Bargaining Policy in the German System of Industrial Relations

WSI Collective Agreement Archive

The German system of collective bargaining is under enormous pressure to adjust to changing circumstances. During the last decade, German reunification, the economic crisis, structural changes in society, and the fierce political offensive launched by opponents of the "collective bargaining cartel" have led to noticeable changes in collective agreements in particular and bargaining policy in general. Despite these factors, the basic principles of the system have remained stable and workable to date. The sector-wide association-level collective agreement is still the primary instrument for regulating working and income conditions. The following article will outline the basic principles of the collective bargaining system and the political and legal framework for the activities of the collective bargaining parties.

1 Basic principles

1.1 COLLECTIVE AGREEMENT AS CENTRAL REGULATING INSTRUMENT

Bargaining policy in Germany is an integral part of a differentiated social and political regulation framework. In terms of their application and the fields they cover, the two central social policy regulation forms or instruments – legislation and collective agreements – are not clearly demarcated from one another. In many cases, collectively agreed provisions have been the historical forerunners of generalised legal regulations. By the same token, bargaining policy components have been added to many legal regulations. Today, we can divide the overall activities in this area into three broad fields:

– Social welfare issues (illness, pensions, disability, unemployment) are mainly regulated by law. This is an area in which collective agreements have resulted in improvement of the statutory benefits in only a few cases.
– Legislation in the field of employment relationships and working conditions stipulates a range of minimum standards (termination periods, working hours, and work and health safety, for example). In nearly all areas, however, there are collectively agreed provisions that supplement and improve (considerably, in some cases) the statutory minimum standards.
– Working and income conditions are almost exclusively regulated by collective agreements. There are exceptions, however (minimum wages in line with the Posted Workers Act, for example).

Trade unions and employers' federations play a key role not only in the negotiation of working and income conditions in the stricter sense but also in the overall shaping and development of the social welfare state. Both social partners represent the interests of their members and contribute ideas in many ways and on many action and decision-making levels of the political process. They exert an influence on the drafting of new laws and regulations, the introduction of this legislation, and ongoing implementation over time. In this connection, the process of "social self-administration" plays a central role in the major branches of the social insurance system. Trade unions and employers' federations also have firmly defined functions and rights in the area of vocational training. One of the main consequences of this is the existence of a close-knit network of contacts and discussion platforms as well as hands-on cooperation of both a formal and informal nature between the two social partners or their representatives in numerous political fields – and this cooperation has at least indirect effects on bargaining policy.

1.2 FREEDOM OF ASSOCIATION AND BARGAINING AUTONOMY

The principle of bargaining autonomy enjoys a key status in the German system of industrial relations and can be derived from the principle of freedom of association outlined in Article 9 Para. 3 of the Basic Law, which states: "The right to form associations to safeguard and improve working and economic conditions is guaranteed to everyone and to all trades and professions." Freedom of association is designed to ensure that dependent employees enjoy equal access to participation in the shaping of working and economic conditions. The basic right of freedom of association not only applies to the individual but also protects the association itself (as well as its activities). Absolute priority is assigned to the autonomous regulation of working and economic conditions by the bargaining parties. The status of bargaining autonomy reflects the particularly prominent position of the bargaining parties in the German Basic Law. The importance of the instrument of the collective agreement itself is also emphasised. The German Collective Agreements Act lays down the general conditions

The WSI Collective Agreement Archive *at the Hans Böckler Foundation is the central documentation point for trade union bargaining policy in Germany. Its job is to document and evaluate ongoing collective bargaining activities and to participate in the political and scholarly debate on collective bargaining policy by publishing its own surveys and studies. The results of this work are made available to interested parties on the Internet at www.tarifvertrag.de.* **Dr. Reinhard Bispinck** *is the Head of the WSI Collective Agreement Archive.* **Andrea Hölz, Alice Martens, Siglinde Marth, Monika Müller, Monika Schwacke-Pilger** *and* **Monika Wiebel** *are clerical employees.*

and requirements for the activities of the bargaining parties and the collective agreements. There are no legal regulations governing strikes and lockouts. The decisive restrictions and limitations are based on the wide-ranging legal rulings of past decades. The rulings of judges are the key source of legislation in the field of bargaining policy. The employers' federations and trade unions exert a major influence on the system of bargaining policy in the Federal Republic of Germany. Their organisational make-up and their day-to-day duties are characterised by specific structures that distinguish them – in some cases, markedly – from the corresponding associations in the other countries of Europe.

