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# Trade Unions in Germany

## Organisation, Environment, Challenges

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- The trade unions in Germany and the system of social partnership and codetermination have undergone a number of developments in recent years the upshot of which is that the workers' side has been weakened.
- At the end of 2010 only 19 per cent of employees were members of a trade union. This represents a decrease of around 5 per cent over 10 years.
- This has affected wage development insofar as there has been no compensation for inflation since 2004. In most of the years in question, real income fell. In the EU, Germany brought up the rear with regard to real-wage development between 2000 and 2009.
- Nevertheless, in the wake of the economic and financial crisis various collectively agreed and company-level instruments have contributed substantially to job security, more specifically collectively agreed and company-level measures involving flexible working time, company-level job security agreements and (further) financial concessions on the part of employees.
- The positive employment balance in the crisis applies more to core workforces than to the growing number of precarious employees. Fixed-term employees in many instances did not have their contracts renewed and many temporary workers soon lost their jobs.
- Against this background, IG Metall in particular is focusing more strongly on temporary workers. It achieved its first collective bargaining breakthrough in this regard in the steel industry in September 2010: for the first time, equal pay for temporary workers was laid down in an industry-wide agreement.



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The trade union systems in European countries differ in many respects, reflecting different political traditions. While in Austria or Germany unified trade unions (*Einheitsgewerkschaften*: trade unions open to all workers regardless of their ideological leanings or political convictions) oriented towards the Social Democratic Party became dominant after 1945, in countries such as Italy and France trade unions with more concrete ideological or party political links (*Richtungsgewerkschaften*), whether Christian or leftwing, have been important. In countries such as Portugal and Spain, but also in Central and Eastern Europe – and in Poland in particular – the various political orientations developed only on the basis of the freedom to organise which emerged in the 1970s or after 1989. Not only trade unions' political traditions, but also their organisational principles differ. For example, sometimes professional associations and sometimes industry trade unions organise whole sectors; and while in the Scandinavian countries trade unions provide social security benefits and services, elsewhere there are trade unions that do not have such organisational underpinning.

Germany's Constitution – the so-called »Basic Law« – guarantees freedom of association. For workers, that means the right to organise in trade unions. No one may be prevented from joining a trade union. At the same time, trade union membership is voluntary: no one may be compelled to join. In contrast to many other countries, German trade unions are not involved in disbursing unemployment benefits or in pensions and pension payments. The central task of the trade unions is collective bargaining.

In what follows, we provide a brief overview of the organisation of German trade unions and of the institutional conditions in which they operate. We shall also look briefly at wage development and the broad outlines of industrial relations. Our focus, however, is the German Confederation of Trade Unions (*Deutscher Gewerkschaftsbund* or *DGB*) and its affiliated trade unions.

## 1. The DGB and Its Affiliated Trade Unions

As of the end of 2010, around 8.1 million people were members of trade unions in Germany. These trade union members are divided into three large and competing trade union confederations, as well as a number

of unaffiliated trade unions. Altogether, just under one in five employees were members of a trade union. Net union density – that is, the proportion of employees who are trade union members – was around 19 per cent, which is around 5 percentage points lower than 10 years previously.

By far the biggest trade union confederation in Germany is the German Confederation of Trade Unions (DGB), founded in 1949, whose eight affiliated trade unions represented around 6.2 million members at the end of 2011, more than three-quarters of all trade union members in the country. The DGB represents the general interests of its individual trade unions in relation to political decision-makers and associations at federal, *Länder* and local government level. It is also formally responsible for mediation in the event of disputes between its member trade unions. The DGB is financed as a confederation by the individual trade unions. Workers are not members of the DGB as such, but of its affiliated trade unions, to which they pay their membership dues.

The confederation's position in relation to its individual trade unions is relatively weak and is largely limited to representative matters. The important policy decision-making is carried out by the individual trade unions. As a rule, the DGB is not directly involved in negotiations with employers' organisations and companies or in collective bargaining and industrial action.

### 1.1 The DGB Trade Unions

Within the DGB the principle of one company, one trade union applies. The eight individual trade unions view themselves as industry trade unions, organising all employees in the branches, companies and departments within its organisational remit. Furthermore, large multi-branch trade unions have emerged as a result of mergers and regroupings.

The restructuring of branches, dual responsibilities (for example, in the education and training sector) or the emergence of new industries (IT, solar and wind energy) have increasingly led to demarcation problems and conflicts between DGB trade unions in recent years. Basically, however, the industry federation principle remains dominant.

Table 1: Individual DGB trade unions

Trade union	Key branches
Industriegewerkschaft Metall (IG Metall) – Metalworkers' Union	Metal and electrical industry, steel industry, textiles and clothing, dry cleaning, wood working, automotive industry, electrical trade, joinery, plumbing, etc.
Vereinte Dienstleistungsgewerkschaft (ver.di) – United Services Union	Civil service, trade, banks and insurance companies, health care, transport, ports, media, social and educational services, printing, private services, fire brigade, etc.
Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE)	Chemical industry, pharmaceutical industry, mining, energy utilities, etc.
Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU)	Construction industry, industrial cleaning, agriculture
Eisenbahn- und Verkehrsgewerkschaft (EVG)	Railways, rail transport
Gewerkschaft Erziehung und Wissenschaft (GEW) – Education and Science Workers' Union	Teachers, educators, higher education
Gewerkschaft Nahrung-Genuss-Gaststätten (NGG)	Food industry, milling, pubs, restaurants
Gewerkschaft der Polizei (GdP)	Police

Around 20 per cent of the members of DGB trade unions are pensioners, around 7 per cent are unemployed and there are 463,000 civil servants (*Beamte*). The latter have a special status in Germany, although this is increasingly diminishing, both in quantitative terms and with regard to its privileges. Basically, civil servants enjoy job tenure. They have freedom of association, but their pay and working time are statutorily determined by Parliament. There is no collective bargaining. Under German law – at least as interpreted hitherto – that means that they do not have a right to strike.

### 1.2 Political Orientation

The DGB trade unions consider themselves to be so-called »unified« trade unions (*Einheitsgewerkschaften*): in other words, they are not officially affiliated with or financed by any political party. Nevertheless, historically there have been very close relations with the Social Democratic Party (SPD). Even today, DGB leader Michael Sommer and almost all trade union leaders are members of the SPD. An exception is the leader of ver.di, Frank Bsirske, who is a member of Alliance 90/The Greens (*Bündnis 90/Die Grünen*). Certainly, relations between the trade unions and the SPD have changed significantly over the past 10 years. The social policy of the Red-Green coalition under Chancellor Gerhard Schröder,

which introduced massive cuts in unemployment benefits from 2003, in the teeth of DGB opposition, led to a certain estrangement between the DGB trade unions and the SPD. This estrangement was a contributory factor in the later founding of the party *Die Linke* (The Left), which attracted many former SPD members. The Left has the support of a significant minority of members of ver.di and IG Metall, in particular.

### 1.3 Membership Development

The biggest individual trade unions are the metalworkers' union IG Metall and ver.di, the United Services Union. Together they represent almost 70 per cent of the members of all DGB trade unions. The majority of members of ver.di and, especially, GEW (education and science workers' union) are women.

The DGB trade unions have lost a significant number of members in recent years (see Figure 1). There are many reasons for this. When most members of East Germany's trade union confederation, the Free German Trade Union Confederation (*Freier Deutscher Gewerkschaftsbund, FDGB*), joined DGB trade unions in 1990/1991, the DGB's total membership shot up. Shortly thereafter, however, in the wake of the restructuring and deindustrialisation of eastern Germany's economy, membership

Table 2: DGB trade unions: membership, 2010–2011

Trade union	2011	2010	Difference 2011–2010 in %	Proportion of women 2010 in %
IG Metall	2.245.760	2.239.588	0,28	17,7
Ver.di	2.070.990	2.094.455	–1,12	50,5
IG BCE	672.195	675.606	–0,50	19,8
IG BAU	305.775	314.568	–2,80	21,1
EVG*	220.704	260.297	–5,07	21,0
GEW	263.129	232.485	1,09	70,0
NGG	205.637	205.646	0,00	40,6
GdP	171.709	170.607	0,65	22,3
<b>DGB total</b>	<b>6.155.899</b>	<b>6.193.252</b>	<b>–0,60</b>	<b>32,4</b>

Note: Unemployed people and pensioners are also included in membership figures.  
Source: DGB and authors' calculations.

plummeted again. In western Germany, too, many jobs in well-organised sectors of industry were lost as a result of rationalisation, restructuring and relocation. Privatisation of the railways and the post office and the ensuing workforce cuts in these large former state-owned companies also had an adverse effect on membership. Particular problems also arose because of massive outsourcing in the construction industry. On top of all that, the DGB has not been able to gain a firm foothold and win new members in private service companies, which tend to be small-scale operations.

