



EROSION, EXHAUSTION OR RENEWAL? NEW FORMS OF COLLECTIVE BARGAINING IN GERMANY

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Introduction

Industrial relations and collective bargaining in Germany are in upheaval. Traditionally, collective bargaining actors and collective bargaining itself have been the driving forces in the development and definition of standard employment relationships that are characterised by well paid, permanent and full time labour contracts. By now for more than ten years a process of erosion of collective bargaining and the standard employment relationship is observed (see e.g. Hassel 1999). And indeed, the signs of erosion or exhaustion are manifold, reaching from the decline of collective bargaining coverage, the membership losses of employers' associations and unions and the decentralisation of collective bargaining – these developments will be discussed in detail in this paper - to other developments like the growth of a low wage sector (Bosch and Weinkopf 2008), the weakening of labour standards in the course of privatisation (Brand and Schulten 2008), the rise of a non-union sector (Artus 2008) or the increase in precarious labour contracts like temporary work (Holst and Nachtwey and Dörre 2010).

The central question concerning the development of German industrial relations is not whether this diagnosis is correct or not, because it definitely is correct. Rather, the question to be tackled in this paper is what the consequences for the actors of collective bargaining are and if there are *any opportunities for action* observable which they have or which they are already developing. The *erosion*-hypothesis leaves little room for this question. From this point of view, the process of erosion is destroying the old institutions without any perspective for the creation of new non-market institutions. A liberal or Anglo-Saxon model of weak unions, powerless employers' associations, dispersed collective bargaining on plant level and a growing non-union sector is regarded as the most probable scenario for the future of German industrial relations in this scenario.

In a similar direction is pointing the hypothesis of *exhaustion* by Wolfgang Streeck (Streeck 2010). Institutional exhaustion of industrial relations is fuelled by a process of liberalisation in the sense of weakening the sanctioning power of non-private and non-market institutions on employers. This does not necessarily lead to a de-institutionalisation of collective bargaining (like supposed in the scenario of erosion), but to a re-institutionalisation which is characterised by the replacement of compulsory institutions by institutions and forms of cooperation formed voluntarily by the market actors. The most prominent example Streeck gives is the development of local alliances for work between management and works councils. These alliances on the one hand can go along with deviations from the norms of collective bargaining, fostering a process of internal erosion of collective bargaining norms. On the other hand they also form a new mode of coordination between capital and labour on plant level building on the exchange of job protection against concessions. However, this line of argument, in the same way as the erosion one, takes a prolongation of the weakening of collective bargaining and the collective bargaining actors for granted; the relationship between collective bargaining and collective bargaining actors is described as a process of mutual destabilisation. Actors that are exhausted do neither have the power nor the concepts to reverse these trends. Regarded in this way, the new central actors of industrial relations will be the companies, because liberalisation by internationalisation of production, financialisation of corporate governance and privatisation of former public services provides more leeway of action for them and reduces the room of manoeuvre for the collective bargaining associations.

In this paper I would like to argue that both approaches of explanation – that of erosion and that of exhaustion – have sent the unions (and maybe also the employers' associations) –into retirement too early. The problem of the future prospects of collective bargaining in Germany cannot be described adequately as a process of exhaustion. Although this is an interesting heuristic device to describe institutional developments, it ignores the capabilities of actors to recognise problems and to react on them *when they are still powerful enough to make significant contributions to the way institutions develop*. And this is from my point of view exactly what can be observed in the German system – or to be more precise in some sectors of the German system – of industrial relations at the moment. There is erosion and exhaustion still continuing on the one hand, but there are also signs of new developments on the other hand. Collective bargaining is not characterised, as Streeck argues, by several and independent but *unidirectional* processes of liberalisation, but by several processes that are tightly connected and nevertheless go into different, if not to say, *opposite* directions. The new developments do not mean that time can be turned back and the former system of collective bargaining can be re-

stabilised; in this respect the argument of the resiliency of the German system of industrial relations, which was made sometimes in the 1990s, does not hold any longer (e.g. Thelen 2000; Turner 1998). The developments I want to refer to in this paper are rather signs of what can be called a *renewal* that – if it would be successful either in some sectors or in the economy as a whole, which cannot be foreseen yet – would change the institutional pillars of the system in a way different from both resiliency and liberalisation.

My argument will be developed as follows. First I will describe in short lines the main institutional characteristics of the German system of industrial relations which can be regarded as an institutional core of the “coordinated market economy” (Hall/Soskice 2001) Germany once has been to a certain extent. In a second step the indicators of erosion and exhaustion will be presented. They do not only point towards a growing de-stabilisation of the system, but also towards an increasing differentiation between some sectors where collective bargaining and the standard employment relationship have disappeared already to a certain extent and sectors where they still exist, albeit under pressure. The third step is to analyse the signs of renewal. I will argue that an important development of renewal – besides others that remain besides the margins of my paper - can be observed *within* collective bargaining and the standard employment relationship in the still existing core of the German system of industrial relations, the export manufacturing sector. This development is new both with respect to the forms of collective bargaining agreements that are more *de-central* and more *procedural* in character and with respect to the local negotiations based on *rank-and-file participation*. Although the signs of renewal are still quite rare regarding the German economy as a whole, the success in terms of increasing its organisational power may initiate a learning process within the unions which leads to a spread of these activities, especially regarding the transgression of the defensive constellations they are still embedded in at the moment. These questions of generalisation and future trends will be tackled in the final section.

Contours of the former system of collective bargaining in Germany

The German system of collective bargaining, shaped in the 1950s and 60s and from then on forming more or less stable institutional features until the 1990s, is well known and analysed in the English-speaking literature (e.g. Thelen 1991; Turner 1991; Wever 1995). There are, above all, two institutional features pointed out in literature that have given the German system a special flavour.

