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der Hans-Böckler-Stiftung



## Special Issue 2019

Martin Behrens  
Heiner Dribbusch [eds.]

# Industrial Relations in Germany

## Dynamics and Perspectives



Nomos

edition  
sigma



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# Industrial Relations in Germany – Dynamics and Perspectives

## Introduction

MARTIN BEHRENS, HEINER DRIBBUSCH, ANKE HASSEL

The Institute of Economic and Social Research (WSI) is trade-union related academic research institute. Since its foundation in 1946, the focus of the WSI has been on the improvement of life chances, social justice and fair working and living conditions. In 1995 it became part of the Hans-Böckler-Stiftung, a non-profit foundation of the German Confederation of Trade Unions (DGB), fostering co-determination, promoting research and supporting students. Based on sound academic analysis, the researchers of the WSI elaborate policy proposals aimed at overcoming labour market restrictions and social problems to the benefit of employees. The main fields of research of the WSI are social and labour market policy, gender studies with a focus on job inequalities and industrial and labour relations. The WSI Collective Agreement Archive is the major German information centre on developments of collectively-agreed pay and conditions. Research on Germany is complemented by active participation of scholars in international networks investigating social and labour market policies, working conditions and industrial relations at the European and global level.

With this special English edition of its academic journal *WSI-Mitteilungen*, the WSI revisits a theme it had previously explored in a special issue on the occasion of the 2003 IIRA World Congress in Berlin. Under the title *Industrial Relations in Germany – an Empirical Survey*, the 2003 issue focused on the state of works councils and multi-employer collective bargaining; the core institutional pillars which have shaped the dual system of German industrial relations. Back in 2003 the WSI was concerned with the simultaneous decline of membership in both employers' associations and trade unions and the risks of a slow but steady erosion of collective bargaining. The institute nevertheless remained confident about the stability and flexibility of the German system of labour relations although it stressed the necessity for stabilisation measures to be taken by the bargaining parties and the government.

In 2019 it is apparent that since 2003 labour relations in Germany have undergone a turbulent history. It is the aim of this special issue to contribute towards improving our

understanding of changes in German labour relations but also to identify new perspectives in both the theory and practice of industrial relations. The erosion of the bargaining system certainly did not stop as bargaining coverage retreated even further; despite considerable efforts to strengthen consolidation, overall union membership continued to decline and the share of members in employers' associations which remained committed to multi-employer bargaining continued to shrink. But just when it appeared that the "pillars of social partnership" were doomed to crumble the Great Recession of 2008 arrived and changed the game. Unions, employers, works councils and the state joined forces in a "crisis version" of German corporatism. Supported by a favourable economic development the resulting "German job miracle" was considered to be proof of the virtues of the German model in general and a renaissance of the unions in particular.

The Great Recession was followed by the so-called European public debt crisis. The European Union, supported by the German government, responded to this with a set of policy changes that have come to be known as the "new European economic governance". Part of this governance was a shift within the EU in favour of political intervention in national bargaining outcomes and procedures. But while the so-called "crisis countries" were forced to dismantle collective social security and decentralise their collective bargaining systems, Germany took another direction. In response to a campaign by the unions, which was met with broad public support, a statutory national minimum wage was introduced with effect from 1 January 2015. Much of the formal stability of German industrial relations is owed to the fact that no major political party questions its foundations. The decline of bargaining coverage and the shrinking of the presence of works councils is a matter of concern for both Christian and Social Democrats. The existence of strong unions is not put into question, not least because they are considered to be more a factor of social stability than of public disorder. Against the background of a long economic upswing since 2010, Germany has seen a substantial increase in employment and unions have not only been able to secure an increase in real wages but also achieve new models of working time which reflect the changing needs of employees.

However, despite all public and political acclaim, the erosion of the German model has continued. The picture of German industrial relations has become more uneven and the differentiation between labour relations and working conditions has widened. In 2019 bargaining coverage is at its lowest level in post-war German history. Although multi-sector bargaining is still the norm, a majority of employees no longer work under a collective agreement. The decline is particularly pronounced in private services. In major sectors such as the retail industry, collective bargaining covers barely a third of employees. Opening clauses allowing for (temporary) deviations from collectively agreed provisions are in 2019 no longer an exception but the norm. Although the national minimum wage stabilised the wage floor, it has not prevented Germany retaining one of the largest low-wage sectors in Europe. The 2003 call for stabilising measures from below and from above is therefore in 2019 as relevant as it was then (see the contribution by *Thorsten Schulten* in this volume).