2 Agents and framework for action

2.1 EMPLOYERS' FEDERATIONS

The private-sector companies in Germany organise the representation of their interests through three different systems:

– The primary job of the entrepreneurs' associations is to represent the economic policy interests of their members vis-à-vis the world of politics and the public at large. These associations are pooled in the Federation of German Industry (BDI).
– As public-law organisations, the chambers of industry and commerce and craft chambers represent economic policy interests on local and regional level.
– The chief job of the employers' federations is to represent the social policy interests of the companies, and these federations are therefore also responsible for collective bargaining policy.

The Confederation of German Employers' Associations (BDA) is made up of 46 national special-interest associations, each of which in turn represents up to 20 member associations. In the BDA, the process of political opinion formation takes place not only in the special-interest associations but also via the *land* associations, which in turn represent the interests of the regional special-interest associations. In the area of collective bargaining, the BDA performs a general coordinating function but – like the DGB umbrella organisation of the trade unions – does not sign any collective agreements. This is the job of the special-interest associations. Two of the major political players in the BDA are without doubt the national industry associations for the metalworking industry ("Gesamtmetall", the umbrella organisation of the 13 regional employers' federations in the metalworking industry) and the chemical sector (Federal Chemical Employers' Federation, also with member federations). Membership in the employers' federations is voluntary, and it is difficult to determine the exact degree of organisation. Several years ago, it was estimated at around 80 % in west Germany, and the figure is considerably lower in east Germany. In recent years, many associations have introduced the option of membership without collective agreement coverage, partly in the form of so-called "OT associations", in order to encourage associations who do not (or no longer) want to be bound by collective agreements to remain members.

2.2 TRADE UNIONS

By far the biggest German umbrella organisation for trade unions is the German Trade Union Federation (DGB) comprising 8 individual trade unions. The DGB trade unions are unified trade unions structured according to the principle of industrial organisation. This means that:

Unified trade unions represent both blue-collar and white-collar employees and comprise more than one ideological/political tendency. The industrial organisation principle (as opposed to the vocation-based organisation principle) means that only one trade union is responsible for representing the employees in a particular company and in a particular economic sector.

The DGB unions have around 7.7 million members, equivalent to a unionisation rate of around 30 % of dependent employees. Unionisation rates differ widely by sector, region and size of company; the percentage of members is highest in the traditional (blue-collar) industries like steel, mining or metalworking, and is lowest in the (white-collar) service sectors. The biggest individual trade union is the services union (Vereinte Dienstleistungsgewerkschaft ver.di) with around 2.7 million members, followed by Industriegewerkschaft Metall (IGM) with just under 2.6 million members, the mining, chemicals and energy trade union Industriegewerkschaft Bergbau, Chemie, Energie (IG BCE) with 800,000 members, and Industriegewerkschaft Bauen-Agrar-Umwelt (IG BAU – construction, agricultural and environmental union) with 700,000 members. In the field of public service, the Deutsche Beamtenbund (DBB) union is a major force with around 1 million members.

The responsibility for collective bargaining lies with the individual trade unions, and the DGB plays a coordinating role in this area. In practice, the role of the DGB in the area of bargaining policy is mainly limited to guaranteeing the regular exchange of information between the trade unions and, where necessary, the provision of support for individual bargaining rounds through suitable PR activities, information campaigns etc.

2.3 THE STATE

The state – be it the government, individual ministries or other institutions and bodies – has no official function in the area of general bargaining policy. Nevertheless, all governments – regardless of political colour – exercise a direct or indirect influence on the collective bargaining parties. In particular, this influence takes the form of government forecasts and statements on the economic development of the country, often in combination with general recommendations for the bargaining parties. Since the less-than-productive experience with the "Concerted Action" programme in the seventies, when government, collective bargaining parties and the Bundesbank met at regular intervals to discuss and coordinate general guidelines for economic and income policy, the trade unions have reacted extremely sensitively to open attempts by the state to exert an influence on collectively agreed income policy. The "Alliance for Jobs" created by the Social Democrat-led government in 1998 and comprising the employers' and industry associations, trade unions and the government also failed – not least as a result of conflicts over whether and in what form the alliance was to reach agreements on wage policy.

As a public sector employer, however, the state plays an officially recognised and active role in bargaining policy in the guise of the authorities at national, *land* and local level. One reason this role should not be underestimated is that income levels are

determined by the state for around 4 million employees (including civil servants) in the public service sector (west Germany).