The first feature is a rather stable system of industry level collective bargaining by trade unions and employers associations. The system was stable in two respects. On the one hand, unions and employers' associations have been encompassing in the sense that most of the employees (at least 80% or more) were covered by collective bargaining agreements. Collective bargaining coverage was (and still is) depending on the membership of companies in the employers' associations, because membership made the application of agreements compulsory for companies. The unions always had a lower density that even at its best times in the late 1970s never exceeded 34% (albeit in the core industries of the system it has been much higher). Competition between unions was low because of the dominance of the industry unions organised in the German Trade Union Federation (DGB). Therefore, unions were able to make centralised agreements with the employers' associations despite quite low membership rates. On the other hand, material labour standards developed rather parallel between the industries, with the core manufacturing industries – and mainly the metalworking industry – acting as a pace setter for other industries. As a result of pattern bargaining, wage dispersion between sectors has been rather stable, and within the industries the unions tried to compress wages at the high and low end of the wage spectrum.

The second institutional feature of the German system of industrial relations is codetermination by works councils. Works councils are workers' representatives that have some legally defined rights of codetermination (and of consultation and information) and that are formally independent of the unions. Although codetermination law has been designed as a device to keep unions back from the plants and therefore was criticised by the unions in its beginnings, in the course of the development the unions made their peace with the works councils by unionising them. In the 1980s, about four out of five works councils were union members. Works councils performed important functions for the unions like recruiting union members and controlling the implementation of collective bargaining agreements in the plants. In return, the unions supported the works councils by consulting and teaching.

The German system was “dual” (Müller-Jentsch 1995) in the sense of the co-existence of two levels, but not in the sense of a competition between the levels, neither with respect to actors nor to agreements. The priority of collective bargaining agreements over plant level agreements was defined by law. Therefore on plant level only agreements could be negotiated that dealt with topics not covered in collective bargaining agreements (like occupational health and safety or equal treatment of women), that improved working standards above the levels of collective bargaining agreements (like a positive wage drift) or that were allowed or de-

manded explicitly by collective bargaining agreements (like organising working time flexibility).

A final note on the system should point to the fact that both unions and works councils have been representative organisations in the sense that they had democratic legitimacy (in the case of the unions rather mediated by several levels of election from the bottom to the top) and that they were intermediate organisations in the sense that they have tried to mediate the material interests of their members (unions) or voters (works councils) on the one and the “system” interests of industries or the whole economy and the plants on the other hand. In this way they defined collective interests for their members and negotiated collective agreements with little or no participation of their members or voters. In other words, its legal foundation and the encompassing structure of the dual system allowed unions and works councils - and also the employers’ associations - to act like *corporatist actors*.

What made the German system of industrial so attractive for foreign analysts in the 1980s was the fact that it was – to a certain degree - able to adapt new developments in the traditional forms. Institutional stability in this phase of development contrasted significantly with the experiences of exhaustion of collective bargaining made in the United States and in Great Britain. One explanation for this fact is that the German government never was able to put so much pressure on unions and collective bargaining at that time, and another explanation is that conflicts did not become as dominant as in the ‘liberal’ countries because new demands by employers, especially regarding working time flexibility, could be handled within the system by shifting responsibilities from industry to plant level. Decentralisation was the price unions had to pay for their success in working time reduction, and it was implemented by so called opening clauses in the collective bargaining agreements that demanded the plant level actors to organise the flexible distribution of working times within periods of compensation for fluctuations of working times defined in the collective bargaining agreements. Although in literature the potential dangers of this kind of plant-orientation (“*Verbetrieblichung*”) were stressed (Schmidt/Trinczek 1999), the development showed that albeit unions lost influence on plant level working time policy, in many cases works councils have proven to be quite successful in introducing flexitime or that they at least have learned in the course of the time to solve problems caused by deficient flexitime regulations (Haipeter and Lehdorff 2007). However, driven by the economic success of the 1980s, the German industrial relations system seemed to be an example for the conciliation of collective regulation of labour standards

and the efficiency of companies. This was what made it different from the experiences in other countries.

Indicators of erosion and exhaustion

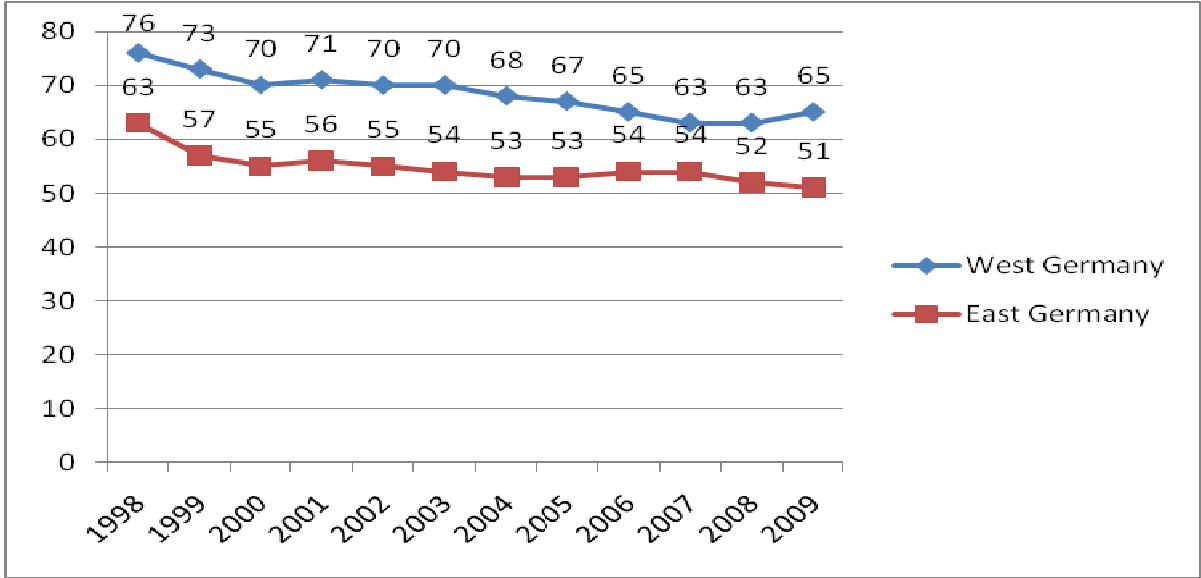
While remaining stable and adaptive at the same time during the 1980s from the middle of the 1990s onwards – to be more precise I would say since the deep crises of the early 1990s – changes in the institutional features of the German model gained speed. The main impetus for this development was the growing critique within the employers' camp about rigidities and high wages of collective bargaining, based on new, market driven business models like decentralisation and outsourcing and a push of internationalisation of production especially towards Eastern Europe and later China. Exit options, both internationally and within Germany (from highly regulated to less highly regulated sectors), made it easy for employers to put pressure on works councils and unions. At the same time, in many companies management has pressed ahead with a financialisation of corporate governance, which was financially attractive for top management and at the same time legitimised ambitious rate of return targets. Taken together, employers were eager to increase competitiveness by cutting costs, and they less willing to accept collective bargaining agreements and the former logic of wage increases oriented on advances of productivity.

