

Before the crisis, in the crisis, and beyond: The upheaval of collective bargaining in Germany

Abstract

The explanation of what has been called the „German employment miracle“ has much to do with the broad recent move in German collective bargaining towards emergency coalitions at firm level, embedded in a larger environment of crisis corporatism. To understand this recent move, including its lessons and its limits, and to assess potential changes in the near future, it is useful to take into account the upheaval within the collective bargaining system in the pre-crisis period. The paper starts with an overview on the gradual erosion of the German collective bargaining system since the 1990s in terms of coverage and impact. During the last few years before the crisis, however, counter-movements within the unions aiming at re-stabilising the system were gaining momentum.

The paper argues that this experience may deserve particular attention in the near future. There are good reasons to believe that very soon German collective bargaining will be at the crossroads. The choice for unions and works councils will be to either return to traditional mixtures of concession bargaining and bargaining on retrenchment measures, or to revitalise their membership base in pursuit of ‘high road’ deals. A corner stone for any revitalisation strategy in the face of the employment legacy of the present crisis will include political pressure for a reformed back-up for collective bargaining by a renewal of statutory collective agreement extension procedures.

Plan

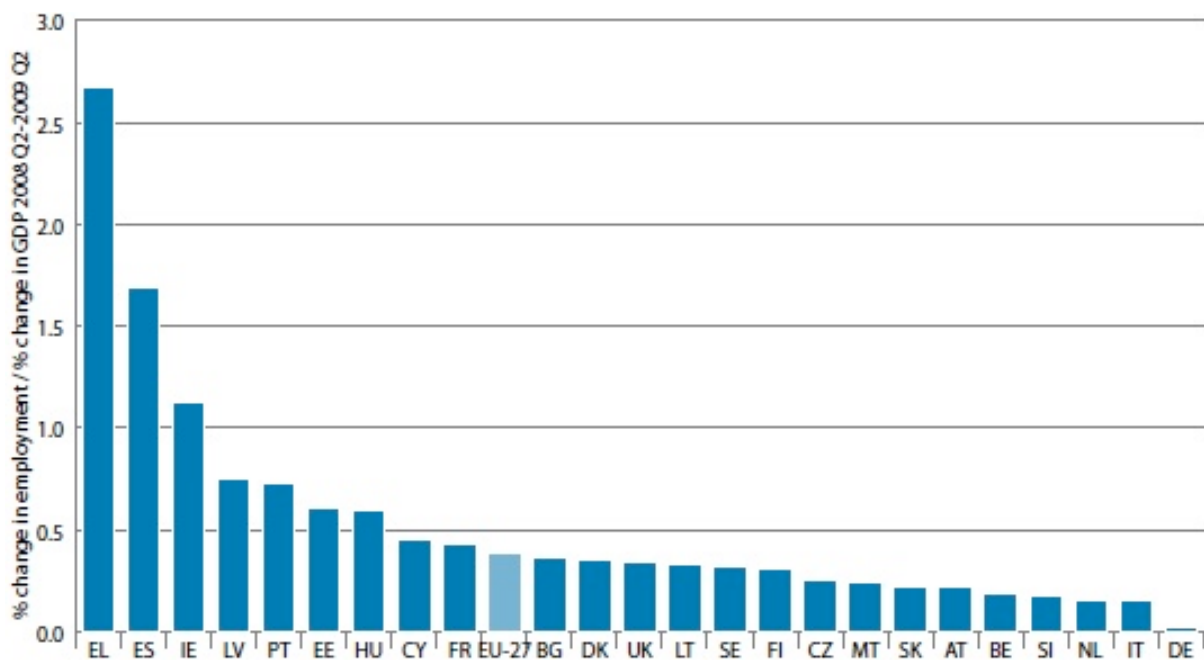
1	Introduction	2
2	Collective bargaining on the eve of the crisis.....	4
2.1	Collective bargaining under strain	5
2.2	Changes in the “architecture” of bargaining: the case of wages	7
3	Bargaining on working-time: back and forth, and back again?	9
3.1	From the reduction to the extension of working-times	9
3.2	Bridges over troubled waters: working-time reductions in the crisis.....	11
4	Turning the tables? Contradictory trends in the metalworking industry	15
4.1	Derogation from sector-level agreements and the need for trade union revitalisation	15
4.2	The ‘Better, not just cheaper’ approach	18
5	Conclusions	20

* Institut Arbeit und Qualifikation (IAQ) / University of Duisburg-Essen, Germany

1 Introduction

The impact of the global crisis on the German economy can be characterised by a steep decline followed, for the time being, by a fast recovery. Both the slump and the recent return to growth have been particularly dramatic in German manufacturing due to its extraordinary dependency on exports, while, as in many other countries, the economic situation in the service sector has been stable. In contrast to turmoil in manufacturing, the effects on employment and the number of registered unemployed have been limited so far. The elasticity of employment relative to GDP has been the lowest amongst all EU countries (Figure 1).

Figure 1: Elasticity of employment decline to GDP contraction, EU-27*



* 2008 Q2–2009 Q2

Source: European Commission (2009a): 28

Next to a substantial drop in labour productivity, the single most important explanation for the gap between business slump and employment outcomes is the reduction of working hours (OECD 2010). Many manufacturing firms ‘hoarded’ the vast majority of their permanent staff by a large array of measures: cutback of overtime and ‘deposits’ on working-time accounts, reductions of wages, reductions of working-time within the framework of collective agreements on employment protection, and last but not least, the use of the public short-time scheme (Fuchs et al. 2010). That is, working-time reductions in various forms have been a key component of employment protection during the crisis so far. Given the staff bottlenecks in many firms after substantial redundancies in the course of the preceding recession in the first

half of the present decade, it is fair to assume that there has been a broad tendency amongst German manufacturing firms to avoid a similar situation at least in the short run by retaining skilled staff as long as possible.

Quite obviously, collective bargaining at various levels has been crucial for most of these personnel measures. By way of example, changes in the organisation of working hours as well as the application of the short-time working scheme have to be negotiated at firm level in Germany. Sectoral agreements on the avoidance of layoffs by working-time reductions are the outcome of earlier 'just-in-case' collective bargaining which may become a useful instrument in the crisis. And last but not least, the extension and flexibilisation of the short-time scheme by the German Federal Government in late 2008 and early 2009 was accompanied by many informal coordination activities with trade unions and employers' associations. To summarise, for the time being collective bargaining has contributed substantially to the safeguarding of jobs in German manufacturing industries.

This course of events reflects another twist in the nature of industrial relations in Germany. After a period of fragmentation and gradual dismantlement of collective bargaining which will be described in greater detail in a later section of the present paper, the crisis has given rise to a dual turn towards a new both bi- and tripartite "crisis corporatism" (Ehlscheid et al. 2010) and local emergency coalitions at firm level. Further, the German trade unions, having suffered from a steady loss in members (relative to the number of workers) and in bargaining power over the past decades, experienced a remarkable comeback in terms of public reputation and acknowledgement by employers federations and the federal government, irrespective the change in government coalition in 2009. Leaders of employers federations, in particular in the metalworking industry, hailed the "sensible" approach of manufacturing unions leaders during the complicated wage bargaining round in early 2010. It must be noted, however, that crisis corporatism applied very much to manufacturing, whereas the large service sector union was blamed periodically for its partly more conflict-prone approach put into practice, most prominently, during a long strike of kindergarten teachers in 2009.