#### 1.4 Organisation and Member Recruitment

Still the best organised workers in Germany are employees in the metal and electrical industry, especially among the large automotive manufacturers. Also well organised are the now relatively small steel industry, particular areas of the civil service and parts of the formerly state-owned post office and railways. Unionisation varies considerably in the chemical industry, however, as well as in building and construction. Trade union representation in new companies in wind and solar energy remains below average. However, in recent years some progress has been made in establishing trade union structures.

In the public sector, public transport and waste disposal have traditionally been trade union strongholds, together with the railways and the post office. As a result of privatisation and liberalisation of the public sector, however, new private providers have emerged in all these areas, in which the trade unions are struggling to

establish themselves. In private services, members are particularly numerous in the retail trade. Since they are very unevenly distributed, however, the proportion of trade union members in this branch is on the low side. The same applies to banks and insurance companies. Also poorly organised are hotels and restaurants and security firms. Finally, craft trades also have below average trade union organisation.

In general, membership recruitment is much easier in large enterprises. In contrast, the trade unions find it very difficult to establish a foothold in small enterprises because it is particularly difficult to set up works councils there: where there are no works councils there are generally also few trade union members. The increasing »precarisation« of employment is also posing problems for the trade unions. Many employees are taken on only for fixed periods or as agency workers. Organising such workers requires a special effort. Furthermore, many companies, especially newly established ones, pursue a deliberate strategy of keeping the trade unions out.

Since the mid-2000s an intense debate has developed within German trade unions, but also among trade union-affiliated academics concerning strategies for coping with organisational problems. Particular reference has been made, among other things, to discussions and practices in the Anglo-Saxon trade unions which, under the heading of *organising*, strive to build up trade union organisations which can not only deal with everyday conflicts, but also address employees' individual concerns and their activation. To date, practical attempts to apply such strategies – for example, in the private security sec-

tor, commercial cleaning, the retail trade and hospitals – have shown mixed results. In some areas – especially the organisational departments of ver.di and IG Metall – various strategies have been able to dramatically slow down and, occasionally, even to halt falling membership. The link between trade union membership and conflicts in the workplace established in some research studies offers a strong basis for the closer involvement or participation of members along the lines of this organisational model.

For many workers trade union membership is a kind of conflict insurance. What they want most of all is support if problems arise in connection with employment. Important individual services include financial support in the case of strike action and lockouts, advice on social and labour law issues and support in the event of employment-related conflicts. Only trade union members are entitled to such services, but non-union employees generally enjoy the same collectively agreed conditions as union members in enterprises with collective agreements. To that extent workers can benefit from the collective agreements secured by trade unions without having to become trade union members themselves.

## 1.5 Financing

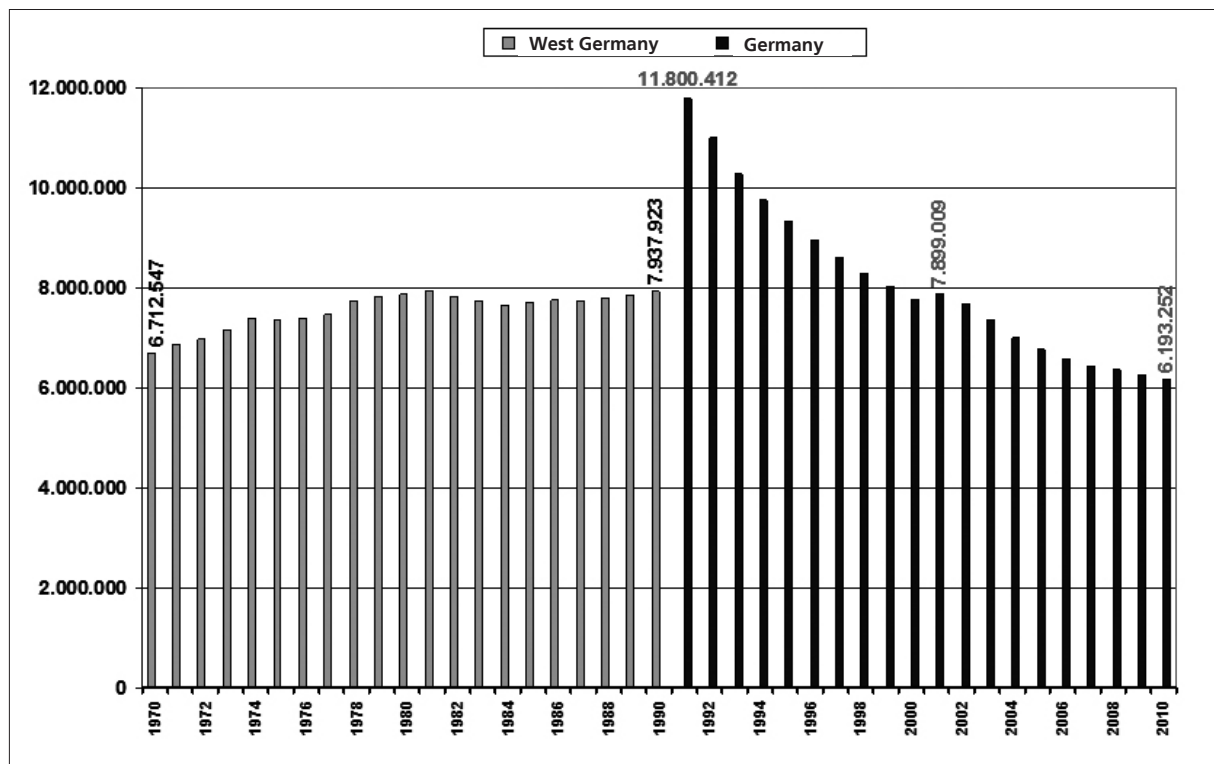
DGB trade unions finance themselves exclusively from member contributions and income from their assets. They receive neither state funding nor public subsidies. The entire apparatus, all administrative staff and all full-time officials have to be paid for by the trade unions themselves.

The monthly contribution at most DGB trade unions is 1 per cent of gross monthly income. As a rule, contributions are paid by direct debit and some trade unions automatically raise them in tandem with wage rises. A fall in membership means financial problems for trade unions.

## 2. Other Trade Unions

The second largest confederation is the DBB Beamtenbund und Tarifunion (German Civil Service Federation), with which 39 national professional trade unions and associations are affiliated, giving it a total membership of around 1,265,720 at the end of 2011, including 908,000 civil servants (*Beamte*) who, as already mentioned, are

Figure 1: DGB membership development, 1951–2010 (up to 1990 West Germany, afterwards Germany)



Source: DGB.

excluded from collective bargaining and have no right to strike. The collective bargaining interests of the 358,000 members of the DBB without civil servant status are represented by the DBB Bargaining Union (*Tarifunion*). In contrast to the DGB trade unions the DBB has registered moderate membership growth in recent years. In 2010, however, one of its member trade unions from the railways sector – the Union of German Railway Workers or GDBA – switched to the DGB after merging with the DGB union TRANSNET to form the Railway and Transport Union (Eisenbahn- und Verkehrsgewerkschaft – EVG).

The German Train Drivers Union (Gewerkschaft Deutscher Lokomotivführer – GDL) plays a special role. It has around 34,000 members, mainly train drivers, and is affiliated to the DBB. It is the EVG's fierce rival for the status of leading railway union. The GDL has made a name for itself nationwide in recent years due to various strikes by train drivers and train crew.

The DBB also considers itself to be a party politically independent trade union confederation, although traditionally it has good relations with the Christian Democratic Party (CDU). DBB president, Peter Heesen, is a member of the CDU.