Unions became aware of these developments for the first time when the employers' associations in the metalworking sector cancelled the collective bargaining agreement made for East Germany in 1992 before its expiring date (which was completely unusual before). The employers' associations did not want to accept any longer on the agreed stepwise adaptation to the West German wage level. The new agreement negotiated finally prolonged the steps of adaptation and introduced a hardship clause that allowed firms in crisis to deviate from collective bargaining norms (Schroeder 2000). Here unions for the first time had to deal with *deteriorations* in collective bargaining agreements, and from this time onwards they have been on the defensive in a way unknown before. On the one hand, protection of labour standards and jobs became more and more important, and on the other hand improvements of labour standards became more and more difficult. As a consequence, Germany was the only country in the EU where real wage increases from 1995 onwards had a negative algebraic sign. Decreasing real wages were a result of rather low wage increases in collective bargaining agreements, the decline of the wage drift within the enterprises and the growing deviance from collective bargaining norms, either by an increasing non union sector or by companies deviating from

collective bargaining norms although they were members of the employers' associations (Bispinck 2009).

Low wage increases did not indicate an offensive of the employers' association. In fact, employers' associations had to deal with growing conflicts of interests between their members, a growing critique on collective bargaining agreements and companies defecting from the associations. These problems had impacts on the coverage of collective bargaining that was on the decline from the middle of the 1990s onwards, decreasing from about 80% in Western Germany to 65% in 2009 (Figure 1)

Figure 1: Collective Bargaining Coverage from 1998 to 2009 for Western and Eastern Germany (Ellguth and Kohaut 2010)

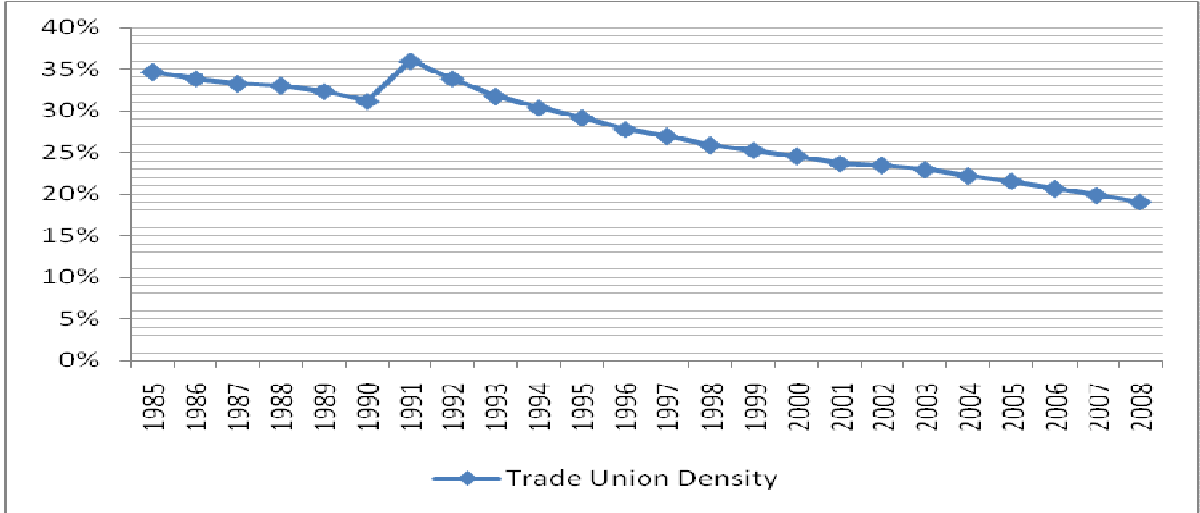


Employers' associations reacted in two ways. On the one hand, they – or at least many of them – have created new forms of associations, the so called OT-associations which are not bound to the collective bargaining agreements. Membership in most of these associations is growing up to now, but it remains an open question whether the members are recruited from the “old” associations – which would fuel the weakening of the associations -, or whether they are organising new members and therefore will increase the membership resources of the associations (Haipeter 2010). On the other hand, employers' associations opted for a further decentralisation of the collective bargaining system, giving more leeway to individual firms. This is why they demanded derogation clauses allowing deviances from collective bargaining norms on firm level. And in many industries these demands have been rather successful, apart from the fact that derogation clauses have been implemented earlier in some industries than in

others or that they have been results of more consensual (like in the chemical industry) or conflict-like negotiations (like in the metalworking industry).

The fact that unions agreed on a de-centralisation of collective bargaining by derogation clauses can be explained by the weakness they were facing themselves. One important indicator of unions' weakness is the long term decline in trade union density that started already in the middle of the 1980s and was interrupted only temporarily by the German unification. From 2007 onwards, union density even fell below 20% (see figure 2), and today it is only slightly higher than the average of the OECD countries (and below the average figures for the EU 15).