The gain in political influence was successfully exploited by (in particular: manufacturing) trade union leaders to the benefit of short-term anti-crisis expenditure programmes put into operation by the federal government in 2008 and 2009. It became obvious that the government, and the chancellor in particular, was keen to establish direct and pragmatic working relationships with some union leaders. The latter observation, however, gives rise to concerns about the sustainability of current trade union influence. Critics within the metal workers

union, while supporting the co-operative approach in the course of the crisis, argue that there may be limits to what they call “borrowed power” (Ehlscheid et al. 2010) and call for a new debate about the revitalisation of trade unions’ own power resources.

In fact, given the weakening of the collective bargaining system and the broader decline in trade union influence within industrial relations over the past decade, scepticism about the stability of most recent trends in German industrial relations is justified. Any assessment of the upheavals in, or of, the system must include the period prior to the crisis. It is to these changes that I now turn. After a brief overview on trends in collective bargaining since the 1990s (sections 2 and 3) I will highlight attempts within the largest manufacturing union (IG Metall) to tackle proactively the problems of fragmentation of collective bargaining and growing pressures on working conditions increasingly pertinent in the years before 2008 (section 4). The bottom-line of these overviews is that, below the surface of the state of emergency in 2009, the fundamental problems of German collective bargaining have remained unresolved. Thus, the concluding section (section 5) provides a short outlook on the open questions which will most certainly pop back to the surface in the near future.

2 Collective bargaining on the eve of the crisis

The German system of industrial relations is widely known as a dual channel system of bargaining on labour issues. As in many other European countries, trade unions and employers’ associations negotiate predominantly sector-wide collective agreements (mostly at regional levels) on wages, working-times and other aspects of working conditions. A separate channel of workers’ interest representation is provided by works councils which are based on general elections within establishments. Works councils have codetermination rights with regard to hiring, dismissals, training, or overtime work and have the right to bargain except on those matters that are usually covered by collective agreements. As a consequence, if local management and works councils want to renegotiate issues included in sector-wide agreements, in particular when management wants to ease economic survival or recovery of the firm by cutting labour costs, there needs to be an explicit entitlement in the collective agreement to bargain at firm level. Alternatively, the collective bargaining parties at sector level agree on local exemptions, which means in practice that local management and local unions negotiate on derogations from the sector agreement which eventually are accepted by the bargaining parties at sector level.

This system, which draws on the legal pillars of the Act on Collective Agreements and the Works Constitution Act dating back to the late 1940s and early 1950s (Zachert 2009), has proven to provide a sound basis for the ‘conflictual partnership’ (Müller-Jentsch 1991) which has become the predominant feature of industrial relations in Germany over many decades. More recently, however, this system got under strain and entered into a period of upheaval.

2.1 Collective bargaining under strain

Arguably, the starting point of upheaval in collective bargaining was the German unification and the consecutive turbulences in Europe’s largest economy. The collective bargaining system was the only institution whose transfer to the Eastern regions of the country failed to a large extent. In the course of the rapid privatisation process, it soon became obvious that this crucial element of the old West German model had not taken root in the Eastern part of the country. While it was primarily the large West German manufacturing companies that stuck to industry-level bargaining, these were small in number compared to the small and medium-sized West German outsourced subsidiaries and home-grown small East German firms, the bulk of which either left the employers’ associations or did not join them in the first place.

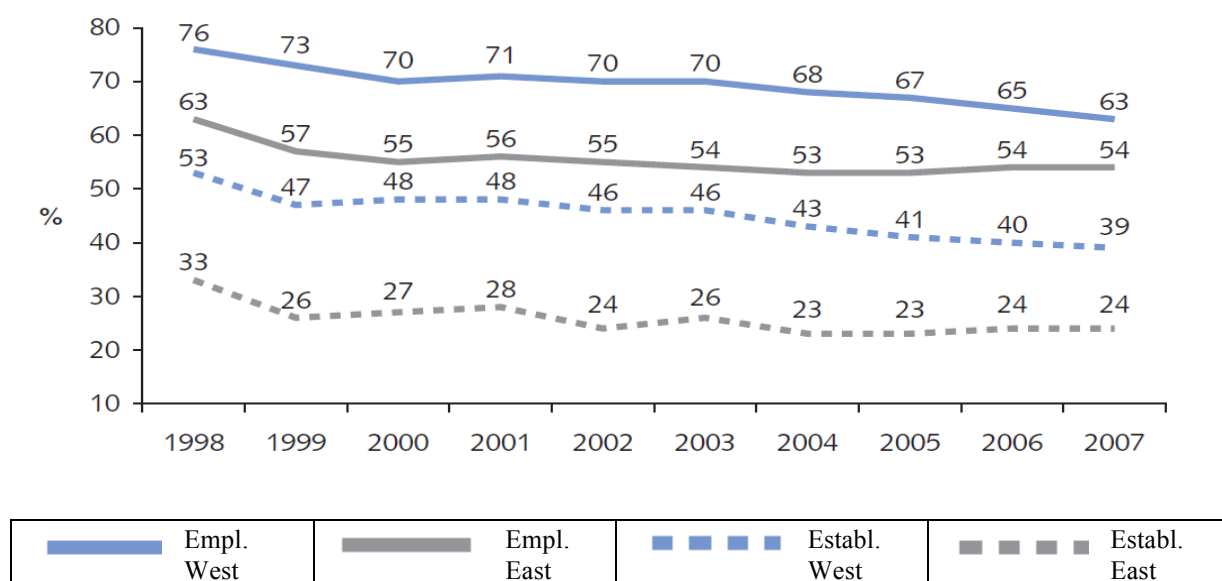
Moreover, the shock of German unification and its economic and political consequences contributed to a rapid change in the political climate. The political and economic elites now shared the belief that the only way of solving Germany’s problems was to adopt the harsh prescriptions of neo-liberalism. These were held to include restricting the earnings of the vast majority of workers, cutting back on welfare state benefits and government expenditure as a share of GDP, and deregulating the labour market, giving priority to company-level arrangements geared to undercut industry-wide collective agreements. The prevailing wisdom among major actors in the economic and political spheres was that the industrial relations system had to be weakened if the economic dynamic was to be strengthened and employment to be boosted. Its institutions were criticised for no longer being in touch with the imperatives of globalisation (Lehndorff et al. 2009).

The turn of the political tide proved to be particularly harmful for the trade unions. They lost significant numbers of members and a considerable part of their influence, which drove trade union density from roughly 30 per cent in the mid-1990s to little more than 20 per cent in 2007 (ICTWSS Database). Within a very short period of time, the unions found themselves cornered. On the one hand the government and central bank refused to countenance any expansionary macroeconomic strategy to address high unemployment rates and sluggish growth in both parts of the country. On the other hand they also faced an onslaught on their control at

the workplace, with a fierce cost-cutting approach from big business intent on regaining their international export leadership and an increasingly beleaguered system of collective bargaining in both parts of the country.