The picture is similar if we look at the scope of workplace representation and co-determination. The situation at major car manufacturers such as Mercedes or Volkswagen, where strong works councils supported by a well-organised workforce appear to be on a level playing field with management, is not typical for the vast majority of establishments. In 2019 a majority of employees in the private sector work in establishments without a works council and works councils are largely absent in small and medium-sized workplaces. Again, it is in private services where the situation is particularly bleak; while it is questionable whether all employees, particularly in very small workplaces, deem a works council necessary to defend their interests, there are recent findings which underpin past observations that some employers are not only hostile towards works councils but actively obstruct employees' efforts to establish one (see *Behrens/Dribbusch*). Since 1997 the WSI has regularly surveyed existing works councils to learn more about their approaches and attitudes and also about their composition. A significant fact revealed in recent analysis shows that women and part-time employees tend to be under-represented in works councils (see *Emmmler/Brehmer*). It comes perhaps as no surprise that across industries members of a works council are more likely to be union members than the employees they represent.

As both bargaining coverage and the existence of a works council are closely linked to union presence and union activity, the decline of union density in Germany is a decisive factor for the balance of power which shapes industrial relations at industry and plant level. As a closer look at the state of German employment relations reveals, we find diverse patterns within different sectors of the German economy. While unions have regained stability or even increased their presence in some organising territories, they have faced continuous decline in others. Focusing on collective bargaining and works council coverage, *Hassel/Schroeder* distinguish three different patterns or "worlds" of labour relations. In contrast to what we see in other European countries, it is less the shrinking public sector but the large companies in manufacturing that constitute the "first world". It is here where industrial relations come closest to the ideal type of the German model. However, this world is not detached from a "third world" of deregulation which appears much less prominently in international comparative research than the world of social partnership with which German industrial relations have been frequently identified.

Industrial relations do not come without conflict and Germany is no exception to this. A comparatively recent development in Germany is the tertiarisation of conflict; with the migration of militancy from manufacturing to services (see *Dribbusch*). This development is closely linked to the removal of collective security as a result of privatising the public sector and a fiscal policy which has impoverished public budgets. Added to this comes an awareness on the side of unions that the times are over when the commitment of employers to collective bargaining and regular pay increases could be taken for granted.

In 2003 the WSI remained tacitly optimistic that some core features of the German model of co-determination could positively help to develop a forthcoming European

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model of labour relations in a non neo-liberal direction. In 2019 we have to acknowledge that this did not happen. It was rather the German model of industrial relations which was shaped by the EU in the form of the Court of Justice of the European Union (CJEU). A number of decisions by the court intervened in the power relationship between employers and employees (see *Seikel/Absenger*). By restricting the scope, applicability, and the contents of collective agreements the CJEU *de facto* furthered the erosion of the German model.

For a long time, German labour relations have been conceptualised by referring to a rather homogeneous model. While different names have been used to describe this model such as “the dual system of interest representation”, “social partnership” or “the German model”, they were all based on the assumption that they capture the very essence of what regulates labour relations in a variety of different workplaces. As the authors of this volume indicate, such a perspective becomes increasingly outdated as the diversity of different institutions and practices increases. Directions of change seem to follow different and sometimes even contradictory paths. As is outlined in this volume, we find processes such as decentralisation and Europeanisation of labour relations side by side with the (partial) growth of state involvement, as well as the weakening of collective actors such as unions and employers’ associations. We hope that the analyses in this volume, some of them available in English for the first time, contribute to a better understanding of the forces at work in the process of changing German labour relations.

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# German Collective Bargaining – from Erosion to Revitalisation?

Following a continuous decrease in levels of collective bargaining coverage for more than two decades, all relevant social actors in Germany now agree that something has to be done to reverse that trend. However, there are still rather different views among trade unions, employers' associations and political actors about the right measures and instruments required for a revitalisation of collective bargaining. While the unions try to rebuild their organisational power and gain political support for the bargaining system, the employers demand further flexibilisation in order to make agreements more attractive for the companies.

THORSTEN SCHULTEN

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## 1 Introduction

German collective bargaining, as it evolved during the 1950s in the post-war period, was for a long time rightly regarded as a prototype of an “inclusive collective bargaining system” (Hayter 2015). A comprehensive structure of sector-level multi-employer bargaining ensured a high bargaining coverage whereby between 80 and 90 per cent of all workers in Germany were covered by collective agreements. Since the mid-1990s, however, a continuous decrease in bargaining coverage has led to a significant level of erosion.

