation.

(HDE). The regional agreements have some specificities. Although the first agreement reached in a bargaining round serves as a model for subsequent negotiations ('pilot agreement'), considerable differences exist as the bargaining regions in the sector have traditionally had quite a high level of autonomy (Haipeter and Bromberg 2015).

Collective bargaining coverage in the retail sector has been declining for many years. As Figure 5 illustrates, in 2020 only 31 per cent of the employees in West Germany and 18 per cent in the East worked in an establishment covered by a collective agreement, with less than half of all employees overall in retail currently covered by a collective agreement (Ellguth and Kohaut 2021; see also HDE 2021). Collective bargaining coverage by establishments is around 21 per cent in West Germany and 10 per cent in the East (Ellguth and Kohaut 2021). This means that 80-90 per cent of all establishments in the retail sector are currently outside the scope of collective bargaining.

The retail sector is therefore characterised by a significantly lower level of collective bargaining coverage than the German economy as a whole. (see also Ellguth and Kohaut 2021). In 2020, for the first time in many years, however, there has been a slight stabilisation, albeit at a rather low level. This is mainly driven by a slight increase in West Germany (31 per cent in 2020 compared to 30 per cent in 2019), whereas the downward trend persists in East Germany. It remains to be seen whether this is an exception or whether this trend will continue.

The situation has changed dramatically since the early-2000s. In 2000, 70 per cent of all employees in the retail sector in West Germany and 40% in East Germany worked in an establishment covered by a collective agreement (Figure 5). The main factor behind this downward trend has been the discontinuation of extension procedures in the sector.

Up until the late 1990s, collective bargaining in the retail sector was characterised by the fact that the regional collective agreements had been declared generally binding by the Federal Ministry of Labour and therefore applicable to all employments in the industry. One statutory precondition for this was a certain level of pre-existing bargaining coverage together with agreement on the part of the negotiating parties that the extension should take place. This was mainly based on the shared view that pay and other working conditions should be taken out of inter-firm competition and that fair conditions should

exist across the sector. Collective agreements defined general minimum standards for all employees irrespective of whether their employer was a member of an employers' associations.

By the mid-1990s, however, consensus on this had broken down, mainly due to reappraisal by some members of the employers' association who were severely critical of the requirements stipulated by the agreements. Thus, since 1999 the employers have refused to apply for extension. This development was accompanied by an organizational split on the employer's side. Some of the employers, led by the department store Karstadt, created a collective bargaining association independent from the HDE, the Bundesarbeitsgemeinschaft der Mittel- und Großbetriebe des Einzelhandels (BAG). This association then created scope for an 'opt-out' form of membership, followed shortly after by the HDE.

This strategy aimed to reduce collective bargaining coverage and consequently removed the necessary precondition for declaring collective bargaining agreements generally binding, an approach at complete odds to the strategy that had prevailed up until then. Peek and Cloppenburg, a large German clothing retailer, was the first company to adopt this new status and more companies followed, with many of the larger retailers withdrawing from collective bargaining in recent years. Ending the extension of collective agreements and introducing opt-out memberships – triggering a sharp decline in organisational density at the employers' associations that applied collective bargaining – has led to an enormous shrinkage of collective bargaining coverage in the German retail sector (see also Schulten and Bispinck 2018).

Moreover, in food retail in particular, which is dominated by rather large firms, smaller organizational entities have been created that operate as independent merchants and which are not bound by collective agreements. Transitioning to company-level collective bargaining seems to be rather rare; in most cases, these employers are not covered by branch-level agreements and indeed do not negotiate any collective agreements at all, in part because ver.di often lacks the power to force them into company-level negotiations once they have left the employers' association. A substantial proportion of companies (48 per cent) state that they use the standards set by industry agreements as a benchmark for their own policies (Ellguth and Kohaut 2021), although this does not necessarily mean that

they offer the same pay levels and working conditions as the companies formally within the scope of industry bargaining.