2.4 COMPANIES

The German system of labour relations is characterised by a dual structure: While the trade unions act as interest-representing bodies at supra-company, sectoral level, this function is fulfilled at company level by the works councils (or the staff councils in the public sector).These bodies are not trade union bodies but represent the entire workforce. Works councils currently exist in Germany in around 11 % of companies covering around 48 % of employees; in companies with 21 and more employees, works councils exist in around 37 % of cases and cover around 66 % of employees. Around 75 % of the works council members are members of the DGB trade unions. This high rate of unionisation indicates that the overwhelming majority of works councils see their work within the context of the overall objectives formulated by the trade unions. At the same time, however, the fact that they are elected by the workforce ensures broadly based legitimisation that creates wide-ranging independence (and not only in formal terms). In line with the stipulations of the Works Constitution Act, the works councils possess not only information and participation rights but also specific codetermination rights in "social matters" (in particular in the area of work regulations, working hours, incomes and performance criteria). Works councils are obliged by the Works Constitution Act to enter into "cooperation in good faith" with the employers; labour disputes between employers and works councils are inadmissible.

Particularly in bigger companies, the trade unions have built up a network of trade union workplace representatives elected by the trade union members in the company. Their job is to inform the workforce about the ideas and objectives of the trade unions, to promote trade union membership in the company, and to further trade union objectives at company level – and this can also entail instruments that are part and parcel of labour disputes (such as strikes). There are often personnel overlaps between works councils and the bodies of union workplace representatives.

2.5 CODETERMINATION

The representation of interests by the works councils at company level is supplemented by the practice of codetermination. In the companies in the coal and steel industry, there has been equal representation of employees on the supervisory boards in line with the relevant legislation (the "Montan" codetermination laws) since 1951; since the adoption of the Codetermination Act in 1976, employees have also enjoyed almost equal representation on the supervisory boards of big corporations (with at least 2,000 employees) in the other sectors of the economy. In companies with fewer than 2,000 employees (and, in the case of GmbH limited liability companies, only from a minimum 500 employees), employee representatives make up only one third of the members of the supervisory boards in line with the Works Constitution Act.

3 Legal principles and basic structures

3.1 COLLECTIVE AGREEMENTS ACT

The basic formal principles for the collective bargaining system are laid down in the German Collective Agreements Act. This piece of legislation stipulates the following, among other things: the parties to collective agreements are (exclusively) the trade unions, individual employers (in other words, companies) or associations of employers. Theoretically, national organisations like the BDA and DGB can also sign collective agreements if they possess the required authorisation. The members of the parties to the collective agreements are bound by the agreements – until the collective agreement in question expires. This also means that a company cannot withdraw from a collective agreement by withdrawing from an association or federation. The legal norms of the collective agreement that cover content, signing and termination of the employment relationship apply directly and with the force of law to the parties to the collective agreement. The collective agreement also takes precedence over other (e.g. company or individual) provisions. The Works Constitution Act states expressly that "income from work and other working conditions that are governed or usually governed by a collective agreement *cannot* be the subject of a company-level agreement." However, the bargaining parties can limit this precedence for specific areas by agreeing on "opening clauses". After a collective agreement expires, its legal standards continue to apply until they are replaced by another agreement. The German Ministry of Employment keeps a collective agreement register listing the signing, amendment and cancellation of collective agreements as well as declarations of extension.

3.2 EXTENSION OF COLLECTIVE AGREEMENTS

As mentioned above, collective agreements are directly valid only for the members of the organisations that are party to the collective agreements. The binding effect of collective agreements can also be extended to the employers who are not covered by the collective agreement in question. The instrument used to effect this – so-called "extension" – is laid down in Section 5 of the Collective Agreements Act. In agreement with the bargaining committee (comprising three representatives each from the national organisations of the employers and the employees), the Federal Minister for Employment can *extend* a collective agreement (in other words, declare the agreement to be generally binding) if the employers bound by the collective agreement employ at least 50 % of the employees in the area covered by the collective agreement and if extension is seen to be in the public interest. The classic function of the extension instrument is to prevent unfair competition and wage dumping by third parties who are not members of the bargaining parties as well as to create socially appropriate working conditions for "outsiders". It also serves to secure the functionability of joint institutions of the bargaining parties (such as the social fund in the construction industry) and to support implementation of legislation (for a more detailed analysis, see the article by *Bispinck/Kirsch* in this journal).