Figure 2: Trade Union Density from 1985-2008 (OECD)



The decline of union density did not reflect directly into collective bargaining coverage that depends on the membership of companies in the employers' associations. However, what did happen since the 1990s - and what is important for the understanding of de-centralisation of collective bargaining - is that unions have not been able to defeat increasing employers' defections of collective bargaining norms by strike and mobilisation. One reason for the increasing importance of informal deviances in the course of 1990s has been the appearance of local alliances for work between management and works councils. Local alliances became the label for new types of local deals that have been developed in the crisis of the early 1990s to increase labour flexibility and to lower labour costs for the companies on the one hand and to safeguard jobs for the employees - at least temporarily - on the other hand. The local alliances to a certain extent - but of course not all or even the majority of them - have fallen short of collective bargaining norms (and were therefore illegal in the strict sense of the word). This was one of the main reasons for the unions to agree with derogation clauses in the collective

bargaining agreements. Besides all critics within the unions against derogation clauses the positive interpretation prevailed that these clauses could work as a device to control the process of deviances that was going on already informally.

In the first decade of the 21st century things became even worse for the unions for two reasons that both were results of labour market reforms of government. The first reason was that temporary work was regulated anew by allowing the temporary employment agencies to agree on labour standards in collective bargaining that are far below those of the industries where the employees were deployed. And the second reason was the implementation of “Mini Jobs” and the practice of adding on low wages below social security standards by public money. Both developments fuelled the growth of a low wage sector that expanded from 15% in 1994 to nearly 21.5% in 2007 (Bosch/Kalina 2008). Both developments have contributed decisively to the upsurge of non-standard employment relationships in Germany. Moreover, the low wage sector also had repercussions for the core workers in standard employment relationships because wage competition between core workers and temporary workers or between industrial and service workers increased in the areas where they overlap.

Signs of renewal in collective bargaining

At first sight the indicators presented above give a strong evidence of erosion and exhaustion characterising the German system of industrial relations. Former encompassing institutions like collective bargaining agreements are on the retreat, the actors of collective bargaining are weakened and non-standard employment relationships are spreading quickly. However, this is - although being an important part of the story - not the whole story.

First of all it is important to keep in mind that erosion or exhaustion is not a state yet but still a *process*. If the complete erosion or exhaustion of institutions would be a reality so far, the processes would have come to an end, and industry collective bargaining or the unions (and with them the employers' associations) would have disappeared or would be in a state of marginal relevance. But this is a state not reached yet. And compared to unions in liberal market economies, German unions still have more resources concerning finance or personnel available to build strategies on (Turner 2008). However, just to have resources at one's command is without meaning for social processes if these resources are not used for new strategies of action. What I want to show is that German unions indeed have tried to develop new strategies for a revitalisation of collective bargaining. These strategies are of course selective and not encompassing, and they can be found only in some industries and not in the economy as a

whole. But selectivity can also be regarded in a positive way: as a first step in a process of learning that maybe will be followed by other steps based on the experiences made.

A first important development to note in this respect is the fact that in the last years in several industries new types of collective bargaining agreements have been implemented like collective bargaining agreements on qualification (that give workers the right to get into a continuous dialogue about further training with their superiors) or on demography (that give firms and works councils instruments at hand to cope with the demographical change) or like framework agreements (that are modernising wage groups by integrating blue and white collar work and that define new criteria for wage classification including social competencies and new responsibilities that are usual for teamwork) (Bahn Müller 2010). Collective bargaining agreements of this kind can be regarded as a sign of vitality of collective bargaining actors who seem to be still able to modernise collective agreements and to adapt them to new conditions and to discover new topics like qualification or demography.

The second development, and that is the one I want to cope with here in more detail, is the development of *new forms of collective bargaining* in the course of de-centralisation of collective bargaining. My interpretation is strongly in line with that of Turner (2008) who is pointing to new union strategies of collective bargaining in the metalworking industry, but my accent is a different one. From my point of view it is not – or at least not alone - the regional campaign ‘better not cheaper’ (*Besser als billiger*) stressed by Turner that can be interpreted as a sign of revitalisation, but a new way of negotiating local collective bargaining agreements which derogate from the overall collective bargaining norms. It is indeed a curious fact that maybe the most promising signals for revitalisation of collective bargaining and collective bargaining actors in Germany can be discovered within a process that usually is regarded as one of the main indicators of erosion and exhaustion. Derogations from collective bargaining norms first of all are an expression of the defensive of the unions and of an internal perforation of industry collective bargaining agreements. Threatened by the employers to relocate, close or source out production or services, unions in many cases have to admit that collective bargaining norms can be fallen short of on local level. Decentralised collective bargaining marks a power shift in favour of employers and in disfavour of works councils and unions. As a result, a second local level of collective bargaining is constructed that stands in a – sometimes latent, sometimes evident – competition with industry level collective bargaining and that is able to hollow out the industry level norms if the number of derogations and the degree

of material deviances become too high to keep the industry level agreement alive as a reference point of normative relevance for the companies.

This is the part of the story that is usually told (so by Streeck 2010). The other part of the story is that unions have been able both to improve their *control* over the process of decentralisation and to develop *new forms of collective bargaining* in the plants that are useful to increase their organisational power. I will try to analyse the developments in more detail based on research I made on derogation clauses in the metalworking and the chemical industries. Both industries are forming the core of the German export sectors, and both have been in the forefront of the development of derogations. In both industries, the first collective bargaining agreements on derogations were concluded as early as the early 1990s. The hardship clause for East German regions in the metalworking industry (allowing derogations from collective bargaining norms in case of economic hardship of companies) was concluded in 1993, and the “corridor” for working times (allowing extensions or reductions of weekly working times up to 2.5 hours) was introduced in the chemical industry in 1994. In both industries, the room for manoeuvre for derogations was gradually increased in the years that followed. In the chemical industry, derogations were introduced offering the possibility to fall short of wage norms (up to minus ten percent) and of single payments, to define particular labour standards for workers in the firms’ service activities and to make even advanced derogations. In the metalworking industries, some agreements were concluded in the 1990s that opened up possibilities for derogations in Western Germany, and in 2004 the Pforzheim Agreement was negotiated between the union and the employers’ associations that introduced a general opening clause for all regions by allowing derogations under two conditions: firstly that they would help to safeguard or create jobs and secondly that they would improve a firm’s competitiveness, investment conditions and innovation capacities.