Besides these issues, the grading structure has long been criticised by the collective bargaining actors for being outmoded (see also Kädtler and Kalkowski 2008). For the employers' associations, the structure does not adequately reflect the changes the sector has passed through in recent decades. This was also one of the reasons why the employers' associations wanted to end the practice of extension in the late 1990s. The discussion about grading mainly revolves around the criteria used to evaluate skills levels and job demands. This concerns for example the grading of cashiers and shelf fillers, which – on a narrow approach – could lead to those activities being classified as unskilled labour. The union is then confronted with the risk that this would lower terms and conditions for those employees who include most of its members. Although both actors see the need to modernise the system, as yet they, they have not been able to reach a consensus, despite several rounds of negotiations.

4.2 Other forms of decentralisation

Derogations from industry-level collective agreements of the type seen in the metalworking industry are something of a rarity in the German retail sector. These are mostly confined to flexible working times, which are relevant mainly in the form of flexible shift systems that allow to adapt staffing levels to customer frequencies. Or they are used in instances of corporate restructuring with a small number of hardship provisions for small enterprises in Eastern Germany (Schulten and Bispinck 2018).

Those agreements mainly aim to safeguard employment and apply, however, in specific situations and are mainly temporary. Negotiations are always led by the trade union, not the workplace actors. However, should such a reorganisation agreement be concluded the process will include information meetings with works councils and town hall meetings with employees and trade union members, with the latter having the final say on the negotiating outcome.

In addition, any collective agreement that deviates from an industry-level agreement must be formally approved by ver.di's Federal Executive Committee, which has a veto right. Derogations are conse-

quently strictly monitored and controlled by the union's headquarters (see also Wiedemuth 2006). However, there are no general opening clauses in collective agreements comparable to those found in the metalworking industry. Overall, ver.di has been quite reluctant so far to accept derogations or deviations from the standards stipulated in the regional industry-level agreements.

This difference between ver.di's approach and the strategy adopted in manufacturing can be explained by different circumstances of these sectors. In most service sectors, trade unions are traditionally much less firmly anchored at company level than those in manufacturing. This relative weakness, and the associated lower trade union organisational capacities at local level, means that opening up collective agreements poses a much greater risk as any local bargaining, that could ultimately entail an industrial dispute, requires a minimal level of organisational capacity and a readiness to engage in conflict.

In few companies, however, ver.di has been able to negotiate so-called 'recognition agreements' (Anerkennungstarifverträge) under which a company that is not a member of an employers' association agrees to comply with sector-wide standards. As one of our case studies has underlined, these agreements can be a first step towards bringing a company that was not previously covered by a collective agreement into the scope of the industry-level agreement. In this sense, such agreements represent a specific form of company-based collective bargaining and will often be accompanied by temporary derogations.

5 Conclusions

In this report we have focused on recent trends and debates on decentralisation in collective bargaining in Germany. In this regard, we have identified three forms of decentralisation: firstly, uncontrolled or wild decentralisation through the erosion of the institutional foundations and the gradual shrinkage of its scope; secondly, decentralisation within the collective bargaining system through agreed derogations from industry-level collective agreements that allow for deviations from these agreement at the company level. And finally, decentralisation between the levels of the dual system, where regula-

tory competences are shifted from the actors at industry level to the actors at company and workplace level.

Our analysis revealed considerable differences between the metalworking industry and the retail sector. While the decentralisation of collective bargaining in the German metalworking industry is characterised by an interplay between wild and organized decentralisation – both forms of controlled decentralisation, localisation to the workplace level and agreed derogations, play a crucial role. Decentralisation in the retail sector has mainly taken the form of wild and uncontrolled decentralisation. In contrast to the metalworking industry, controlled decentralisation by agreement between the parties to collective bargaining is a rarity. Rather than making use of agreed opening clauses in collective agreements, employers in the German retail sector have departed from the terms of industry-level agreements by the simple expedient of opting out of collective bargaining altogether. One exception to this are ‘recognition agreements’ negotiated between the trade union and an individual employer that often allow derogations for a specified transition period. These agreements can be regarded as a first step towards bringing companies (back) into the scope of industry-level collective agreements. They are rare, however, and require a minimum level of organisational capacity and a willingness to engage in conflict on the part of workforces at company level, as our case study underlined.