Against that background, the academic discourse on German industrial relations and collective bargaining was long dominated by the view that the erosion is an almost inevitable development (e.g. Hassel 1999; Hassel/Schulten 1998, Streeck 2009). In the recent decade, however, the discourse has largely changed from a “paradigm of crisis to a paradigm of strategy” (Urban 2013), putting much more emphasis on the strategic options of social actors to shape the developments of industrial relations. The change in the discourse came largely from the trade union literature and its new emphasis on organising practices (Brinkmann et al. 2008), but was also adopted in the debates on the future of German collective bargaining (Bispinck et al. 2010).

In the meantime, the question on how to revitalise collective bargaining has become one of the core issues in German industrial relations. The changing views and perspec-

tives have largely been influenced by the role industrial relations played in overcoming the great economic recession in 2009 (Lesch et al. 2017a). Moreover, the comparatively good economic performance and the sharp decrease in unemployment during the 2010s have significantly re-strengthened the structural power of German trade unions (Dribbusch et al. 2018). Finally, there was also the consideration of international experiences, which supported the view that the erosion of German collective bargaining was not an irreversible process but could be politically shaped and influenced (Bispinck et al. 2010).

Since the 2010s, the idea that Germany needs a fundamental revitalisation of collective bargaining has become more and more an issue not only for the trade unions but also for sections of the employers and even for most political parties; including the current government coalition of Christian and Social Democrats. One expression for the changing discourse was the adoption of the Law for the Strengthening of Collective Bargaining Autonomy (*Gesetz zur Stärkung der Tarifaautonomie*) in 2014 which included a legal package of different new regulations including the introduction of a statutory minimum wage and a facilitation of the rules for the extension of collective agreements.

This article is basically composed of two parts. The first part contains a detailed analysis of the development of collective bargaining in Germany and elaborates the available data on collective bargaining coverage (section 2). In the second part, the fundamental approaches and concrete proposals for a revitalisation of German collective bargaining are discussed (section 3). Finally, it concludes with a short outlook on the future of collective bargaining in Germany (section 4).

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## 2 Decline in Collective Bargaining Coverage

### 2.1 Different Data Sources for Measuring Bargaining Coverage

Although all collective agreements in Germany have to be registered at the Federal Ministry of Labour there is no administrative data available on the number of workers covered by collective agreements. All data on collective bargaining coverage in Germany is based on company and worker surveys. There are three major data sources available:

The first and most widely used data source is the IAB Establishment Survey carried out by the Institute for Employment Research (*Institut für Arbeitsmarkt- und Berufsforschung, IAB*) of the German Federal Employment Agency which is an annual survey of more than 15 000 establishments. Based on that survey the IAB regularly publishes elaborations on collective bargaining coverage in Germany (for the most recent reports: Ellguth/Kohaut 2018, 2019; Kohaut 2018). The second data source is the German Socio-Economic Panel (SOEP) which is an annual survey of around 30 000 individuals in approximately 11 000 private households. As only the most recent waves of the SOEP provide some information on whether or not the surveyed workers are hired in com-

panies with collective agreements, there is currently only one study available which analyses the collective bargaining coverage on the basis of the SOEP data (Schneider/Vogel 2018). Finally, the third data source is the German Structure of Earnings Survey (SES) which is by far the largest of the three surveys with around 60 000 surveyed establishments. The SES is carried out only every four years so that currently the latest available data is from 2014. The German Federal Statistical Office has produced comprehensive data evaluation on collective bargaining coverage in Germany based on the 2014 SES data (Statistisches Bundesamt 2016).

Although all three surveys provide a representative profile of the German economy regarding company sizes, branches and regions, they come to significantly different conclusions regarding collective bargaining coverage in Germany (*figure 1*). According to the IAB Establishment Survey in 2017, around 55 per cent of all German workers were employed in a company covered by a collective agreement. According to the SOEP in 2016, the figure was only 53 per cent, while the SES in 2014 found even a much lower figure of only 45 per cent.

This article will take the figures provided by the IAB Establishment Survey as this is the only data source which allows the creation of more long-term data series. Considering the different results of all three surveys, however, it might be concluded that even the IAB Establishment Survey underestimates the real decline in bargaining coverage in Germany.