3.3 REGIONAL AND COMPANY-LEVEL COLLECTIVE AGREEMENTS

One of the typical features of the bargaining system in Germany is the *regional or association-level collective agreement* between

Table 1: Coverage of companies by collective agreements in west and east Germany in 2001 – Percentage of affected companies –

	Sectoral collective agreement		Company-level collective agreement		No collective agreement (of which, orientation towards a collective agreement)	
Sector	**West**	**East**	**West**	**East**	**West**	**East**
Agriculture etc.	43.3	11.4	2.1	3.7	54.6 (28.1)	84,9 (48.6)
Mining/Energy	60.8	64.8	8.4	21.1	30.8 (77.8)	14.1 (48.2)
Raw material processing	46.8	23.4	4.6	8.4	48.7 (68.6)	68.1 (41.6)
Capital goods	43.4	16.4	4.8	4.4	51.8 (52.6)	79.2 (54.7)
Consumer goods	50.8	17.4	3.5	10.3	45.6 (49.3)	72.3 (47.7)
Construction	65.3	31.4	0.9	7.1	33.8 (49.2)	61.5 (61.0)
Trade/Repair	50.2	20.5	2.6	4.3	47.2 (44.6)	75.2 (42.4)
Transport/Communications	42.2	11.6	7.1	11.2	50.7 (29.8)	77.2 (53.7)
Banking/Insurance	67.7	30.8	1.0	0.0	31.3 (51.7)	69.2 (20.1)
Services for companies	13.8	11.6	1.5	4.2	84.6 (31.8)	84.2 (33.0)
Other services	44.8	21.1	2.5	4.2	52.7 (42.9)	74.7 (51.0)
Non-profit institutions	39.0	46.3	6.5	6.6	54.5 (37.0)	47.1 (64.2)
Authorities/Social insurance	77.0	83.2	9.9	11.8	13.1 (33.8)	5.0 (65.1)
Total	44.6	22.1	2.9	5.5	52.5 (41.0)	72.4 (46.9)

Source: IAB company panel, 9th wave West/6th wave East, 2001.

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Table 2: Coverage of employees by collective agreements in west and east Germany in 2001 – Percentage of affected employees –

	Sectoral collective agreement		Company-level company agreement		No collective agreement (of which, orientation towards a collective agreement)	
Sector	**West**	**East**	**West**	**East**	**West**	**East**
Agriculture etc.	56.4	19.9	2.6	8.2	41.0 (24.7)	71.9 (50.7)
Mining/Energy	84.1	76.5	12.7	17.8	3.2 (65.6)	5.8 (64.3)
Raw material processing	69.6	41.8	9.0	14.3	21.4 (67.2)	43.9 (54.8)
Capital goods	63.9	29.1	9.3	14.0	26.8 (67.4)	56.9 (57.4)
Consumer goods	68.7	31.4	7.7	14.1	23.5 (59.0)	54.5 (52.8)
Construction	77.6	43.0	3.0	8.5	19.4 (61.2)	48.6 (68.3)
Trade/Repair	66.0	36.3	4.7	7.8	29.3 (57.9)	55.9 (47.9)
Transport/Communications	57.0	24.1	17.5	39.0	25.5 (41.1)	36.8 (63.6)
Banking/Insurance	86.3	86.7	5.4	0.0	8.3 (61.2)	13.3 (39.1)
Services for companies	32.2	36.9	6.4	5.9	61.5 (36.1)	57.2 (43.0)
Other services	60.5	44.8	6.5	10.7	33.0 (56.5)	44.5 (59.7)
Non-profit institutions	45.2	34.0	11.4	18.3	43.4 (60.8)	47.7 (64.6)
Authorities/Social insurance	83.6	89.3	11.4	9.4	5.0 (47.8)	1.4 (56.9)
Total	63.1	44.4	7.6	11.8	29.3 (521.2)	43.8 (55.3)

Source: IAB company panel, 9th wave West/6th wave East, 2001.

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a trade union and an employers' federation. This agreement is valid for a sector or parts of a sector and applies either to an individual region or throughout Germany. This kind of collective agreement is legally binding on the members of the employers' federation as well as on the members of the trade union entering into the agreement. An employer who is bound by the collective agreement is entitled to employ non-union members at conditions that deviate from those in the collective agreement – but little use has been made of this option to date. In times of crisis, however, the possibility cannot be ruled out that employees will be willing to work for wages that are below the collectively agreed levels.

There is a high level of sectoral differentiation with around 300 different "agreement sub-sectors", but the size of these sub-sectors varies considerably. Whereas the collective agreements for the metalworking industry cover several sectors, for example, including vehicle construction, plant engineering, electrical goods, shipyards, aerospace, foundries etc., there are four different agreement sub-sectors in the comparatively small leather industry alone.