Improvements of control

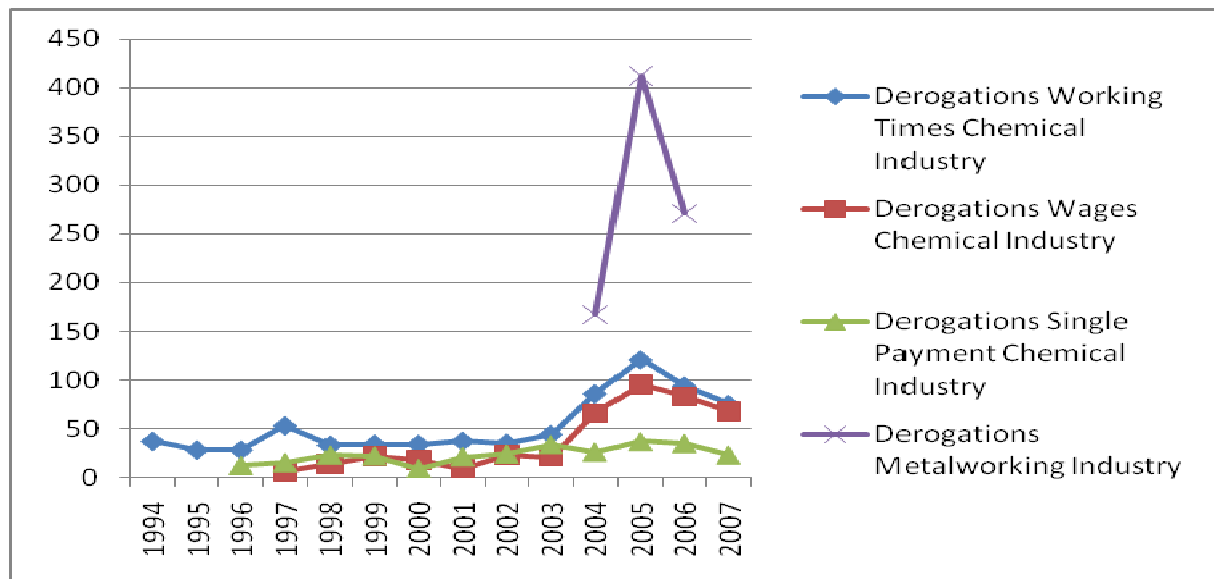
At first sight, the differences in form and practice of derogations between the industries could hardly be greater. In the chemical industry, collective agreements on derogations were regarded as a social partnership project by the collective bargaining actors. The purpose of derogations was to make the collective bargaining agreements more attractive and, thereby, to strengthen collective bargaining coverage. Derogations were negotiated at plant level in the form of plant level agreements by the plant level actors management and work councils and were to be accepted *afterwards* by the union. In the metalworking industry, the negotiations on so-called ‘opening’ or derogation clauses gave rise to considerable conflict. The situation

was made even more complicated for the union by the fact that in 2004 it was threatened by the Federal Government, which announced that it would introduce legislation on derogations if the collective bargaining actors were unable to reach agreement. The Pforzheim Agreement of 2004 was to a certain extent enforced by government. In contrast to the chemical industry, the Pforzheim Agreement stipulates that derogations have to be negotiated as local collective bargaining agreements that are “additional” to industry-level collective agreements. In contrast to the chemical industry they are to be negotiated by the union *right from the start*. The union, not the work councils, is the main actor in the negotiations on the side of labour.

Despite these differences, the use of derogations developed along similar lines in both industries. The graph in figure 3 shows the number of additional collective bargaining agreements negotiated in the metalworking industry in the years 2004 to 2006 on the one and the number of derogations concerning topics that have been dealt with in derogative plant-level agreements (and within the “corridors” defined in the collective bargaining agreements) in the chemical industry from 1994 to 2007 on the other hand. The numbers are difficult to compare directly. The reason is that in the chemical industry the number of agreements is lower than the number of derogations for the three “corridor” topics, because usually the agreements contain more than only one topic; in many cases they combine working time extensions and wage reductions. However, what can be compared is the tendency of the respective figures in both industries, and the tendency is pointing in the same direction. An important observation in this respect is that in both industries the number of derogations increased considerably in the years 2004 and 2005. These increases were closely linked to the widespread demand from employers and their associations for increases in working times without pay compensation.

Figure 3: Number of derogations (metalworking industry) and plant level agreements on working times, wages and single payments (chemical industry). (Data from the union (in the case of the chemical industry) and own calculations from Haipeter 2009)

Tabelle ergänzen: (chemical - metalworking industry)