## 2.2 Development of Bargaining Coverage Since the Mid-1990s

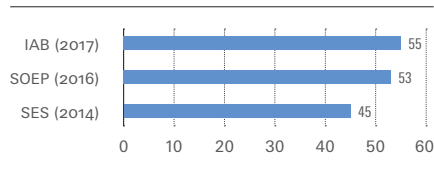
According to the data from the IAB Establishment Panel, Germany has been faced by a strong and continuous decline in bargaining coverage (Oberfichtner/Schnabel 2017, Ellguth/Kohaut 2018, 2019; Kohaut 2018). The percentage of workers employed in companies with collective agreements declined from almost 80 per cent in the mid-1990s to a mere 55 per cent in 2017 (*figure 2*). The decline was particularly strong in the second half of the 1990s but continued during the 2000s and 2010s.

The reasons for that decline were manifold: It started after German unification which promoted a more fundamental transformation of German capitalism and the political economy (Lehndorff et al. 2009; Streeck 2009). At the same time, neoliberal percep-

FIGURE 1

### Collective bargaining coverage in Germany according to different data sources

Percentage shares of workers employed in companies covered by collective agreements



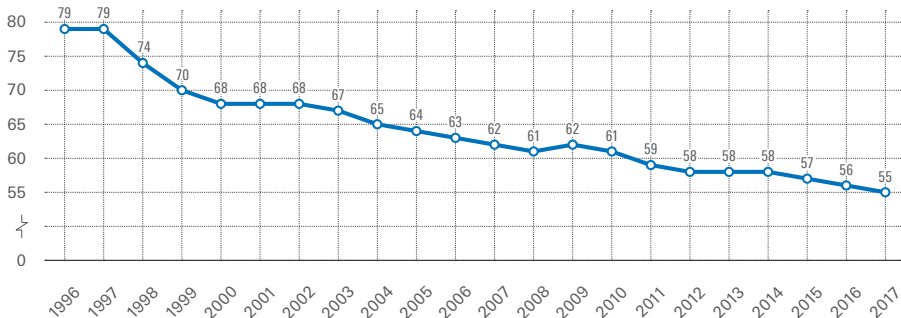
Sources: IAB = Establishment Panel of the Institute for Employment Research 2017 (Ellguth/Kohaut 2018); SOEP = German Socio-Economic Panel 2016 (Schneider/Vogel 2018); SES = German Structure of Earnings Survey 2014 (Statistisches Bundesamt 2016)

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FIGURE 2

### Collective bargaining coverage in Germany

Percentage shares of workers employed in companies covered by collective agreements



Source: IAB Establishment Panel

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tions of globalisation became a dominant discourse in Germany which put all social and labour-market institutions under the general suspicion of hampering international competitiveness (Flecker/Schulten 1999). Against that background collective bargaining lost a lot of acceptance among German employers who complained about labour costs being “too high” as a result of “overregulated” and “non-flexible” collective agreements (Hassel/Schulten 1998). Thus, the employers demanded a more fundamental decentralisation of German collective bargaining. Since the mid-2000s, there is almost no sectoral collective bargaining area where the bargaining parties have not agreed on more or less far-reaching opening-clauses with the opportunity to diverge from sectoral standards at company level (Schulten/Bispinck 2018). However, this far-reaching decentralisation has not been able to stop the decline in bargaining coverage. On the contrary, Germany has seen a parallel development of organised and disorganised decentralisation or even erosion of collective bargaining.

The decreasing acceptance of collective agreements has been particularly strong among newly-established firms. The decline of bargaining coverage has therefore not only been the result of employers withdrawing from collective agreements but even more of a “composition effect” as new firms have been less willing to participate in collective bargaining (Ellguth/Kohaut 2010; Bossler 2019). The development has also directly impacted German employers’ associations who have been afraid that the lower acceptance of collective agreements might be transformed into a lower number of organised employers. In order to avoid membership losses many German employers’ associations have introduced a new so-called “OT” membership status (OT = *ohne*

*Tarifbindung*, which means “not bound by collective agreement”) according to which organised employers can *de facto* choose whether or not they want to be bound by the sectoral agreements signed by the association (Behrens/Helfen 2019).