In the civil service the DBB Bargaining Union forms a negotiating bloc with ver.di and other DGB trade unions. In other sectors, however, there is considerable rivalry in collective bargaining. Ver.di and the relevant DBB unions compete for the available mandates in elections to staff councils in the civil service.

## 2.1 CGB

The third and by far the smallest confederation is the German Christian Trade Union Federation (Christlicher Gewerkschaftsbund Deutschlands – CGB). It reported the membership of its 16 individual trade unions as 283,000 in 2010. The CGB considers itself, in contrast to the other two union confederations, as a Christian »*Richtungsgewerkschaft*« (union with particular ideological or party political links). Only some of its individual trade unions are active in collective bargaining.

The CGB trade unions, in contrast to the, in some instances, relatively strong Belgian or Dutch Christian trade unions, are not really capable of strike action. Fur-

thermore, they are attractive to companies, mainly because they sign collective agreements that undercut the wage and working conditions agreed with DGB trade unions. However, this occurs only where the DGB trade unions themselves have only a weak foothold and find it difficult to enforce their own collective agreements. The CGB unions compete with the DGB unions in collective bargaining mainly in individual craft and services branches, as well as in temporary employment. The DGB trade unions engage with the CGB on an adversarial basis. In several instances, DGB trade unions have been able to dispute the right of CGB trade unions to participate in collective bargaining in the courts, as a result of which these unions can no longer conclude valid collective agreements.

The CGB regards itself as non-partisan, but politically it is close to the Christian Democratic parties. The chairman, Matthäus Strebl, is a CSU (Christlich Soziale Union) MP. However, the majority of trade unionist members of the CDU and the CSU support the DGB trade unions.

## 2.2 Non-confederation Trade Unions

Finally, there are a number of trade unions that do not belong to any of the three confederations, in most cases organising particular occupational groups. Their total membership has been estimated by WSI at around 270,000. The following are significant with regard to collective bargaining.

The Marburger Bund, the association of privately employed and state employed doctors (MB), is by far the biggest trade union for salaried medical staff, with around 108,000 members in 2010. Up to 2005, the union participated with the relevant DGB unions in wage negotiations concerning clinics. Since then, however, the MB has negotiated alone. On this basis a series of spectacular strikes in 2006 enabled the MB to implement its own collective agreements for medical staff in clinics.

The German Journalists Association (DJV) is the largest trade union for journalists working for publishers and newspapers. In 2010, it reported around 38,000 members. Its rival is the German Union of Journalists (DJU), with around 21,000 members, which is part of ver.di. Neither trade union is strong enough to engage in collective bargaining on its own and thus they do so jointly.



The Cockpit Association (Vereinigung Cockpit – VC), with around 8,300 members, is the most important trade union for pilots. Strike action in 2001 enabled it to assert collective bargaining autonomy with Germany's biggest airline.

As a result of labour market and employment developments smaller trade unions outside the DGB have gained in significance over the past few years. However, their memberships are far smaller than those of the unified trade unions. Nevertheless, the profile of the non-DGB trade unions has been enhanced by the fact that individual occupational and professional groups – train drivers, air-traffic controllers, doctors – have conducted industrial action fairly successfully, based on their favourable negotiating positions.

### 3. The Collective Agreements System and Wage Development

In Germany, only trade unions have the right to negotiate collective agreements, whether with employers' organisations or individual enterprises. Most collective agreements are concluded by DGB trade unions.

National collective bargaining in Germany is dominated by central collective agreements (*Flächentarifvertrag*). These central collective agreements are concluded for whole branches or subbranches and apply regionally or nationwide to all companies belonging to the employers' organisations that are party to the agreement. Free collective bargaining plays a major role in this connection. It implies that collective agreements are negotiated and signed without government or state interference. In contrast to other European countries – such as Scandinavia – in Germany experiences with compulsory arbitration in the latter days of the Weimar Republic (1929–1933) mean that there is still no institutionalised possibility to have the results of collective bargaining rounds confirmed by the state.

That being the case, the German government plays a direct institutional role only in wage negotiations in the civil service. As the employer of civil servants it takes part in collective bargaining itself and negotiates with the civil service trade unions.

Apart from collective bargaining, there is relatively little legislative intervention in matters concerning working conditions and remuneration in Germany, by European

comparison. There is a statutory upper limit of 10 hours on daily working time (with some exceptions) and a statutory minimum four weeks' holiday. Otherwise, the working week and annual holidays, as well as pay are not subject to state regulation, but rather are the object of collective bargaining.

Furthermore, hitherto there has been no statutory minimum wage of the kind found in a number of other countries. Previously, most DGB trade unions have rejected such a statutory minimum wage as interference in free collective bargaining. In the face of the growing low wage sector, however, there has been a rethink over the past decade or so. The DGB is now calling for the introduction of a statutory minimum wage of 8.5 euros. The employers' organisations have largely rejected this out of hand, however. The employers' organisations in various services branches and in construction are more open-minded about this and are at least willing to consider minimum wages agreed in the course of collective bargaining.

The federal Minister of Labour, in agreement with the collective bargaining committee (which contains an equal number of members from each side), can declare collective agreements generally binding. In this way it becomes valid for all employers and employees within the scope of collective bargaining who are not otherwise bound by collective agreements. In some branches – especially building and construction – there are already generally binding minimum wages in accordance with the Posted Workers Act (*Arbeitnehmer-Entsendegesetz* – *AEntG*). These also apply to employees whose company is not based in Germany. Besides the building industry such minimum wages are also to be found in, among others, industrial cleaning. Until a statutory minimum wage is introduced, declaring a particular wage generally binding is an important option in checking the growth of low wages.

#### 3.1 Wage Development

In the past 10 years national-level trade unions in Germany have generally been able to secure only moderate wage increases. At the same time, from 2002 there has been negative wage drift: in other words, increases in real wages have predominantly been below the average collectively agreed wage rises (see Figure 2).

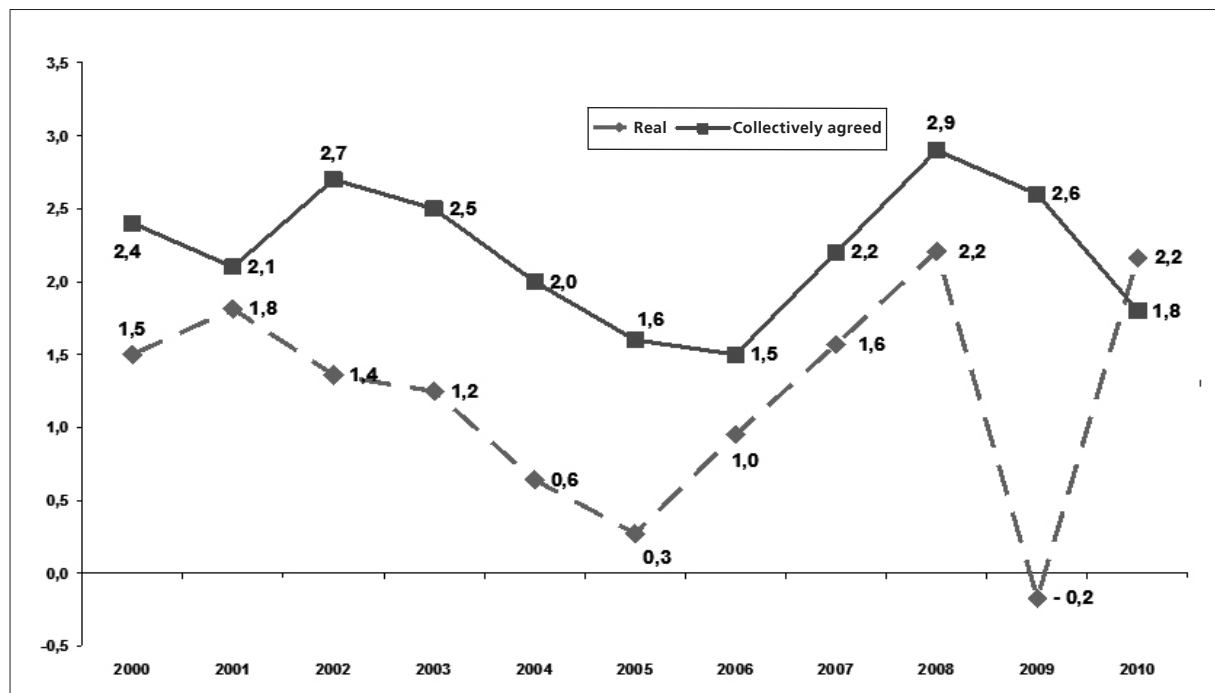
If price development is also taken into account it turns out that since 2004 there has been no compensation for inflation: instead, in most years real income has fallen. This development also emerges from international comparison, such as an EU comparison of the development of average real gross incomes from 2000 to 2009 (see Figure 3). While in Germany the gross income of dependent employees rose by only 1.3 per cent in real terms in the decade leading up to 2009, the average rise in the EU27 was 7.9 per cent and in France 8.9 per cent. With the 2009 crisis, wage stagnation in Germany continued.