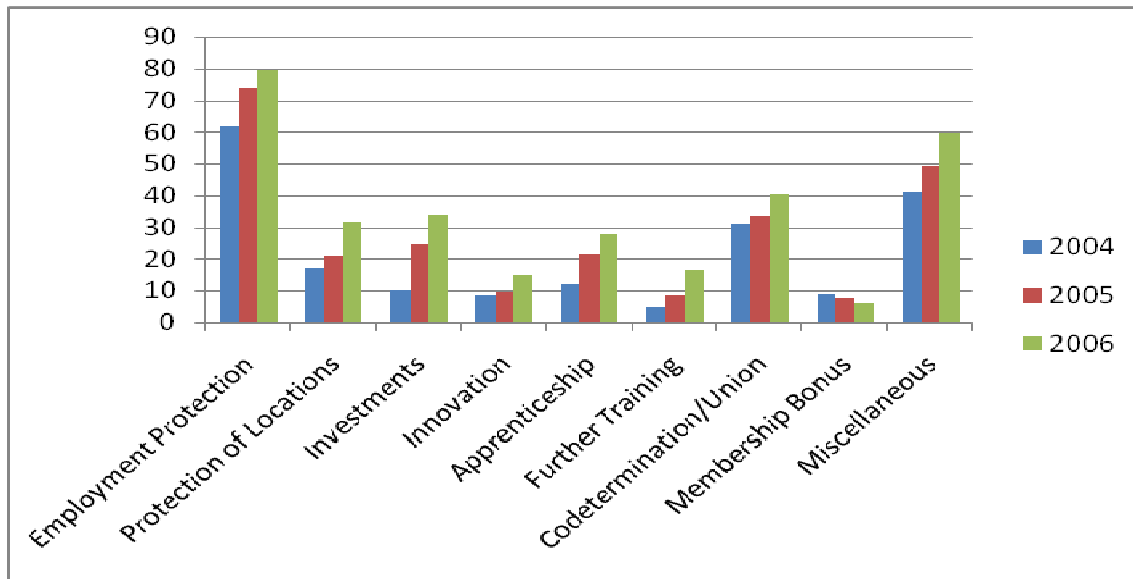


In the eyes of both unions, this development was critical and a real threat to the collective bargaining agreements. And both unions reacted in a rather similar way and tried to regain – or more precisely to gain – *control* over the number and contents of local agreements on derogations. Both the chemical workers’ union, IG BCE, and the metalworkers’ union, IG Metall, developed and implemented ‘rules of coordination’ for dealing with derogations. They were intended to standardise processes and to improve the control exerted by union headquarters. Important points in this respect are the detailed investigation of the economic situation of the firms demanding derogations and of the effects of derogations on other firms or locations within one company, the duty to inform union headquarters about demands for derogations and the right of headquarters to make the final decision about whether or not to accept a derogation. Both unions also wanted their local members in the plants to participate in decision-making. In IG BCE, such participation was to be based on meetings of members. In IG Metall, however, members were to participate in decision-making through ballots on whether or not to initiate negotiations and whether or not to accept any agreement that might be reached. This difference was to a certain extent predetermined by the legal status of the agreements on derogations. Participation in the form of ballots for union members is possible only if the agreement is a collective bargaining agreement that is negotiated and decided by the union. Only in this case is the union able to define the proceedings and only in this case can other employees that are not union members be excluded (because the agreement formally applies only to its members). In the case of plant level agreements, like in the chemical industry on the other hand, it is the works councils that organise the process and any agreement formally covers all employees in a plant. I will come back to this point soon.

The coordination rules have been an organisational innovation of the unions, and they proved to be rather successful. The decrease in the number of derogations from 2006 onwards has stabilised the situation. In both industries, the share of companies with derogations settled down at a stable level of about 10%. Another indicator of improved control is the rising quality of derogations, especially those concerning the concessions made by companies on a broad range of topics, from employment protection to investments and extended rights of codetermination (figure 4). The counter-concessions by companies were of more than only cosmetic relevance. So in the three years of 2004-2006 investment promises of more than 3 billion Euros were made in the derogation agreements, which amounts to a share of nearly 4% of all investments made in the metalworking sector in this period (Haipeter 2009). The term “innovation” in most cases refers to joint efforts of management and works councils to increase the productivity-levels (in order to be able to pay wages according to the collective bargaining norms in future), and under the headlines of “apprenticeship” and “further training” the number of apprenticeships and the budget available for further training are defined. “Codetermination rights” in most cases means that the works councils (and sometimes the unions) have the right to control all the measures fixed in the derogation agreements; in some cases they also entail extended rights for works councils to codetermine in the reorganisation process of the plants.

All in all it can be said that unions were able to improve both their control on local processes of negotiation and the material outputs at least with respect to counter-concessions by management. Because of the counter-concessions derogations have the character of a compromise that makes them acceptable for unions and their members and distinct from a mere concession bargaining. But compromise also means ambiguity for the employees. Derogations on the one hand offer some temporal security by employment protection and investments; on the other hand concessions have to be made for employment security and for long term investments that up to the 1990s have been a salient characteristic of the German production model. Compromise also means ambivalence for the firms: On the one hand derogations help to cut costs (but not to be more flexible internally, because all kind of temporal flexibility has already been enabled by the overall collective bargaining agreements); on the other hand they made life easier for management, so that management is less enforced to be more innovative and to produce better products (and this is the reason why investments and innovation have been demanded *by the unions* as counter-concessions).

Figure 4: Share of counter-concessions in the metalworking industry by issue in all derogation agreements from 2004 to 2006, own calculations (Haipeter 2009)



New forms of collective bargaining

The negotiation on derogations posed a serious *problem of legitimacy* for unions and works councils. In all the cases I analysed, the workforce was rather critical of derogations and negotiations. Employees were not asking for derogations in order to safeguard their jobs; on the contrary, they were hostile to them because they were seen as unfair. They were regarded as violations of the norms of distributional justice. This interpretation was fed by the experiences of wage restraint the employees had been suffering since the 1990s, which had aroused strong sentiments of injustice, and the derogations were regarded as a further step in that direction.

In this situation, works councils and unions had to canvass for support during the negotiations into which they had been forced by management. The labour representatives developed two strategies of handling the members to deal with this problem. One of them was the integration strategy, which stressed the need to accept derogations as an act of solidarity with those employees who would otherwise lose their jobs. This strategy was directed mainly at employees and appealed to common interests in a situation in which employees, works councils and management were all under threat. Derogations were interpreted as a cooperative strategy for safeguarding jobs and were therefore advocated jointly (mainly at employees' meetings) by works councils and management. By contrast, the conflict strategy emphasised the conflict of material interests between workforce and management and tried to unite employees against a common adversary. In this strategy works councils presented themselves as representatives of

the material interests of the employees who tried to reach the best results possible for the employees in a situation of defensive.