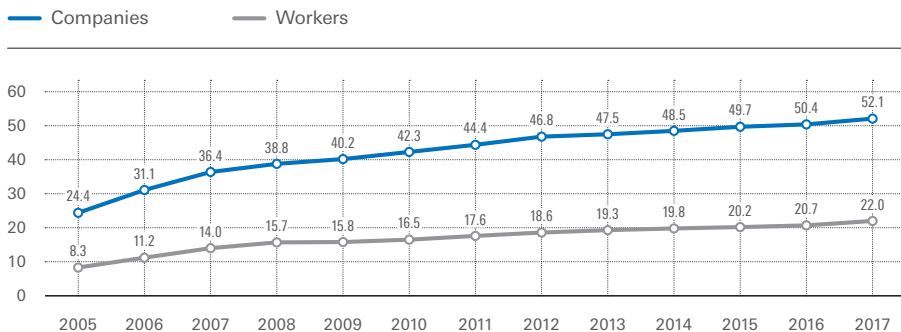
According to survey data provided by Behrens/Helfen (2016, p. 453), in the meantime about half of all German employers have introduced the possibility of a so-called “OT” membership status. To what extent employers make use of this “OT” membership in practice is rather unclear, as most employers’ associations do not publish any data on their membership. One of the few exceptions is the metal industry where according to the employers’ association *Gesamtmittel*, the percentage of companies using an “OT” membership status increased from around 25 per cent in 2006 to about 52 per cent in 2017 (figure 3). As larger companies are more likely to be covered by a collective agreement, the percentage of workers in an organised company with an “OT” status is around 22 per cent. All in all, the figures show an ongoing shift in the membership towards “OT” members. There is again a particular role of newly-established firms. If they become a member of an employers’ association at all, in most cases they opt for an “OT” membership status. Overall the “OT” construction leads to a fundamental dilemma for the employers’ associations: On the one hand it might help to stabilise their membership while on the other hand it creates an institutional legitimisation for not being bound by collective agreements which in turn contributes further to the decline in bargaining coverage.

Finally, the decline in German collective bargaining has also taken place against the background of a significant weakening of trade union power resources (Dribbusch et al.

FIGURE 3

### Members of the German employers’ association *Gesamtmittel* with an “OT” membership status, 2005–2017

Percentage shares of all member companies and affected workers

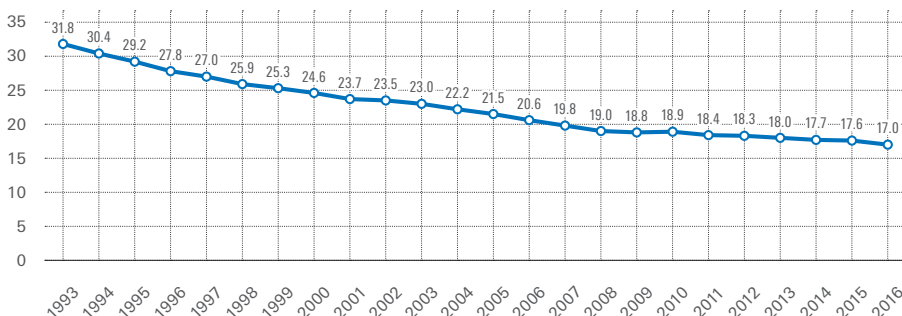


Source: *Gesamtmittel*; own calculation

FIGURE 4

### Trade union density in Germany, 1993–2016

Employed union members in per cent of all employees



Source: OECD

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2018). In many cases unions just lack the organisational strength to prevent individual firms from withdrawing from collective agreements or to put pressure on non-covered firms to enter into collective bargaining. Since the early 1990s German trade unions have lost about half of their members, so that the union density decreased from 32 per cent in 1993 to around 17 per cent in 2016 (*figure 4*).

### 2.3 Current Status of German Collective Bargaining

In 2017, 55 per cent of the workers were employed in a company which was bound by a collective agreement according to data provided by the IAB Establishment Panel (*figure 5*). Among this number 47 per cent were covered by a sectoral agreement and 8 per cent by a company agreement. 45 per cent of the workers were hired in companies without binding collective agreements. In half of these cases, however, the companies claimed to take existing sectoral agreements as an “orientation” for their own in-house working arrangements, so that the influence of collective bargaining goes beyond the scope of formal bargaining coverage. The German peak employers’ association BDA (*Bundesvereinigung der deutschen Arbeitgeberverbände*) even states that “80 per cent of the workers in Germany are directly or indirectly covered by collective agreements” (BDA 2018a; author’s translation). All studies on that issue, however, came to the same conclusion that those companies which claim to take collective agreements as a voluntary orientation usually provide for wages and conditions well below collectively agreed standards (Addison et al. 2016; Berwing 2016; Schulten et al. 2018; Bossler 2019). Thus,