These shifts in power relations and in strategic orientations of major actors were strong driving factors behind the erosion and fragmentation of the collective bargaining system. Obviously Germany is by far not the only country where trade union membership has declined over recent decades. What is less common, however, is a drop in membership roughly at a similar pace experienced by employers' associations. Moreover, some of these associations established a special option for employers to join the associations without being forced to submit to collective agreements (Haipeter and Schilling 2006). As a consequence and other than in most EU-15 countries, coverage by collective agreements declined along with trade union decline. In 2007, roughly 62 per cent of German employees were covered by collective agreements, out of which 53 per cent were industry-wide and 9 per cent firm-level agreements. From 1998 to 2007, the share of employees covered by collective agreements dropped from 76 per cent to 63 per cent in Western Germany, and from 63 per cent to 54 per cent in Eastern Germany. As small firms are underrepresented in the employers' associations, the shares of firms covered by collective agreements in 2006 are much lower, namely 39 per cent in Western and 24 per cent in Eastern Germany (Bispinck/Schulten 2009; cf. Figure 2).

Figure 2: Collective bargaining coverage in Germany by employees and establishments (1998-2007, in per cent)



Source: Bispinck/Schulten (2009) based on IAB Establishment Panel

As a result, collective bargaining coverage in Germany has dropped to, apart from Luxembourg, the second lowest level amongst EU-15 countries, outstripped only by the 34 per cent coverage in the UK with its virtual absence of multi-employer bargaining beyond the public service (European Commission 2009b).¹

2.2 Changes in the “architecture” of bargaining: the case of wages

It is not only coverage by collective agreements that is declining, but also their power to shape the regulation of working conditions. Decentralised bargaining which, in the golden age of the German model, used to yield extra pay beyond industry standards, crossed the divide and led to the payment of wage increases below those agreed at sector level (“negative wage drift”; cf. Bispinck 2009). Symptomatically, and untypically for other EU countries including the EU-15, real compensation per employee virtually stagnated for more than a decade, and even dropped slightly by 0.8% per year from 2000 to 2008 (European Commission 2008).

Equally important, differences in pay and working conditions between industries have been growing. Union influence is highest in industries exposed to globalisation pressures, and much weaker in industries dependent solely on the internal market or public budgets. While the collective bargaining actors in the core manufacturing industries have managed to agree wage increases slightly above inflation rates, taking into account the average productivity increase in the whole of the economy, real wages increased at a much slower pace due to the “negative wage drift”. While there was still some wage increase in manufacturing, real wages in large areas of the public and private service sectors were stagnating or even falling, due largely to the blocking of negotiations over long periods, for example in retail. Moreover, in growing low-wage sectors, such as food processing, there are virtually no associations on either side in a position to negotiate and powerful capital groups in outsourcing markets such as call centres and former monopoly markets such as mail services are actively fostering competition based on low wages. In consequence, wage dispersion in Germany, which had started to increase in the 1980s at the upper end of the wage scale, increased at the lower end in the course of the 1990s and was, at the eve of the crisis, above the EU average and approaching the UK rate (OECD 2007). The share of low wage earners (i.e. those employees

¹ It is true that the absence of coverage may, to some extent, be outweighed by the existence of a works council, i.e. the second pillar of workers’ interest representation. However, the share of workers having no representation coverage at all, neither from collective agreements nor from works councils, is also on the rise. In West Germany, this share increased from 21% in 1998 to 31% in 2007, and in East Germany from 35% to 42% respectively (Ellguth/Kohaut 2008).

earning less than two thirds of the median income of all wage earners) soared from 15 per cent in 1995 to 22 per cent in 2006 (Bosch/Kalina 2008).

Correspondingly, between 1996 and 2004, average labour costs in the private service sector dropped from 83 per cent to 78 per cent of those in manufacturing, which is the largest gap among EU countries (Horn et al. 2007). With real wages virtually stagnating in manufacturing and falling in parts of the service sector, both the wage moderation in core areas of the collective bargaining system and the crisis of that system in large areas of the service sector contributed to the decline in Germany's unit labour costs relative to the Euro area by almost 10 per cent between 1999 and 2006, as computed by the ECB (2007: 64).

This certainly helped to strengthen considerably the international price competitiveness of the German economy, but German successes in export markets have far from compensated for the lack of domestic demand. Taking into account these macroeconomic outcomes of the erosion of collective bargaining it is easier to understand the particularly dramatic downturn of the German economy in the wake of the financial crisis, outstripped only by countries with particular involvement in speculative financial or real estate bubbles such as Spain, Ireland or the UK. Similarly, the current recovery of manufacturing is primarily based on demand from East Asia, whereas the austerity programme of the federal government gives rise to gloomy outlooks on the development of the domestic market over the next years.

Given the crisis affecting both the trade unions and the employers' associations, the lack of institutional defences in the German industrial relations systems against outsiders' intent on undercutting collectively-agreed labour standards becomes decisive. Further, defences that once existed have been demolished by political intervention. Firstly, at the instigation of the employers' umbrella associations, the state has virtually given up using its power to declare collective pay agreements generally binding (Kirsch 2003). In fact, in many EU countries statutory extension procedures provide for the relative stability of collective bargaining coverage irrespective the decline in trade union density (Traxler 2004). Secondly, the privatisation of publicly-owned companies and competitive tendering for public services have given rise to competition between companies bound by collective agreements and those not so bound. Thirdly, as a result of budgetary pressures, bargaining structures in the remaining areas of the public sector are becoming fragmented. It is only recently and in a very limited number of industries that minimum wages have been extended by the Federal Ministry of Labour, while the introduction of a general statutory minimum wage remained a highly con-

controversial issue in public debates and is being dismissed explicitly by the current government majority.

Until the eve of the crisis, similar trends reflected in the development of collective bargaining on working-time. In the course the crisis, however, working-time issues became a major source of re-stabilisation of collective bargaining.

3 Bargaining on working-time: back and forth, and back again?

Collective bargaining on working-time used to be a core issue of (West)-German trade unions for many decades. Until the late 1980s and the early 1990s, working-time developments were, to a large extent, influenced by trade union initiatives and campaigns for shorter working hours. In metalworking in particular the quest for the 35-hour week became a crucial part of the self-consciousness of the union. However, in the course of the 1990s, the political turn of the tide did not forgo this core subject of collective bargaining.