There are many reasons for this negative real wage development. First of all, for a considerable time not all the 28 million employees or so who are liable for social security contributions have been covered by a collective agreement (see Table 3).

In this context, the lack of a statutory minimum wage in Germany is particularly glaring. It must be noted, however, that the mere existence of a collective agreement does not guarantee decent wages; the wage structure also depends on the relative strength or weakness of the negotiating partners. The trade unions are particularly constrained in those branches of the private service sector in which

low wages are especially evident. In quite a few areas of the German economy there are currently collective agreements in which the agreed wages are below the 8.5 euros per hour minimum wage demanded by the DGB. Another contributory factor in the negative development of real wages in Germany is the replacement of full-time by part-time working. According to the IAB (Institut für Arbeitsmarkt- und Berufsforschung), an independent institute of the Federal Employment Agency, the number of full-time employees fell from 25.5 million in 2001 to 23.6 million in 2010. The number of part-time employees grew from just under 10 million to 12.5 million over the same period. This structural change in employment was government policy and has been underpinned with various tax and social policy measures. This has led to the expansion of so-called »precarious employment«. This includes in particular so-called »minijobs«, for which maximum monthly pay is 400 euros. In December 2010, 7.4 million people had a minijob, while 4.9 million employees, two-thirds of them women, were exclusively in precarious employment; 2.5 million people had precarious employment as a second job. In 2010, a further 260,000 people worked in so-called »1 euro-jobs«, for which they receive, in addition to the social minimum, no more than between 1 and 2.5 euros per hour. These jobs officially count only as »em-

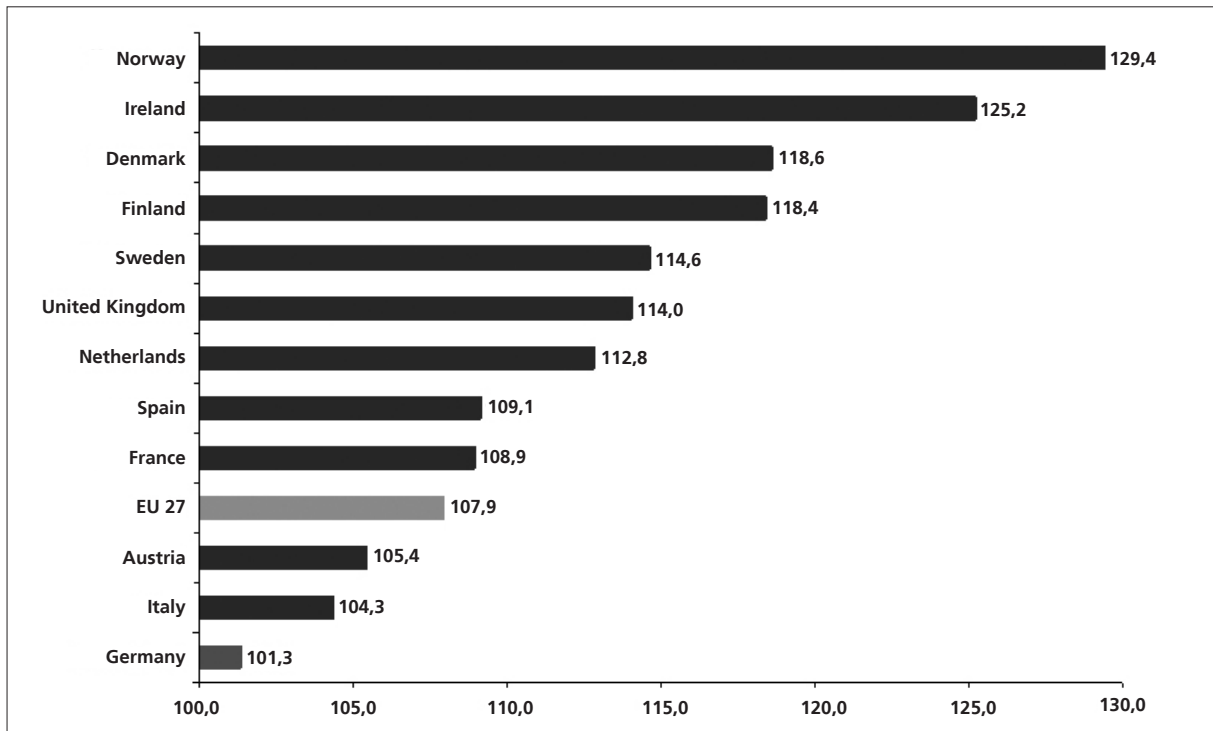
Figure 2: Collectively agreed and real wage increases, 2000–2010



Source: Destatis, WSI-Tarifarchiv, as of: January 2011.



Figure 3: Increase in real wages, EU, 2000–2009\* (index: 2000 = 100)



Note: \* Including employer social security contributions (estimated for 2009).  
Source: AMECO database.

ployment opportunities» and not as regular employment, which means that there are no social insurance entitlements attached and only limited labour law entitlements.

In addition, since 2003 temporary work has been almost entirely deregulated, leading to a sharp increase in low paid employment. The annual average number of temporary workers for 2010 was 780,000, in contrast to only 330,000 in 2003.

As a result of all these developments the low-wage segment – that is, the number of those who earn less than two-thirds of the median wage – expanded between 1995 and 2010 to more than 22 per cent or 6.6 million employees. The basis of this statistic is a low wage threshold of 9.5 euros in western German and 6.87 euros in eastern German *Länder*. In fact, 2.1 million workers received even less than 6 euros per hour.

In 2009, the very sharp increase in short-time working in particular adversely affected real incomes. Short-time working designates the time-limited reduction of working time. During such periods, instead of wages employees receive so-called short-time allowance – in

the amount of unemployment benefit – for the cancelled working hours. It is important that they retain their employment relationship and related entitlements at such times. During the crisis the government established the possibility of extending short-time working up to 24 months. This extension of short-time working has been supported by the trade unions in order to avoid collective redundancies as a consequence of the economic crisis.

## 4. Codetermination and the Right to Strike

In broad outline, industrial relations in Germany are characterised by workplace codetermination in the form of works councils and by enterprise codetermination in the supervisory boards of larger corporations.

### 4.1 Works Councils

The elected members of the works council (*Betriebsrat*) represent the interests of all employees in the enterprise or workplace. It is not a trade union body. However, co-

Table 3: Covered by a collective agreement, western and eastern Germany, 2010  
(percentage share of companies and employees)

	Central collective agreement		Enterprise collective agreement		No collective agreement (aligned with collective agreement)	
	West	East	West	East	West	East
<b>Enterprises</b>	34	17	2	3	64 (40)	80 (39)
<b>Employees</b>	56	37	7	13	37 (50)	51 (47)

Source: IAB Betriebspanel 2010.

operation between works councils and trade unions represented in a given workplace is expressly ensured by law. Works councils can be formed in all private enterprises with at least five employees and are elected by the entire workforce. Senior executives and senior management are not represented in the works council. All legal-age employees can put themselves up for election who have been employed by the company for at least six months. The trade unions represented in the company can submit their own nominations, although lists of candidates who are independent of the trade unions can also be submitted. At most, 50 signatures are needed for this. The number of works council members depends on the size of the company. In companies with more than 200 employees one member of the works council can be entirely released from his or her work duties to perform works council tasks.