In contrast to the retail sector, decentralisation of collective bargaining in the German metalworking industry is characterised by a complex interplay between wild and organised decentralisation. On the one hand, the industry collective bargaining coverage has been shrinking as a result of wild decentralisation due to companies leaving the employers’ associations, shifting to the ‘opt-out’-sections of the associations, or, in the case of new companies, not joining the associations at all. Growing wild decentralisation has also led to a decrease in the scope for organised decentralisation, which is characterised by a dynamic development of both localisation of regulatory competence to the workplace level (Vertrieblichung) entailing a shift in responsibilities from the collective bargaining arena to works councils and codetermination, and decentralisation within the collective bargaining system by strengthening the company bargaining level in the form of agreed derogations.

Works councils are core actors in both of these processes. Given that localisation to the workplace level means a shift in competences to works councils in terms of both topics and responsibilities, works councils must rise to the challenge of negotiating, regulating and monitoring what the collective bargaining actors have empowered them to do, as specified in the opening clauses in the industry-level agreements. In case of the decentralisation within the collective bargaining system via derogations, the trade union is the most important negotiating actor at workplace or company level. It is the union that checks company applications of companies for derogation, establishes and leads the collective bargaining committees, who negotiates with management and who organizes membership participation and membership recruitment. Works councils are far from being unimportant in this process, however, as they need to work hand-in-hand with the trade union to help organise negotiations and employee participation. In the course of these developments, the workload of the works councils and demands for new competencies and their capability to act have increased tremendously.

In both the sectors considered in this study it is the employers or the employers’ associations that are the main driving forces behind the decentralisation, of whatever form. In the case of wild decentralisation, the employers leave the employers’ associations. Moreover, attempts by employer associations to retain members through ‘opt-out’ forms of membership arguably fuel and legitimate this process. In the case of the localisation of regulation to the workplace level, this is also propelled by employer interests as it transfers greater decision-making scope to the company-level. And by agreeing to opening clauses allowing for regulation at workplace level, as with working time flexibility, trade unions have sacrificed some of their influence over these important topics. On the other hand, some forms of localisation to the workplace level have been developed by unions themselves, as in the case of opening clauses to safeguard employment or the scope for individual working time arrangements under the agreed supplementary payment, the ‘T-Zug’, which allows employees under some circumstances to trade off money for additional time off. Finally, opening clauses on derogations also have their origins in employers’ demands for deviations that permit terms and conditions below the minimum standards set by industry-level agreements. Trade unions in manu-

facturing were finally compelled to concede such arrangements given the threat of wage competition from lower-cost operations abroad and the growth of informal derogation. Developments in the metal-working industry have shown that IG Metall has come to terms with derogation and responded with its own strategies of negotiation, participation and organising in order to make a success out of what came be regarded as the inevitable.

In any case, decentralisation has brought new challenges for trade unions and works councils. One of the main approaches to respond to these challenges would appear to be an intensification of cooperation between these actors. In the case of derogations, trade unions need the works councils as the latter are the link both to the employees and management, as well as being indispensable for monitoring how derogations are implemented. Shifting the locus of regulation to the workplace level will not work without works councils that are able and willing to step in and to implement what the unions have negotiated on this at industry level. At the same time, works councils need the trade unions; firstly, to provide professional support in dealing with the tasks arising from the localisation of regulation to the workplace level and, secondly, to supply the organising and bargaining power necessary to negotiate fair derogation deals with management. Organised decentralisation calls for much more closer cooperation between these two actors than has previously been the case.

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Autorin und Autor



Prof. Dr. Thomas Haipeter

Leiter der Forschungsabteilung
Arbeitszeit und Arbeitsorganisation

Mail: thomas.haipeter@uni-due.de
Telefon: +49 203 37 91812



Dr. Sophie Rosenbohm

Wissenschaftliche Mitarbeiterin
Arbeitszeit und Arbeitsorganisation

Mail: sophie.rosenbohm@uni-due.de
Telefon: +49 203 37 91815

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Institut Arbeit und Qualifikation
Fakultät für Gesellschaftswissenschaften
Universität Duisburg-Essen
47048 Duisburg

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Dana Morisse

dana.morisse@uni-due.de

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