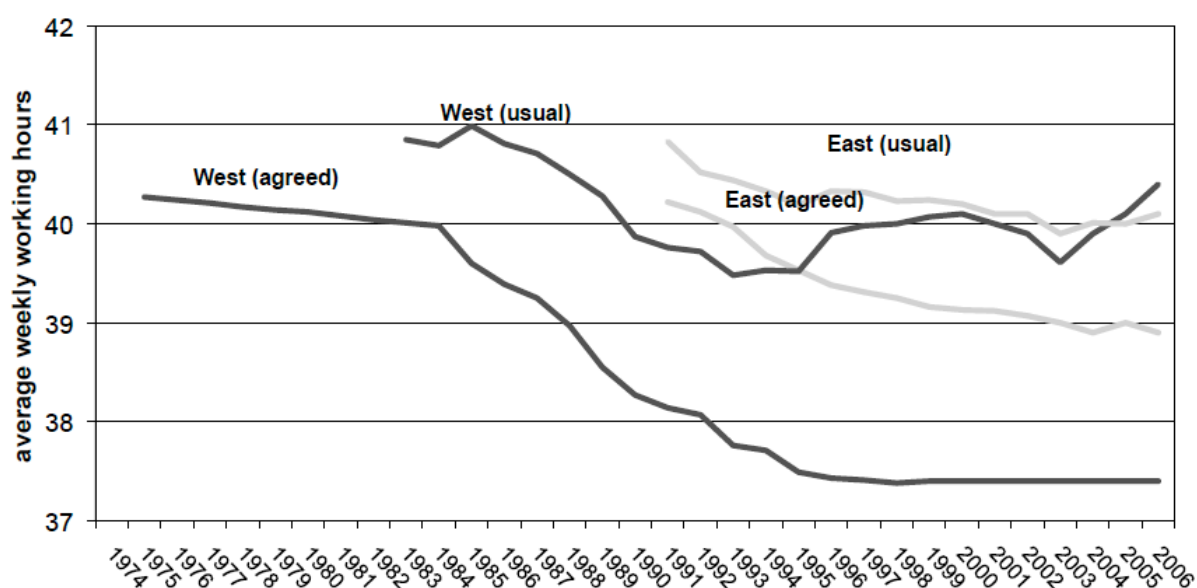
3.1 From the reduction to the extension of working-times

While in the „old“ Federal Republic actual working hours of full-time workers kept, by and large, the pace of reductions agreed upon in collective bargaining, the impact of these agreements started to fade gradually in the course of the 1990s. Interestingly, while there was some initial reduction in both contractual and actual working hours in Eastern Germany over the 1990s, the catch-up process stalled at the threshold of roughly 40 hours per week, at which level the average working hours of East German full-time workers were eventually overtaken by those of their West German counterparts during the past decade.

As demonstrated in Figure 3, the extension of working hours has been largely a West-German phenomenon. Over the past decade in particular, it were primarily the metalworking industry and the public services that pushed the average working-time beyond the 40-hour threshold (Table 1). That is, two industries which used to practice below average actual working hours (and, in the case of metalworking, continue to do so) were the ones where employers were most determined to return to longer hours and were prepared to go into lengthy and fierce conflicts. In the case of the public administration, these conflicts ended with staggered compromises about working-time extensions to different degrees by region in West Germany, whereas in metalworking it was primarily a series of various local derogations from multi-employer agreements stipulating extensions of up to 40 hours that pushed the average. These conflicts were prepared by harsh approaches from the employers' side and accompanied by

intense campaigns in the media between 2003 and 2008 urging for longer hours for the sake of international competitiveness and for the alleged need of austerity in public budgets (following important tax cuts for businesses in the preceding years). As a consequence, within only three years from 2003, working hours soared by roughly one hour in each of these two industries in Western Germany. Bluntly, these working-time extensions were not caused by ups and downs of the economy. They were the outcome of a shift in political power relations.

Figure 3: Average agreed* and usual** weekly working-times of full-time workers in West- and East Germany (1984-2006)



* average of all workers covered by multi-employer collective agreements

** „How many hours do you usually work per week?“

Sources: German Microcensus, special evaluation IAQ; WSI-Tarifarchiv

Table 1: Average usual weekly working-times of full-time workers by industry, Germany 1995/2008

	1995	2008	Δ 1995-2008 (hrs)
Metalworking industry	38.3	39.3	+ 1.0
Manufacturing without metalworking	39.5	40.3	+ 0.8
Construction	39.8	40.6	+ 0.8
Private services	40.4	40.9	+ 0.5
Public administration	39.3	40.4	+ 1.1
All workers	39.7	40.4	+ 0.7

Source: EU Labour Force Survey, special evaluation IAQ

To some extent, the overall extension of working-times has been eased by the general drive towards working-time flexibility over the past two decades. Almost every second employee in Germany has so-called working-time accounts which are to provide a tool for the adaption of individual working hours to the needs of business fluctuations, and to some degree as well to

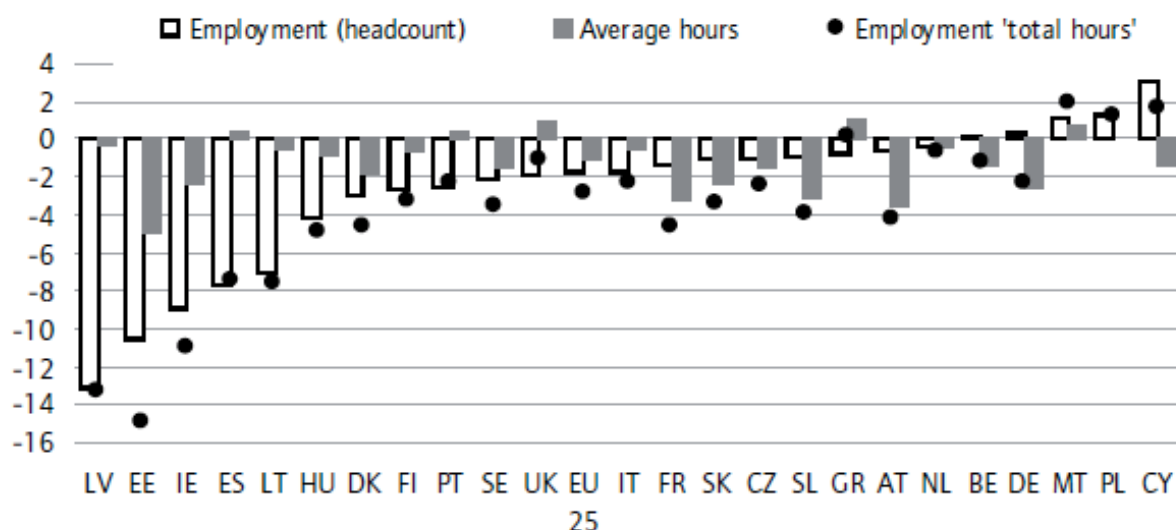
the needs of the individual. In practice, and not surprisingly, business needs tend to prevail. If not regulated properly, working-time accounts may provide loopholes for the informal extension of working hours of white collar workers in particular who are subject to management orientations towards „indirect control“ of the work process. As the share of these categories of employees continues to rise, the „individualisation“ of working-time organisation proves to be another driver for actual working hours (Lehndorff 2007).

The latter trend contributed to the modest employment gains during the short period of growth before the present crisis, but at the same time produced large parts of the working-time buffer which cushioned the impacts of the crisis on the labour market. It is to this reverse move that we now turn.

3.2 Bridges over troubled waters: working-time reductions in the crisis

As indicated at the beginning of the present paper, the arguably most surprising observation in the German labour market over the past two years has been to what extent it is possible to “dismiss hours rather than workers” (cf. Figure 4). Since this experience has been acknowledged by a multitude of observers, including the OECD (2010), and since it has been attributed primarily to the German short-time work scheme, it is worthwhile to take a closer look at this experience as a catalyst for recent changes in German industrial relations.