Works councils have a number of rights related to information (for example, hiring new employees, classification), consultation (for example, in the case of restructuring) and codetermination (for example, beginning and end of working time). The works council can oppose dismissals, although ultimately they cannot prevent them. The works council is not entitled to conduct collective bargaining or call for strike action. It can only reach agreements that do not conflict with existing collective agreements. Analogous to the Works Constitution Act, which regulates the activities, rights and duties of works councils, the activities of staff councils in the civil service are regulated by various staff representation acts. But while the basic structure of representation rights in the civil service is the same, in specific instances staff councils may be subject to diverging legal provisions.

The establishment of works councils is not obligatory. In companies without works councils the trade unions do, however, have a right of initiative enabling them to instigate a procedure to bring a works council into being. The establishment of works councils frequently

leads to conflicts with the company. Some firms, especially in the private service sector, actively oppose them – for example, the large retail chain Lidl is notorious in this respect. There is a works council in only 10 per cent of all companies with five employees or more, although 45 per cent of all employees work in such companies. In the western *Länder* the employees are represented by a works council in 90 per cent of all large companies with more than 500 employees. The eastern *Länder* are not far behind on 85 per cent (see Table 4).

Table 4: Works councils by branch, Germany, 2010  
(percentage of companies and employees)

Branch	Companies with works council	Employees in companies with a works council
Mining/energy	41	81
Manufacturing	16	66
Construction	3	21
Trade	10	31
Transport/haulage	14	47
Information/communications	15	47
Financial services	29	73
Hotels/restaurants and related services	4	15
Health care, care, education	11	44
Economic and research/technical services	8	33
<b>Total</b>	<b>10</b>	<b>44</b>

Note: Private sector companies with at least five employees, not including agriculture and non-profit organisations.

Source: IAB Betriebspanel 2010.

According to an analysis of works council elections in 2010 commissioned by the Hans-Böckler-Stiftung around 77 per cent of all works council members at that time were also members of a DGB trade union. Most of the other works council members did not belong to a trade union.

Works council members enjoy far-reaching employment protection, which means that works councils have now become a de facto institutional basis for a trade union presence in companies. As a rule, however, trade unions are strongly represented only where the works councils are largely trade union dominated.

#### 4.2 Enterprise Codetermination

Besides workplace codetermination in the form of works and staff councils, there is also so-called »enterprise codetermination«. Historically, this is based on the demand for enterprise democratisation, a key item on the trade union agenda in the wake of the Nazi period. The codetermination in the coal and steel industries that came into force in 1951 was one of the most notable outcomes of this demand. In 1957 and 1976, further important codetermination laws were enacted, which dealt, among other things, with the question of the preservation of the coal and steel codetermination system in the face of the crisis of the two industries. As a consequence of this historical development concerning coal and steel codetermination, whose importance has declined sharply due to the foreseeable end of mining in Germany and steel industry contraction, all corporations with more than 2,000 employees are subject to so-called parity-based codetermination: in other words, both shareholders and employees have the same number of representatives in the enterprise supervisory board. On the employees' side both enterprise and external trade union representatives can be elected, in a certain ratio. In case of conflict, the shareholders' side, which as a rule appoints the chair, has a casting vote. In 2008, there were still 694 companies with parity-based codetermination. On top of this there are 30 companies in mining and steel in which coal and steel industry codetermination still exists, with somewhat extended codetermination rights. Finally, there is so-called »one-third participation« in around 1,100 to 1,200 corporations with more than 500 employees. This means that one-third of the seats are reserved for employees' and trade union representatives.

#### 4.3 A Restrictive Right to Strike

Legislation on industrial action in Germany is comparatively restrictive. It does not have a statutory basis, but is rather staked out in the case law of the Federal Labour Court (*Bundesarbeitsgericht – BAG*) and derived from the freedom of association established in the Basic Law. The limitations set out in this case law apply not only to strikes but also to lockouts which are legal within these limits and can be employed as a weapon by both individual companies and employers' organisations.

There is no individual right to strike. The law permits only walkouts called for by a trade union. Works councils expressly may not call strikes. Furthermore, strike action is permitted only in pursuit of concluding a collective agreement. In case of dispute, the courts decide what kinds of thing can be the object of collective bargaining. Although according to recent case law strike action is permissible in pursuit of a collective agreement to regulate the consequences of collective redundancies and workplace closures, it remains open how far not only the effects but also the measures themselves can be the object of a strike. Solidarity and sympathy strikes are permissible under certain circumstances. There is an obligation to »keep the industrial peace« for the duration of a collective agreement: in essence, during this period strikes are not permitted concerning anything regulated in the collective agreement. Civil servants (*Beamte*) have no right to strike, according to current legal interpretation. In Germany, this strike ban affects most teachers, the police and large parts of the public administration. The DGB trade unions are against this strike ban, while the Civil Servants' Association, the DBB, expressly abjures a right to strike for civil servants.

In Germany, striking or locked-out trade union members usually receive substantial strike pay from their unions. This is a key trade union service associated with membership. The services union ver.di, for example, pays 2.5 times the monthly contribution as strike pay for each day a worker remains on strike (based on working time of eight hours). Strike pay is paid only in the case of legal strikes organised by trade unions.

General strikes or political strikes, of the kind seen recently in many other countries within the framework of protests against the crisis policies of European governments (Spain, Greece, Portugal and Italy) are not permissible in law, according to the dominant legal interpreta-

tion. In principle, this includes all strikes directed against government measures or existing or planned legislation. Trade unions that call strikes that are not legally warranted are liable to pay compensation. There has been much controversy in DGB ranks for some years concerning whether they should campaign for a right to take political strike action.

A key characteristic of the German trade union movement is its pronounced legalism. The DGB trade unions consider themselves guarantors of social peace. Strike action is generally taken only within the strict confines of the law. On top of this come experiences with the German courts which sometimes imposed punitive damages on trade unions for illegal strike action in the 1950s. For the most part, the trade unions reject any form of legal violation. Even street blockades are extremely rare. As a rule, trade union demonstrations virtually never, and strikes only in isolated instances, lead to clashes with the police.

Since the establishment of the Federal Republic, strikes have occurred most frequently in the metal and electrical industry, not in the civil service. In recent years, however, strikes have been increasing – sometimes fairly lengthy ones – in private and public services, including the health service and the railways.

Since the 1970s, the commonest form of trade union strike has been the so-called warning strike, designed to demonstrate to the employers that the workers' demands are serious. In the civil service and the metal industry the trade unions can mobilise hundreds of thousands of workers for this purpose. In principle, strike action is the last resort, only to be taken if negotiations break down definitively.

At the workplace level many conflicts that in other countries result in strike action are absorbed by the works council. Even so, unofficial walkouts occur occasionally, mainly in the form of collective events at which the employees are informed about developments. So-called »wildcat strikes«, which take place against the will of the trade union or individual trade union structures, were frequent into the 1970s and could be dramatic. In the past two decades, however, strike action taken against the express wishes of the trade union has been rare. An important reason for this is that employees less often see an opportunity, besides trade union wage agreements, to obtain further wage rises through workplace strikes than was previously the case.

## 5. Social Partnership and Countervailing Power

After the Second World War, against the background of the Cold War, the social partnership model of industrial relations developed in West Germany. According to this model, although companies and trade unions might have different opinions on individual issues – for example, wage levels or working time – the two labour market partners essentially shared a common interest in the competitiveness of the business. The social partnership model found broad acceptance among the trade unions and broad segments of the workforce due to the economic boom of the post-war period, in which profits rose and people became more affluent. A discernible expansion of the welfare state rounded out this class compromise.

With the introduction of works councils and enterprise codetermination an institutional framework was created favouring negotiations between the social partners. Both workplace codetermination and enterprise codetermination promoted, in various ways, an industrial relations culture based on negotiations and cooperation. Thus many workplace conflicts were institutionalised, subject to negotiations between the works council and the management or channelled through the courts. Furthermore, within the framework of the restrictive right to strike, as outlined above, labour conflicts were difficult outside this framework.