The two strategies were implemented in various ways, but in all cases they were based on efforts to *integrate the employees by involvement*. The main instrument used in this respect was *information and communication*. The most important forum of communication was workforce meetings, which were held either as displays of unity between works councils and management or to demonstrate opposition to management. Other means of communication, such as flyers, notice boards, e-mails or face-to-face interchanges, were widely used by the works councils. This practice of intensified communication was widespread and was quite successful in bringing the employees in line with the works councils and unions, because in this way the interest representatives disseminated not only information but also their own interpretations of it. By this means they managed to put themselves in the position of being able to impart their own definition of the situation to the workforce.

In some cases the works councils did more than that. In five of twelve cases I analysed in detail in the chemical and in the metalworking industry they *mobilised* the employees for short term strikes. This mobilisation was closely linked to the conflict strategies the works councils pursued in the negotiations. The feedback on mobilisation from employees was very positive. The works councils were able to build on a fighting spirit among employees that in most cases exceeded the short term actions the works councils had planned. The employees would have liked to intensify the strikes. However, mobilisation proved to be a rather effective instrument in channelling the critical attitude towards derogations into broad support for the works councils in their negotiations with management. Criticisms were attributed to management, not to the works councils (on the role of attributions for integration see Kelly 1998).

Rank-and-file participation is the third form of employee involvement. It was practiced also in five of the twelve cases. Participation is different from communication and mobilisation in that it involves employees systematically in the decision-making process. This was done by organising ballots to decide on whether or not to start negotiations and whether or not to accept an agreement. It is no accident that all the five cases of rank-and-file participation were located in the metalworking industry. There are two reasons that can be mentioned.

First, derogations have the status of collective bargaining agreements in the metalworking industry. This point is important because negotiations on collective bargaining agreements are organised by the unions and not by the works councils. This gives the metalworkers' union –

in contrast to its counterpart in the chemical industry - an opportunity to define participatory processes. This does not mean that such a strategy would be impossible to implement in the chemical industry. But it would take the union much more effort to convince works councils and it would be difficult to make clear why only the union members should participate at least in cases where density figures are low.

Second, rank-and-file participation was promoted by the metalworkers' union only. The works councils did not promote such participation. They see themselves as elected representatives of the workforce. Being elected gives them a legitimacy to act that makes employee participation unnecessary. The only thing some of them did was to try to identify the mood of the workforce at mass meetings. Therefore, the impulse to develop new forms of interest representation based on direct democracy had to come from the unions outside the plants. Only the metalworkers' union, IG Metall, adopted a strategy of '*plant-related collective bargaining*'. This strategy was intended to increase the union's organisational power through the negotiation of local collective bargaining agreements. The perceived relevance of the union in enforcing and guaranteeing labour standards in local disputes was to be strengthened, and the development of participation was intended to make the union more attractive to existing and potential members. Prior to derogations, plant-related collective bargaining was supported only by a minority within the higher levels of the union, but in the course of negotiating derogations it increasingly came to be regarded as a strategy for regaining the initiative in local disputes. It even became part of the coordination rules implemented in 2005.

Rank and file participation in particular had important effects for the organisational power of the union. Derogations, based on rank-and-file participation, set the recruitment issue in motion. The union was able to improve its legitimacy and to boost union density in the plants. In all of the five cases where rank-and-file participation was common practice, it proved possible either to compensate for membership losses or to increase union density. In three of the cases, membership density increased significantly, despite the fact that the union was on the defensive in the negotiations about concessions. In one case membership density even doubled from about 20% to more than 40%, and shop stewards could be implemented that did not exist before. In the other two cases the increase of membership density was about 5% to 10%, but based on rather high density rates. In two other cases membership losses could be adjusted that had taken place during former derogations made in these plants. In a current research project about the 'better not cheaper'-campaign of the metalworking industry in North Rhine-Westphalia we could find – and reaffirm - this pattern of success in various other cases.

Moreover, all the experts I have spoken with told me that the union has been successful in recruiting new members and, more generally, in consolidating its organisational power wherever participatory practices have been introduced. One of the local union officials I interviewed in this context put it in the following words (and the other officials we interviewed have confirmed this in other words): “It is somehow crazy, but wherever we have organised the negotiations on derogations along the lines of rank-and-file participation, we were successful in committing our members to the union and in attracting new members”.

Maybe the most important factor of this success story is that the metalworkers’ union developed a new union strategy of involving union members – and union members only - in negotiations. By privileging its members, existing members were strengthened in their loyalty, while the union became more attractive to non-members. This finding can also be proven by the fact that in the cases of the chemical industry, where no participation of this kind took place, no positive results on union density could be identified.

Summary

The analysis of derogation clauses shows a somehow paradoxical result: Alternatives to erosion and exhaustion can be identified just along processes that usually are regarded as indicators for erosion or exhaustion of the collective bargaining system. New forms of collective bargaining, improvement of unions’ control of collective bargaining and examples for union revitalisation as a result of local collective bargaining go hand in hand with threats by employers and a defensive of unions and works councils. Erosion or exhaustion and renewal are *co-developing*. In an environment of erosion, unions have found new strategic answers that enabled them to cope with at least some of their problems successfully. The precondition for being successful is that unions are still powerful enough to make significant contributions to the way collective bargaining develops. The development has not come to a tipping point yet that would leave unions in a position of weakness and unable to change the way things go. There are examples that unions have proven to be able to coordinate processes of derogation within their organisations and with respect to works councils effectively, that they were able to put pressure on employers for making counter-concessions and that they have developed new forms of decision-making based on rank-and-file participation which helped them to increase their organisational power so that they could strengthen their positions in the plants. Unions are still capable of shaping the development and contributing to a renewal of the collective bargaining system.

One of the main questions for the future of renewal will be if unions will learn from the positive experiences they made in controlling derogations and in particular in strengthening their organisational power by *rank-and-file participation in local collective bargaining*. Concerning the first point, the examples of the chemical and the metalworking industry have shown that union control of derogations is well established, and also the service sector union Verdi has implemented similar forms of control of derogations (Wiedemuth 2007). However, with respect to local collective bargaining the picture is different. Positive examples of rank-and-file participation in derogations can only be found in the metalworking industry, where this form of mobilisation of union members is rather wide spread. Other unions could and should learn from this example. Looking at the metalworking industry, one of the main challenges seems to be that up to now local collective bargaining and rank- and-file participation is restricted to derogations – and therefore to configurations of defensive in the plants and, even worse, to only about 10% of the plants organised in the employers' associations where derogations are negotiated in fact. It can be expected from the success of rank-and- file participation that the revitalisation of the union could gain speed if concepts of local collective bargaining would be developed for more offensive issues whatever they may look like – of course without neglecting industry collective bargaining.