Figure 4: Comparison total hours, average hours and headcount employment, Q1 2008 to Q2 2009, in %



Source: Leschke/Watt (2010) based on Eurostat National Account and Labour Force Survey Data

To begin with, it should be noted that long before the present crisis, the collective bargaining parties in numerous industries have agreed on collective agreements for the safeguarding of

employment. In principle, most of these agreements stipulate the possibility to strike firm-level deals between management and works councils on temporary working-time reductions in the case of economic difficulties or crises, geared to avoid redundancies. In many cases, these measures may apply to the whole workforce as well as to groups of employees whose jobs are particularly endangered. As a rule of thumb, the maximum rate of reduction varies across industries but hovers around 20%. In many of these sector-level agreements it is explicitly understood that there will be no compulsory redundancies over the duration of the respective local agreement.

It is just a small minority of the agreements which stipulate partial wage compensations for the hours not worked. In fact, this aspect points at the biggest dilemma for any major work-sharing agreement in the recent crisis. While many firms had to reduce working hours far beyond the scope foreseen in the agreements on the safeguarding of employment, the substantial wage cuts entailed would not have been tolerable for most workers. For this reason many firms could not benefit from these agreements over the past two years.

While bilateral agreements on shorter hours were important but limited in scope, the most suitable way out of the ‘work sharing – wage cuts dilemma’ proved to be the provision of public subsidies under specific conditions. This is where the trilateral ‘German short-time work’ scheme came into play. In principle, this scheme is comparable to programmes in some other European countries, such as ‘temporal unemployment’ in France or the ‘cassa integrazione’ in Italy.² It has been extended and flexibilised stepwise and substantially since the beginning of 2009 and stipulates that working-time for all or part of the workforce may be reduced by between 10 and 100 per cent. The maximum duration of short-time working has been temporarily extended from originally 6 to 24 months. The hours *not* worked are compensated by the labour administration (short-time allowance / *Kurzarbeitergeld*) at 60 per cent, or 67 per cent for workers with children in the household. The social security contributions for the hours not worked are reduced to 80 per cent; the 50 per cent share of the worker is paid by the labour administration but the employer’s part has to be paid by the employer. Along with the temporary extension of the scheme the latter payment is borne by the labour administration from the 7th month. Over the first six months, the employer can be exempted from these contributions in the event training measures are undertaken.

² For recent “work sharing” or “short-time working” initiatives and the respective regulatory frameworks in various European countries cf. Eurofound (2009) and Messenger (2009).

The use of the short-time scheme has been a particularly effective measure to decouple, in the short run, employment from the economic downturn. The number of workers involved soared from its long-term average of less than 200,000 persons per month to an average of 1.1 million in 2009, whose working hours were reduced, on average, by one third. Thus, the hours not worked, but compensated for within the scheme, amounted to the full-time equivalent of almost 400,000 persons (Fuchs et al. 2010).

The use of the short-time working scheme is closely connected to the statutory system of co-determination of works councils enshrined in the German Works Constitution Act. The introduction of the scheme requires an agreement between management and the works council. The amount of hours reduced, the parts of the workforce involved, and also the timing of the application of the scheme are subject to local agreements. Thus, one can argue that the focus on the reduction of working hours during the crisis has boosted tripartism at various levels to an extent formerly unknown in Germany.

While the importance of the short-time work scheme has been widely acknowledged, other contributions to the working-time reductions in 2009 have been underestimated so far. Table 2 gives an overview of the relative importance of the individual components.

*Table 2: Components of working-time reductions in Germany, 2009**

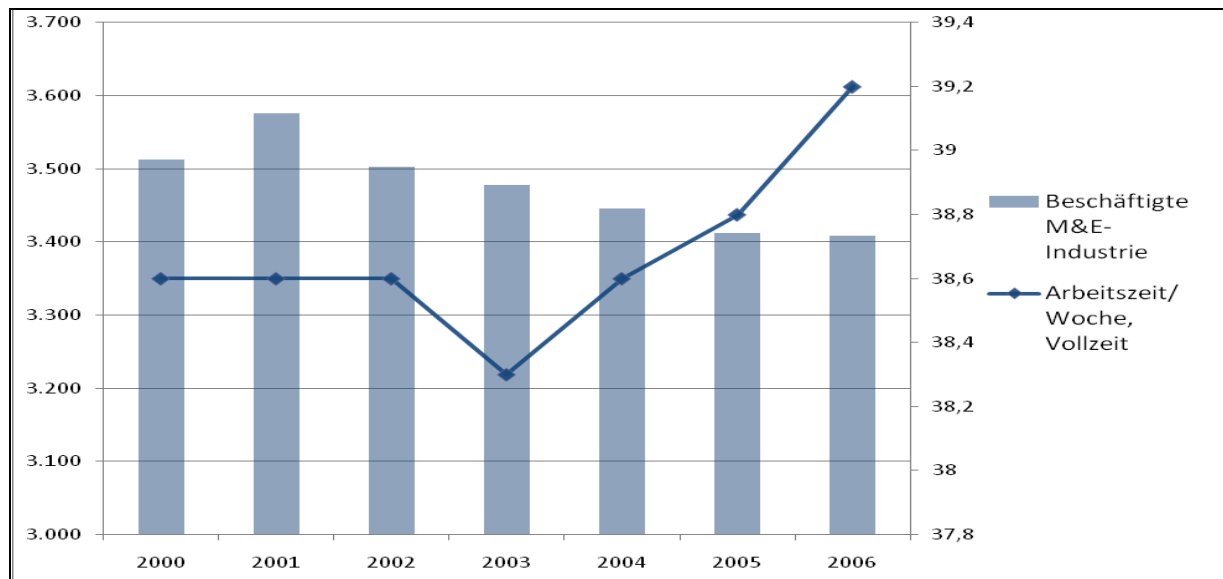
Instrument	Days per worker per year
Short-time work	15
Shorter working week due to increase in part-time work and to employment protection agreements	13
Cutback of overtime work	10
Reduction of 'assets' on working-time accounts	9

* Rounded estimates of days per worker per year on average in 2009 relative to 2008, drawing on various sources

Source: Fuchs et al. (2010)

If one regards the reduction of overtime and the melting down of hour banks as variants of individual working-time reduction, the contribution of these instruments beyond any bi- or tripartite agreement amounted to roughly 40% of the overall volume of hours cutback. Thus, one must admit that the working-time extensions prior to the crisis played a substantial role in cushioning the impacts of the crisis on the labour market. Figure 5 supports this view by the case of the metal industry.