Partly in competition with, partly complementing social partnership the DGB trade unions have also harboured notions of »trade unions as a countervailing power«. These more strongly emphasise the in principle divergent interests of the capital side and the employees. Whether trade unions tend towards a social partnership-oriented or a more conflict-oriented direction depends on the prevailing circumstances. From time to time there have also been large-scale labour conflicts in Germany in which the conflict orientation was to the fore, for example, in the conflict concerning the continued payment of wages during sickness in 1956/57, the metalworkers' wage strike in 1963, the wildcat strikes in September 1969, some industrial action in the 1970s or the conflict over the 35-hour week in 1984. All in all, both have exerted some influence in both enterprises and collective bargaining, neither ever being entirely dominant and some sort of agreement has always been reached within the trade unions.

## 5.1 Changes since the mid-1990s

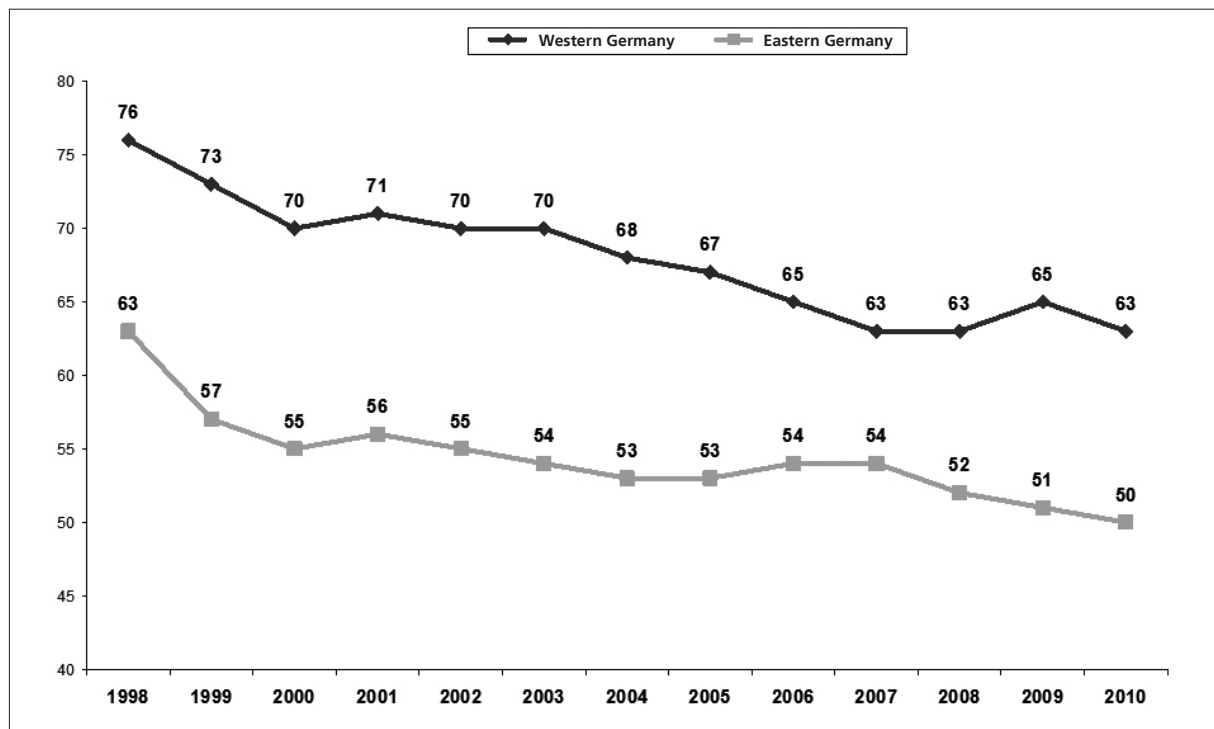
The dominant understanding of industrial relations in the period after 1949 became increasingly fragile as a result of the second global economic crisis at the beginning of the 1980s. The abovementioned trends of erosion of collective agreements, mass redundancies and the emergence of new sectors began to pose new challenges for the trade unions and their prevailing ideas. After 1990 the employers called the social compromise into question as the international situation and the conditions of competitiveness changed.

After a brief boom due to unification the now expanded Federal Republic of Germany hit another economic crisis in 1992/93. The economic downturn was overlapped by economic internationalisation and a new competitiveness with regard to production locations which accelerated with the end of the Cold War. One expression of the new pressures due to competitiveness, but also of a new self-confidence on the part of capital, was the »collective bargaining turnaround« pushed by employers' organisations in the second half of the 1990s. Its aim was to compel radical revision of existing collective bargaining regulations based on changes in competitive

conditions. In focus here were demands for a prolongation of the working week, flexibilisation of every variety and cuts in supplementary payments and income. This policy was accompanied at the workplace level by incessant cost reduction programmes, outsourcing, closures and relocations or at least the threat of these things. Less and less account was taken of trade unions and works councils. A similar process took place in the civil service. The liberalisation and privatisation promoted by all German governments in the 1990s and 2000s changed the public sector fundamentally. On top of this came a tax policy which was detrimental to the public budget, as a consequence of which increasingly jobs were lost, working time was prolonged and personnel costs were cut. These changes fostered a confrontational climate in the civil service which is still in place today. The once uniform collective bargaining landscape in the civil service is now largely fragmented and increasingly fraught with potential conflict.

All in all, since the mid-1990s there has been a decline in the coverage of collective agreements (see Figure 4). This development has been accompanied by a sharp increase in opening clauses in such agreements, permitting workplace-level deviations from centralised agreements.

Figure 4: Development of collective bargaining coverage of workers, western and eastern Germany, 1998–2010 (%)



Source: IAB.



Sometimes this takes the form of a company agreement, sometimes of an agreement between the works council and the company. However, as a rule these agreements also have to be approved by the relevant parties. The main reason for such deviations was economic emergencies. Since the end of the 1990s, however, enterprises have increasingly demanded deviations from collective agreements in order to gain competitive advantages through cost cutting. In many cases works councils and workforces were pressurised by threats of production relocation or closures until management obtained the concessions it was looking for with regard to labour costs.

Concessions were demanded with regard to remuneration, especially supplementary payments, such as Christmas or holiday payments, as well as working time. In the wake of these developments the working week was strongly flexibilised so that actual working hours were closely tied to current production fluctuations. Time-limited workplace guarantees were given in return for such and other concessions, which ruled out compulsory redundancies for a certain period. While many deviations were negotiated without major conflicts, in some instances there were fierce clashes, for example, in 2004 at Daimler Benz when employees sought to defend themselves against the company's far-reaching demands. For a number of years IG Metall has attached more and more importance to involving members in conflicts about deviations from collective agreements and deliberately using such disputes for organisational purposes.

At the workplace level conflict-oriented options have become increasingly important in recent times, for example, in the face of threats of company closure, symbolised, for example, by the unofficial strike at Opel Bochum in October 2004 or the six-week strike to keep open the AEG plant in Nuremberg at the beginning of 2006. A conflict-orientation also plays an important role in various organisational strategies aimed at bringing about a turnaround in membership development. For example, workplace disputes provide opportunities to establish works councils, while collective bargaining and industrial action can serve as occasions to step up organisational activities. National-level trade unions in Germany often pursue a combination of cooperative and conflict-oriented strategies. Approaches based on social partnership can be superseded by notions of countervailing power, and vice versa. Also playing a role here

are various trade union traditions, the attitude of managements to trade unions and the balance of power between trade unions and enterprises.

## 5.2 Crisis Management 2008–2010

The global economic crisis which started to develop at the end of 2008 triggered a new dynamic in the interaction of state, enterprises and trade unions. For example, when companies get into financial difficulties the trade unions support their demands for state bridging loans; however, at workplace level and in collective bargaining the unions face demands for wage restraint and concessions. In relation to the crisis IG BCE and IG Metall, with varying emphases, have advocated state action to help the branches of industry which they organise. Services trade union ver.di called for the expansion of public services with the help of extensive economic stimulus packages. Such varying emphases also reflected different experiences of the crisis on the part of individual trade unions. While the private and public services sectors were only partially affected by the crisis in 2009 the coincidence of financial crisis and economic downturn in the automobile industry brought about a massive decline in production that impacted large parts of the metal and electrical industry, but also the chemical industry.