The aspect of learning also has an *international dimension*. German unions have learned from the organizing strategies developed by unions in liberal market economies - besides techniques of organising campaigns that are implemented rather punctual up to now (Turner 2008) - at least two important insights: that the membership issue is vital for them and that there are opportunities to deal with the problem successfully (therefore I would disagree with the findings of Hassel (2007) who calls into question that German unions have incentives strong enough to develop new strategies). Of course in the German context the strategies to a certain degree have to be different ones. German unions have to cope with works councils, and they have much more resources than their colleagues in the Anglo-Saxon countries. This is why social movement unionism plays a much smaller role in Germany (the German unions do not need coalitions with other actors so urgently except in industries where they have become a weak actor like in retail trade, see Turner 2008), and this is why German unions at least in the manufacturing sector can develop strategies within a still existing system of collective bargaining building on still existing organisational power in the plants. In this system, rank-and-file participation seems to be the most promising strategy of organizing. However, needless to say that rank-and-file participation also belongs to the organizing strategies Anglo-Saxon unions have developed already in the 1990s (Bronfenbrenner and Juravich 1998). For them the

German experience also has something to say: firstly, that their strategies are really innovative and offer a lot of connecting points for unions in other countries; and secondly, that it is important to coordinate local activities centrally, especially if they have to do with derogations and concessions – only then decentralisation really can become an opportunity to strengthen a centralised union (and not to undermine it like in the English example of the 1960s described by Flanders (1970)).

Regarding the prospects of revitalisation and renewal two qualifications have to be kept in mind. The first is that renewal in the way it could be observed in German industrial relations is not a return to the old system of industry level corporatism. Rather, renewal means that something new is emerging that did not exist before. Collective bargaining more and more develops the features of a two-level system on industry and plant level. Although the danger that plant level agreements undermine industry level ones remains at least latent, unions have shown a surprising capability to control the interferences between the levels and to get into the offensive on plant level by mobilisation and rank-and-file participation. As a consequence, union organisation will become more participatory in style and industrial relations will become more conflictual on plant level. Both developments show that it would be misleading just to speak of a new plant level micro-corporatism; unions' success on plant level depends to a certain degree on the fact that they become *less corporatist* in style and more willing to integrate their members actively. At the same time, being less corporatist does not mean to be more voluntaristic, like Streeck argues when he says that nowadays institutions of industrial relations in Germany no longer exist because they can be enforced but because employers chose then voluntarily in order to enjoy the advantages of coordination. Of course, as we have seen, in many cases employers are able to enforce derogations. But they are neither able to predict the outcomes of negotiations nor to prevent unions from coordinating the process or from increasing their organisational power in the plants. This is what enforces plants to remain in the employers' associations. Not out of the blue still all the bigger companies where the unions have a remarkable power position are still part of the collective bargaining system.

The second qualification is that renewal does not mean the end of erosion or exhaustion. Erosion in the sense of a process of dissolution of old institutions still exists, like the decrease in collective bargaining coverage or in union members. In some industries like house cleaning for example, no industry collective bargaining agreements have been negotiated for years because the unions have been too weak to enforce them. There are also signs for a exhaustion in the sense of a voluntaristic coordination by employers. Examples are alliances for work that

are falling short of collective bargaining agreements informally and that are not coordinated by unions. What makes the situation complex is that the co-development of erosion, exhaustion and renewal can be observed both *within* single industries and *between* industries in comparative perspective. On the one hand we can find industries where signs of renewal along erosion and exhaustion are rather obvious. In other industries especially in the private service sector erosion and exhaustion dominate and signs of renewal are quite difficult to find. In these industries it makes much more sense to speak of liberalisation; and not for accident here union efforts of renewal are more closely related to American experiences of social movement unionism developed for plants where union power is low or even absent.

The findings are not falsified by the developments of the *financial crisis* and the way unions and employers were able to circumvent dismissals by reducing working time collectively through using (public co-financed and extended) short-time work, through working time reductions in local alliances of work and through interrupting overtime work and clearing the cumulated working time on working time accounts (Zapf and Brehmer 2010). On the one hand, based on these instruments Germany did rather well in preventing a collapse on the labour market in international comparison. However, on the other hand, there is little evidence that this revival of corporatism, as it was called by Müller-Jentsch (2010), is more than a – from the side of the employers camp - voluntary corporatism in crisis built on the fact that unions and works councils have proven to be useful in preserving the core workforce to be able to react immediately on increases of international demand and, more general, in maintaining order in the plants. All the structural problems of collective bargaining and of the unions mentioned are still on the agenda; none of them is solved by the crisis, and unions still have to deal actively with the problem of their own revitalisation.

To sum it up, developments of industrial relations at best can be described as a *fragmentation* of a former more - but because of differences in union power between industries never completely - uniform system. Renewal, erosion and exhaustion go hand in hand in different degrees within and between industries. The standard employment relationship is slowly melting away (in some industries of private services faster than in others), and it is changing its character by becoming more unstable and more disputed; derogations are the most advanced form of this development. The decisive point to stress here is that the development is far from being unidirectional in the sense of a broad trend of liberalisation. There is liberalisation, but there are also counter-developments caused by unions with new strategies and organisational power strong enough to influence the trends of developments. There is still room of manoeuvre for

actors, and there are still actors capable to act besides the firms. Therefore, the future is more open and uncertain as a unidirectional trend of liberalisation would suggest. Future prospects will depend to a large extent on the strategy building of unions and on how far they will learn among each other from the successful experiences they make.

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