Figure 5: Average working hours and persons employed in the German metalworking industry, 2000-2006



Columns: Average number of employees per year (Source: Metalworking Employers Federation)

Curve: Average usual working hours per week of full-time workers in metalworking (Source: German Micro-census, special evaluation IAQ)

The point I want to make here is that the society as a whole had already paid the price of this buffer in the years of economic growth. The working-time extensions in the years before 2008 moderated the employment benefit of the upswing. While it is true that the ‘upward flexibility’ of those years created additional leeway for ‘downward flexibility’ during the crisis, it should be kept in mind that the overall employment outcome of these ups and downs is less brilliant than it appears to be if one narrows the analysis on the year 2009. This has to be taken into consideration when it comes to an assessment of trends in German industrial relations. While the implementation of short-time working and of the employment protection agreements make a strong case for the vigour of collective bargaining in Germany, its very crisis reflects in the importance of individual working-time reductions during the crisis based on prior working-time extensions beyond the norms stipulated by collective agreements.

As a consequence, the unresolved problems of collective bargaining before 2008 will pop up to the surface again very soon. In terms of bargaining on working hours, the implicit question will be whether or not return to the business as usual before the crisis. In a more general perspective, the challenge for trade unions will be how to escape from their defensive position within industrial relations which were increasingly characteristic over the past two decades. For the time being, the gains in public acceptance for unions over the last two years may provide some tailwind. But as everybody knows, winds may change. It is therefore useful to

look at firm level experience gathered in the years before the crisis which may serve as points of reference in the years to come. It is to these stepping stones that we now turn.

4 Turning the tables? Contradictory trends in the metalworking industry

As indicated above, the alleged need to subordinate the institutional architecture of the German model of capitalism to radical improvements of the ‘international competitiveness of the German economy’ in the face of the ‘imperatives of globalisation’ has become the most prominent and powerful driver for changes in the industrial relations system. One particularly pertinent conflict was pushed forward by the metalworking employers federation with strong support by the former social-democratic government from the early years of the past decade. It was the call for firm-level ‘derogations’ from industry-wide collective agreements which virtually riddled the collective agreements in this industry. The moves and counter-moves in this conflict may serve as the first example for potential stepping stones for the future here.

4.1 Derogation from sector-level agreements and the need for trade union revitalisation³

One would expect a process of decentralisation which is controlled or organised to be compatible with existing structures of collective bargaining and industrial relations by just adding a new level of bargaining to the still existing ones. In consequence, the architecture of industrial relations would possibly be changed and become more complex, but in the course of this change it would reinforce its unique mission, that is, *the setting of (national or industry) minimum employment standards*. It is the establishment of these very standards which is the historical achievement of collective bargaining (historically first as single-employer, later as multi-employer bargaining) insofar as minimum employment standards have been taken out of the competition on the respective product and labour markets. In contrast to this achievement, a process of less controlled decentralisation might destabilise the ‘institutional architecture’ of collective bargaining in a given country by undermining existing central or sectoral levels of collective bargaining, the capacities of their actors and the norms and standards established at these levels. In fact, it is the latter tendency which has become increasingly relevant in Germany during the first economic recession in the present decade and the years of the consecutive recovery prior to the present crisis, i.e. between 2001 and 2007. It is hardly surprising that the focus of this conflict over industry standards has been in the metal industry

³ The following section is based on the work of my colleague Thomas Haipeter (2009).

which to a large extent accounts for the manufacturing basis of Germany's export championship.

The undercutting of industry-level agreements took two forms. The first was the negotiation of local agreements by the parties in firms experiencing economic difficulties ('restructuring agreements' in the West and 'hardship clauses' in Eastern Germany). To a greater or lesser extent, these agreements were based on certain procedural rules which were to provide for some stability of the overall architecture of the bargaining system. In contrast to these forms of, by and large, a controlled derogation of sector-wide agreements, the *informal* undercutting of these agreements by management and works councils at firm level became increasingly important. The latter type of agreement may be called 'wildcat' derogations as other than stipulated by the statutory framework of collective bargaining the door to local derogations was not explicitly opened by the unions and employers associations at the sector level. These changes gave rise to the creation of a 'grey area' in which collectively agreed standards were undercut and which lacked both transparency and central control by the associations, irrespective of whether or not the negotiating parties had given it their blessing in 'restructuring' or 'hardship' clauses.

This situation began to change with the signature under the so-called 'Pforzheim Agreement' by the negotiating parties in 2004. The negotiation of this agreement was to a certain degree a reaction on the political pressure that the then federal government had built up by threatening to introduce statutory 'opening' clauses which would have put an end to the priority of sector-level agreements typical for the collective bargaining architecture since the late 1940s. The agreement specified that derogation agreements were possible provided that jobs would be safeguarded or created as a result and they would help to improve competitiveness and ability to innovate, as well as investment conditions. In contrast to earlier restructuring agreements, the Pforzheim Agreement contained a number of provisions stipulating, among other things, that the measures should be scrutinised and negotiated by the bargaining parties at firm and industry level, that companies should make comprehensive information available and that the negotiating parties at industry level, rather than local management and works councils, should be empowered to conclude derogation agreements.

The importance of the Pforzheim Agreement was not related to the sheer quantity of local derogations from industry-wide agreements. In fact, even in 2006, it was still approximately one in every ten firms covered by collective agreements in the sector that negotiated an official derogation from the relevant agreement. Rather, it was the new approach to control of

derogations which mattered, and the debate on trade union strategy it triggered within IG Metall (Huber et al. 2006). The union executives drew the conclusion that effective control required tight internal procedural standards from the very beginning. Consequently, coordination guidelines were drawn up during 2005 which specified the procedural arrangements, including duties to inform and decision-making competences, linked to the negotiation of undercutting agreements. The guidelines included the following points. Firstly, applications to negotiate undercutting agreements were to be submitted to the union's area headquarters (which is the organisational equivalent of the regional employers' associations) and to be decided on by officials at that level on the basis of extensive information about the company in question. Secondly, officials at area headquarters could give local union branches the power to conduct negotiations. Thirdly, negotiations were to be supported by firm-level collective bargaining committees, whose role was to ensure that union members took part in the negotiations. Finally, the outcome of the negotiations was to be communicated to the union executive at federal level, which had to authorise and take responsibility for the agreement.

The requirements regarding information flows and decision-making competences have now become part of established collective bargaining practice. Even more importantly, it has been possible to increase actual control over derogations. According to the experts of union and employers' associations, the wildcat decentralisation, which had been increasing up to 2004 but could not be quantified because of its informal nature, has been curtailed in the course of the standardisation of derogation procedures. This shift from a 'grey area' towards formalised negotiations implied an interesting side-effect: It was now the regional (in practice: local) unions which led the negotiations with the firms, in co-ordination with regional and central union headquarters. Obviously, the members of the respective local works councils were involved in these negotiations, but the implication in many cases was that more voice was to be given to the ordinary members of the union in the respective firms. In many cases, and usually for the first time, the bargaining tactics were discussed at union meetings in the firms.

The basic idea behind this move was to use company agreements to involve members in local labour disputes and bargaining to a greater extent than they have hitherto been involved in centralised collective bargaining and thus make the trade union more attractive to current and potential members and increase union density in the workplace. Thus collective bargaining at firm level has some of the characteristics of a participatory organising strategy. The associated increase in the union's legitimacy through the 'discovery of members' (Dörre 2008) can manifest itself in various forms. These include individual members' involvement in collective bargaining committees, the continuous provision of information to members (contrary to non-

members) through meetings and, above all, voting by members on whether to accept the outcomes of local bargaining. The experts note that where these participatory practices have been introduced, the union has been successful in recruiting new members and, more generally, in consolidating its organisational power. The more attractive the union becomes as a result of local collective bargaining, the greater its capacity to control the undercutting of collectively agreed norms and to prevent firms withdrawing from the industry-wide collective agreement.