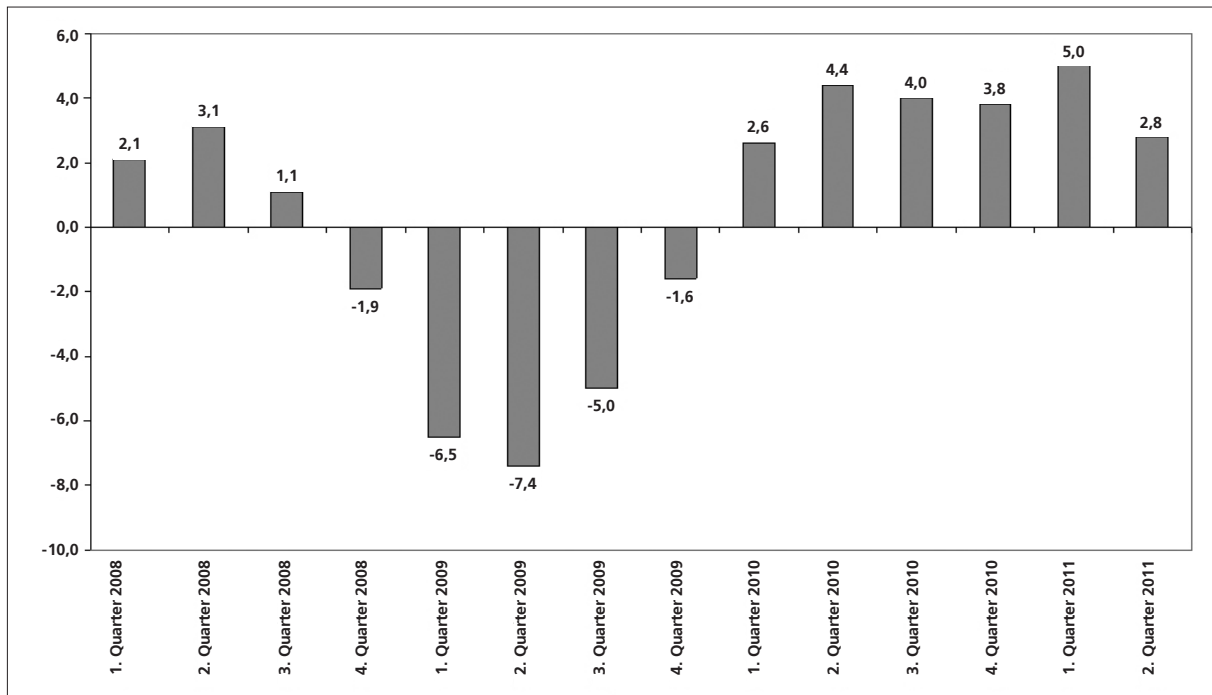
Germany's national accounts have been as severely affected by the global financial and economic crisis since the fourth quarter of 2008 as many other European countries (see Figure 5). Since 2010, a slight recovery can be detected, including renewed growth in key areas of export industry, which retain particular significance for trade unions in Germany. Given the debt crisis in some European countries and the related risk of renewed recession throughout Europe, however, it must remain open whether this development will be maintained.

The basic political situation in autumn 2008 was congenial to the involvement of the trade unions in government and industrial policy crisis management. The crisis affected the pillars of Germany's export economy and thus the metal and electrical industry, a branch in which IG Metall remains comparatively well embedded. At the end of 2008 the government was embroiled in the run up to the parliamentary elections in September 2009 and could not remain indifferent to a massive increase in unemployment. The business sector was hoping for a





Figure 5: Germany's GDP, 2007–2011 (price adjusted, chain-linked, change over the previous year)



Source: Statistisches Bundesamt, Wiesbaden, Destatis, Deutsche Wirtschaft, 2. Quarter 2011.

rapid end to the economic downswing and, influenced by the skills shortages it had complained about before the crisis, was extremely concerned to hang on to its permanent staff at acceptable cost. In particular in 2009 there was something of a »renaissance of social partnership« in important areas of the German economy.

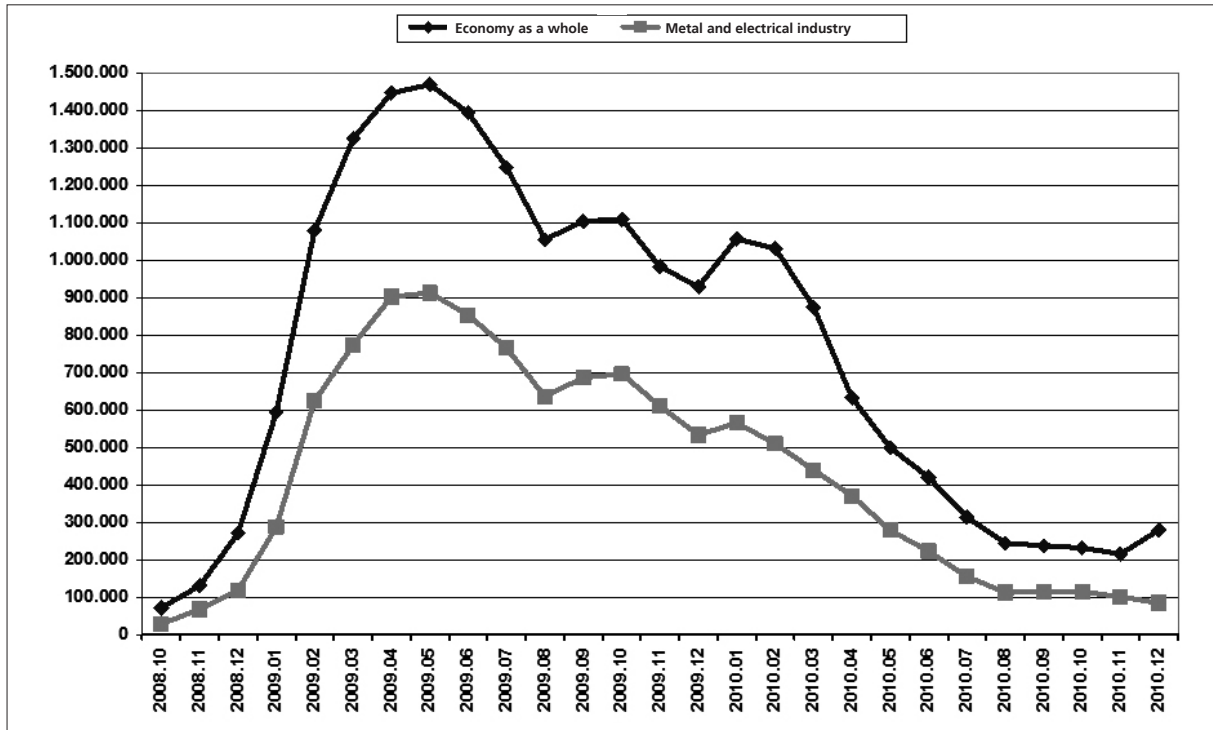
Measured by people's fears at the beginning of the crisis, both broad swathes of employees and also the trade unions, which have been affected particularly strongly, have come through the crisis relatively unscathed. An important instrument for safeguarding employment was the prolongation of short-time working permitted by the government (see Figure 6). Employees were able to receive short-time allowances for up to 24 months in the amount of unemployment benefit and thus to maintain their employment and related entitlements. This enabled companies to massively reduce the regular working time of hundreds of thousands of workers, cushioned by unemployment insurance benefits. Furthermore, the government eased the cost of short-time working for companies by waiving a certain portion of their social security contributions. In May 2009, there were almost 1.5 million employees on short-time working, 902,000 of them (62 per cent) in the metal and electrical industry alone.

However, enterprises were able to keep going during the crisis due to various options related to more flexible working time. These had been agreed before the crisis, both in collective bargaining and in individual workplaces. They have proved to be key instruments, making it possible to cut working time in a cost-neutral manner. The time credits accumulated in the boom period were now reduced and all available options exhausted to put the onus on working time accounts. The extensive working time corridors whose introduction before the crisis was regarded by the trade unions, not without justification, as a way of introducing working time increases that would be cost-efficient for employers and prevent employment growth now proved to be a simple way of closing employment gaps. In many companies, moreover, existing job retention agreements were renegotiated on new terms. Sometimes employees had to make further financial concessions to get the management to agree to continue to rule out layoffs, even in the crisis.