One could argue that a turn in handling things does not necessarily imply a turn in substance of outcomes. In fact, the concessions made in the local agreements continued to be dominated by working time and wage issues. By way of example, almost 60% of all derogation agreements struck between 2004 and 2006 stipulated longer working hours without a compensatory pay increase. However, the average length of agreed working time extensions decreased slightly (from 3.7 hours in 2004 to 3.3 hours in 2005 and 2006), and in an increasing number of cases, provisions were made to gradually cut back working time extensions over the lifetime of the agreement (almost 30% in 2006). That is, the improved trade union control over derogations from industry standards reflected to an increasing, if still limited extent in the outcomes and not just the process.

As to the change in the process, i.e. the membership offensive in collective bargaining at firm or establishment level, it is justifiable to regard it as a form of union revitalisation or strategic unionism in line with the institutional features of the German system of collective bargaining (Frege/Kelly 2003; Brinkmann et al. 2008). Unlike organising campaigns of unions in the UK or the US that are appropriate if unions' recognition is weak or if unions have to fight for local representation, membership offensives in local conflicts on derogations seem to be an adequate form of union revitalisation if the institutional power of the unions is still high (albeit already eroding) and local representation is institutionally backed by works councils. In this situation the main choice for union strategy can be to increase local organisational power, and membership participation in local conflicts appears to be a promising instrument to do this.

4.2 The 'Better, not just cheaper' approach

In close connection to the experience with internal trade union coordination vis-à-vis local derogations from industry agreements, IG Metall launched a campaign flagged as 'Better, not just cheaper' (Wetzel 2007). It aimed to replace relocation and the undercutting of collective agreements with product and process innovation on the bargaining agenda within the respec-

tive firms. The implication is to drive the respective firms onto the ‘high road’ on which competitiveness is improved primarily by process and product innovation, rather than by deteriorations of pay and labour standards.

While the outcomes of this campaign are still being explored by our institute, first findings⁴ indicate that the dynamics involved in these approaches may lead collective bargaining parties, and the trade unions in particular, onto new territories. Works councils, in cooperation with local trade union bodies, may discover interesting potentials for pro-active bargaining even under unfavourable initial conditions once the knowledge of workers as the experts of the work process is brought into play. Even more so, the individual or collective practical expertise of the members of the works councils themselves may be linked with accounting expertise of consultancies specialised in the support of works councils. In a number of cases, a combination of ‘expertise, ideas and pressure’ pushed management into negotiations about alternatives to outsourcing, delocation, or deterioration of working conditions.

True, this approach can be regarded as experimental at best. Even in the case of success, in terms of jobs preserved or industry standards defended, new questions arise. The most obvious one is the short decay time of local compromises on the bargaining issues at stake here. Competitive pressures from global markets guarantee for manufacturing jobs in high wage countries such as Germany in general, and for labour standards as laid down in collective agreements in particular, being periodically called into question by management. Under such conditions, any success of works councils or trade unions will be temporary only. Even more important are problems connected with the content of the compromises. As Buchanan and Briggs (2004: 27) point out in their analysis of ‘left productivism’ in the Australian trade union movement, „few workers join unions to help their bosses run the workplace more efficiently.“ It cannot be taken for granted, to say the least, that ‘innovation’ in the work process includes the safeguarding or even improvement of working conditions. At the end of the day, job quality must be part of the agenda of any ‘better, not just cheaper’ approach that aims to mobilise workers’ endorsement for the works council and increase the membership basis of the union.

In spite of these qualifications, the ‘better, not just cheaper’ approach has proved to be an important contribution to the search for ways out of the defensive squeeze in which the manufacturing industry unions in particular were stuck in the first half of the past decade. The

⁴ For what follows cf. in greater detail Brettschneider et al. (2010).

evidence gathered so far also suggests that this approach implies important changes in the self-conception of works councils. None of the classical self-images of workers' representatives will be sufficient to comprehend this kind of pro-active approach, be it the role of the 'protector and cooperative spokesperson' in the tradition of social partnership, be it the role of a more confrontative fighter for workers' interests who refuses to 'wrack his brains for the boss'. The interesting observation in our interviews with works councils engaged with the 'better, not just cheaper' approach, if stemming from different political traditions in trade union policy, has been the shared view that an effective defence of jobs and working conditions in German manufacturing today implies to counter management with the works council's own expertise in the organisation of the work process and the developments in product markets, and to be on a par with management in accounting matters.

In some cases, works councils and local unions were able to go further down the road of combining 'expertise, ideas and pressure' even in the crisis. This experience may become even more pertinent once 'crisis corporatism' in German manufacturing begins to crumble.

5 Conclusions

The present crisis has triggered a broad move in German collective bargaining towards emergency coalitions at firm level, embedded in a larger environment of crisis corporatism. This move started virtually over night, under the shock of the sudden and dramatic economic downturn, and in a pre-election political climate in which major actors were not interested in confrontation. To understand the recent move, including its lessons and limits, and to assess potential changes in the near future, it is useful to take into account the upheaval within the collective bargaining system in the pre-crisis period.

The outstanding characteristic of the changes in German collective bargaining since the 1990s has been the gradual erosion of the system in terms of coverage and impact. Other than in countries with powerful collective agreement extension procedures, in Germany trade union decline gives way to decline of employers' associations, which in turn translates into decline of collective bargaining coverage. From the early years of the past decade until the beginning of the current crisis, erosion was aggravated by fragmentation through local concession bargaining, entailing derogations from collectively agreed industry standards. During the last few years before the crisis, however, counter-movements within the unions aiming at stabilising the system were gaining momentum. The focus was on the attempt to turn the tables in local bargaining by urging for counter-concessions from management. True, the

'high road' was not too busy as collective bargaining practices geared to strengthen the skills base of the workforce ('retraining, not redundancy'; cf. Bosch 1992) and to pave the way to process or product innovations ('better, not just cheaper') were still far from dominating the scene. However, the important lesson for unions has been that their engagement in bargaining on employment and competitiveness at local level may either cut their legs or force them to revitalise their membership basis.

This lesson may become particularly pertinent again over the next few years. At present, crisis corporatism is effective and efficient, but its prospects are dubious. Many of the local emergency coalitions in manufacturing may crumble once firms choose to seek their way out of turmoil on product markets by turning to downsizing strategies. Equally, given the impact of the financial crisis on public budgets, both public and private services will suffer from the harsh prescriptions of the austerity regime which, in the case of Germany, is supported by major actors and the media with particular ideological determination and vigour. Thus, sooner or later, crisis corporatism will lose grounds. The choice for unions and works councils will be to either return to traditional mixtures of concession bargaining and bargaining on re-trenchment measures, or to revitalise their membership base in pursuit of 'high road' deals, i.e. to carry on from where they were shortly before the crisis started.