Finally, the so-called »scrappage premium« in the automobile industry should be mentioned. This was the government's response to the demands of IG Metall and the industry to subsidise the purchase of new cars when older cars were sent to be scrapped. The ecological

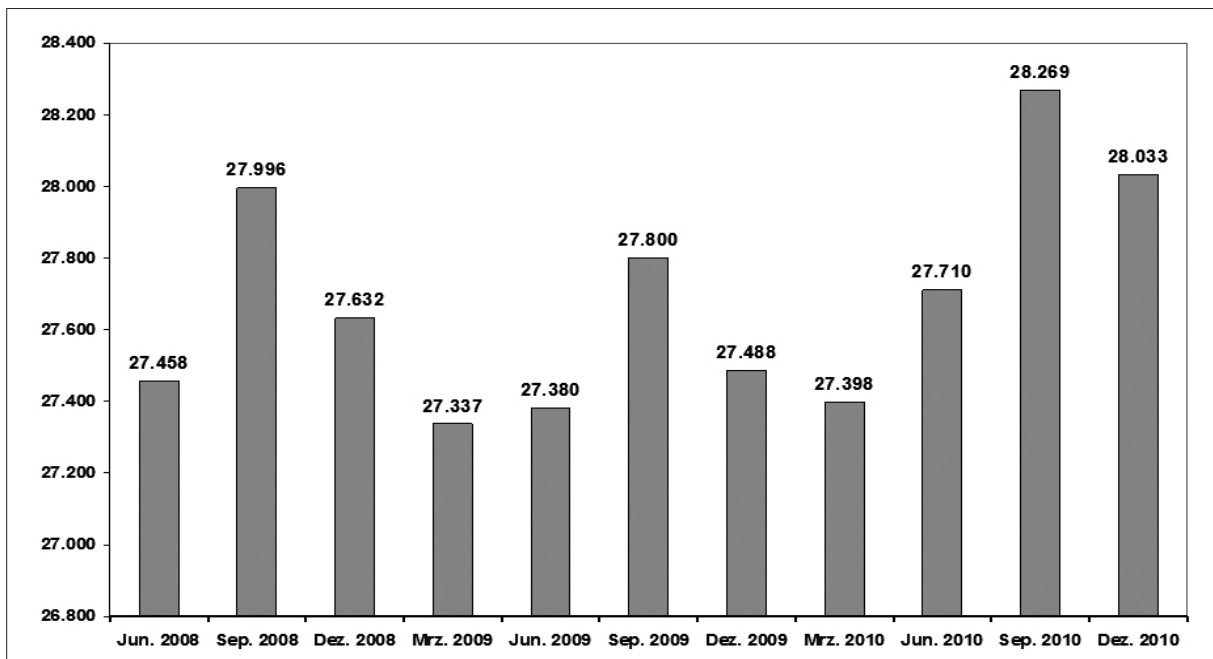


Figure 6: Monthly development of short-time working, whole economy and the metal and electrical industry, October 2008–December 2010



Source: Bundesagentur für Arbeit.

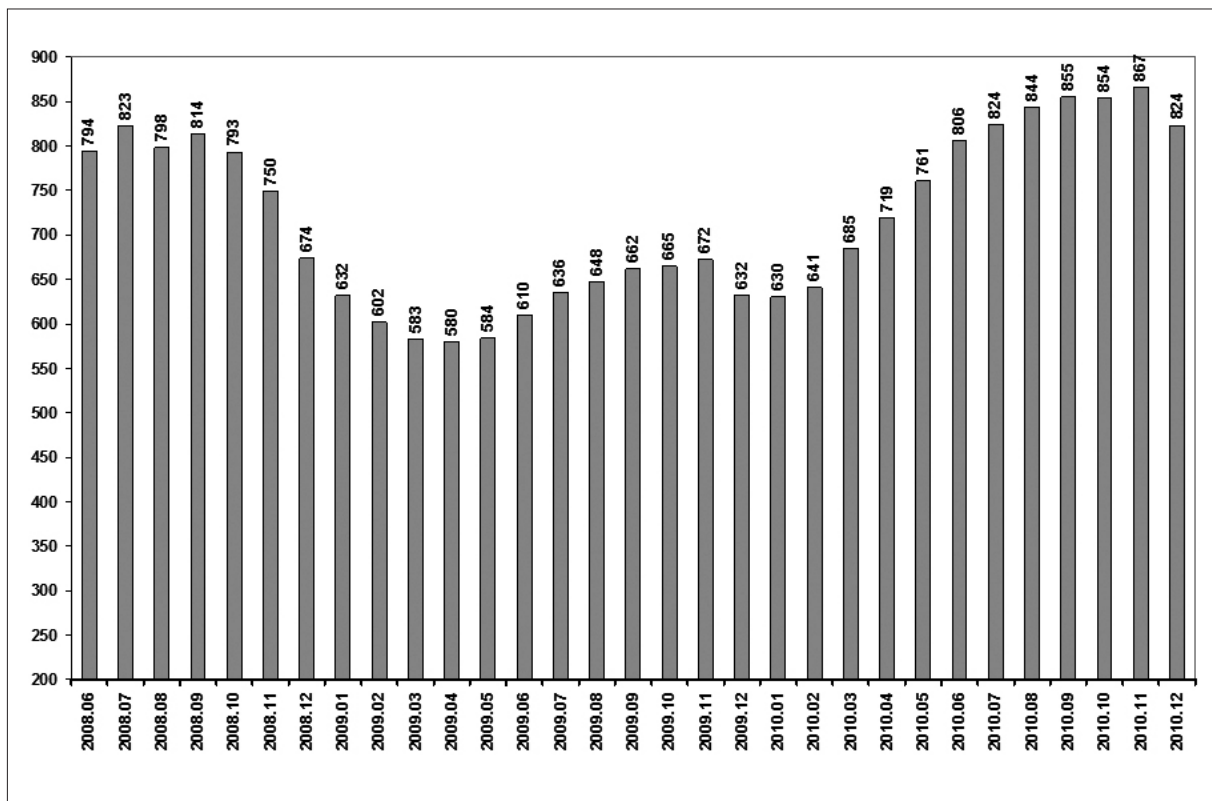
Figure 7: Development of employment subject to social security contributions, June 2008–December 2010 ('000)



Source: Bundesagentur für Arbeit, authors' calculations.



Figure 8: Monthly development of temporary work, June 2008–December 2010 ('000)



Source: Bundesagentur für Arbeit.

effect of this large-scale strategy is extremely controversial but it has helped to stabilise employment among regular and protected employees in core trade union domains. Furthermore, agreements were concluded in the metal industry pay round in 2010 which primarily included provisions to safeguard employment in exchange for modest pay rises.

On the other hand, the rules on short-time working, but also »restraint« in collective bargaining mean that workers have had to accept continued wage stagnation or even a fall in total wage volume, as in the years before 2008. The WSI estimates for 2009 and 2010 a collectively agreed annual wage rise of around 2 per cent, but with major differences continuing between different branches. The gap between the wages of different groups which was already developing before the crisis has widened even further.

Whatever relief may have been experienced by part of the core workforce, the limits and dilemmas of crisis management were also manifest. Fixed-term employees

did not receive a new contract and many temporary workers soon lost their jobs (see Figure 8). With little legal protection, they represented a buffer for management, but also for many works councils and permanent employees, making it possible to externalise the crisis to some extent and to avoid layoffs among the core workforce. It was also for this reason that personnel departments at first relied on precarious employment even in the employment upswing. IG Metall is making every effort to organise temporary workers even after the crisis and to achieve financial equality for temporary workers and core employees by means of enterprise and collective agreements. A first breakthrough in collective bargaining came in September 2010 in the steel industry where for the first time equal pay for temporary workers was laid down in a central collective agreement.

Finally, it remains open how far-reaching the budget consolidation measures will be in public service sectors at federal, state and municipal level, as consolidation further intensifies in the wake of the »euro-crisis«.



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