To sum up, there are good reasons to believe that very soon German collective bargaining will be at the crossroads. Corner stones for any revitalisation strategy in the face of the employment legacy of the present crisis will rest both at the firm level, with respect to the activation of the trade union membership base in search for 'better, not just cheaper' solutions, and at the political level. The renewal of the institutions which frame, and support, collective bargaining in Germany, including the introduction of a statutory minimum wage as well as a reformed back-up for collective bargaining by statutory collective agreement extension procedures, are most likely to get top priority on the political agenda in the years to come.

References

- Bispinck, R. (2009): Tarifpolitischer Jahresbericht 2008: Tarifpolitik in der Finanzmarktkrise. WSI-Mitteilungen, no. 4, pp. 210-217
- Bispinck, R./Schulten, T. (2009): Re-Stabilisierung des deutschen Flächentarifvertragssystems. WSI-Mitteilungen no. 4, pp. 201-209
- Bosch, G. (1992): Retraining - not redundancy: innovative approaches to industrial restructuring in Germany and France. Geneva: Internat. Inst. for Labour Studies

- Bosch, G./ Kalina, T. (2008): Low-wage work in Germany: an overview. In: Low-wage work in Germany. New York: Russell Sage Foundation, pp. 19-112
- Brettschneider, A./Bromberg, T./ Haipeter, T./Lehndorff, S. (2010): Konzepte gegen die Krise? Chancen und Ambivalenzen betrieblicher „Besser“-Strategien für Arbeitspolitik und Interessenvertretungen. WSI-Mitteilungen, no. 9
- Brinkmann, U. / Choi, H. / Detje, R. / Dörre, K. / Holst, H. / Karakayali, S. / Schmalstieg, C. (2008): Strategic Unionism. Aus der Krise zur Erneuerung? Wiesbaden: VS
- Buchanan, J. /Briggs, C. (2004): Rethinking Left Union Strategy: Left Productivism and the Labour Process in Australia Since the End of the Cold War. Acirrt/University of Sydney (Ms.)
- Dörre, K. (2008): Die strategische Wahl der Gewerkschaften: Erneuerung durch Organizing, WSI-Mitteilungen 61, pp. 3-9
- ECB (2007): European Central Bank, Monthly Bulletin, 02/2007. Frankfurt/Main
- Ehlscheid, C./ Pickshaus, K./ Urban, H.-J. (2010): Die große Krise und die Chancen der Gewerkschaften. In: Sozialismus, no. 6, pp. 43-49
- Ellguth, P./Kohaut, S. (2008): Tarifbindung und betriebliche Interessenvertretung: Aktuelle Ergebnisse aus dem IAB-Betriebspanel 2007. WSI-Mitteilungen, no. 9, pp. 515-518
- Eurofound (2009): Europe in recession: Employment initiatives at company and Member State level. European Foundation for the Improvement of Living and Working Conditions, Dublin. <http://www.eurofound.europa.eu/publications/htmlfiles/ef0920.htm>
- European Commission (2008): European Economy, Statistical Annex. Directorate General for Economic and Financial Affairs, Brussels
- European Commission (2009a): Employment in Europe 2009. Luxemburg
- European Commission (2009b): Industrial Relations in Europe 2008. Luxemburg
- Frege, C. and Kelly, J. (2003): Union Revitalization Strategies in Comparative Perspective, European Journal of Industrial Relations 9, pp. 7-24
- Fuchs, J. / Hummel, M. / Klinger, S. / Spitznagel, E. / Wanger, S. / Zika, G.: Die Spuren der Krise sind noch länger sichtbar. IAB-Kurzbericht 3/2010
- Haipeter, T. (2009): Tarifabweichungen und Flächentarifverträge: Eine Analyse der Regulierungspraxis in der Metall- und Elektroindustrie. Wiesbaden: VS. Summary in English available in: Haipeter, T. / Lehndorff, S. (2009): Collective bargaining on employment. Geneva: International Labour Office, Industrial and Employment Relations Department. Dialogue Working Paper No. 3
- Haipeter, T./ Schilling, G. (2006): Von der Einfluss- zur Mitgliedschaftslogik: die Arbeitgeberverbände und das System der industriellen Beziehungen in der Metallindustrie. Industrielle Beziehungen 13, pp. 21-42
- Horn, G.A./Logeay, C./Stephan, S./Zwiener, R. (2007): Preiswerte Arbeit in Deutschland. Auswertung der aktuellen Eurostat Arbeitskostenstatistik. IMK Report Nr. 22. Düsseldorf: Hans-Böckler-Stiftung
- Huber, B. / Burkhard, O. / Wagner, H. (eds.) (2006): Perspektiven der Tarifpolitik. Im Spannungsfeld von Fläche und Betrieb. Hamburg: VSA
- ICTWSS Database: Database on Institutional Characteristics of Trade Unions, Wage Setting, State Intervention and Social Pacts in 34 countries between 1960 and 2007. Amsterdam

- Institute for Advanced Labour Studies AIAS, University of Amsterdam.
<http://www.uva-aias.net/208>
- Kirsch, J. (2003): Die Allgemeinverbindlicherklärung von Tarifverträgen - ein Instrument in der Krise. WSI-Mitteilungen, no. 7, pp. 405-412
- Lehndorff, S. (2007): Flexibility and control: new challenges for Working-Time Policy in the European Union. Labour & Industry, no. 3, p. 11-28
- Lehndorff, S./Bosch, G./Haipeter, T./Latniak, E. (2009): From the 'sick man' to the 'overhauled engine' of Europe? Upheaval in the German model. In: Bosch, G./ Lehndorff, S./ Rubery, J. (eds.), European employment models in flux. A comparison of institutional change in nine European countries. Basingstoke: Palgrave Macmillan, pp. 105-133
- Leschke, J./Watt, A. (2010): How do institutions affect the labour market adjustment to the economic crisis in different EU countries? ETUI Working Paper 2010.04. Brussels: European Trade Union Institute
- Messenger, J.C. (2009): Work Sharing: A Strategy to Preserve Jobs during the Global Jobs Crisis. TRAVAIL Policy Brief no. 1. Geneva: ILO
- Müller-Jentsch, W. (1991): Konfliktpartnerschaft: Akteure und Institutionen der industriellen Beziehungen, München, Mering: Rainer Hampp Verlag
- OECD (2007): Employment Outlook. Paris
- OECD (2010): Employment Outlook. Paris
- Traxler, F. (2004): Employers and Employer Organisations in Europe: Membership Strength, Density and Representativeness. Industrial Relations Journal, no. 4, pp. 308-316
- Wetzel, D. (2007): Stabilisierung des Flächentarifvertrags durch betriebsorientierte Tarifpolitik. In: Bispinck, R. (ed.), Wohin treibt das Tarifsystem? Hamburg: VSA, pp. 117-127
- Zachert, U. (2009): 60 Jahre Tarifvertragsgesetz – Eine rechtspolitische Bilanz. WSI-Mitteilungen, no. 4, pp. 179-184