In addition to entering into regional or association-level collective agreements, the trade unions in Germany also sign *company-level in-house collective agreements* with individual companies who are not members of an employers' federation. Although the absolute number of valid company-level collective agreements is relatively high, they are still of comparatively little significance in macroeconomic terms – but it must be said that their importance can vary considerably from sector to sector. In industries dominated by a small number of companies like the mineral oil industry and aviation, for example, in-house collective agreements are the most relevant type of agreement. They also play an important role in the energy industry. Many company-level collective agreements are "recognition collective agreements" – in other words, they adopt the provisions of the corresponding regional collective agreement.

In west Germany, collective agreements cover around 53 % of companies and around 76 % of employees, compared to 33 % of companies and 63 % of employees in east Germany.

3.4 TYPE AND FREQUENCY OF COLLECTIVE AGREEMENTS

The broad range of topics that are suitable subjects for collective agreements have led to the creation of a high number of different kinds of collective agreements that have different names in different trade unions. We can, however, distinguish between the following typical kinds of collective agreement:

– *Collective agreements on pay:* these agreements govern the level of basic collectively agreed remuneration in the form of wage and salary tables. The agreements can also cover apprenticeship remuneration, although this remuneration is often also laid down in separate agreements. The remuneration-based collective agreements generally have a duration of one year.
– *General collective agreements on pay:* these collective agreements stipulate the various wage/salary groups, define the group characteristics, and regulate performance-based payments. The number of wage and salary groups differs widely from sector to sector and union to union. There are often 7 to 10 and more wage groups for blue-collar employees, around 5 to 7 for (commercial and technical) white-collar employees, and 1 to 3 salary groups for master tradespeople. In some areas, there are joint remuneration agreements for blue- and white-collar employees (chemicals, energy, food processing etc.)
– *Framework collective agreements:* these agreements contain provisions of different kinds that govern working conditions (such as probation periods, notice periods, duration and distribution of weekly working time, stipulations on night-time and shift work, holiday, short-time work, and

much, much more). The general and framework collective agreements normally have a duration of several years.

Alongside these collective agreement types – which can also occur in combination in practice – there are numerous further types of collective agreement on special topics like rationalisation, teleworking, monitor workplaces, phased part-time retirement, capital-forming payments, health and work safety, further training, promotion of women's interests and so on. In many areas, these issues are sometimes also regulated in the general or framework collective agreements.

At the end of 2002, the collective agreement register at the Federal Ministry of Employment listed around 57,300 valid collective agreements throughout Germany. Of the approx. 31,500 original collective agreements (the remainder are parallel or amendment collective agreements), around 37 % are association-level and around 63 % company-level collective agreements. The number of valid collective agreements (collective agreement density) in the various economic sectors differs widely. The metalworking industry in west Germany, for example, has more than 150 different regional collective agreements; in contrast, the high number of collective regulations and benefits in the private insurance industry are governed by seven collective agreements that are valid throughout Germany.

3.5 STRUCTURE OF COLLECTIVE AGREEMENTS

Collective agreements generally have a standard structure: they begin with the names of the parties to the agreement – in the case of regional collective agreements, for example, the employers' federation and the trade union. In some cases, more than one federation or trade union jointly sign a collective agreement. This section is followed by a definition of the scope of validity of the agreement. This comprises three components: technical, geographical and personal scope of validity. The technical scope of validity outlines the economic sector or the sub-sectors for which the collective agreement is valid. There is frequently also an indirect technical description that makes reference to the member companies of the employers' federation signing the agreement. The geographic scope of validity covers one or more German *laender* (or parts thereof) or the region "west Germany" or "east Germany". There are meanwhile a number of collective agreements that cover the whole of Germany. The personal scope of validity designates the employee groups covered by the collective agreement; depending on the type of agreement, these groups comprise blue-collar employees, white-collar employees and apprentices who are members of the trade union signing the agreement. It is often the case that specific groups of employees are explicitly excluded from the agreement, such as management executives – and occasionally also those in marginal part-time employment who fall below a certain number of working hours or a specific income threshold.

Some collective agreements start with a preamble which outlines the general objectives and intentions of the agreement. This preamble is then followed by the content-based provisions of the agreement. Where applicable, this section is followed by provisions on the collective agreements or provisions that are replaced by the new agreement. The last section of the collective agreement then generally lists the date the agreement comes into effect, the earliest possible termination date, and the period of notice for termination. In general or framework collective agreements, the provisions are occasionally supplemented by annexes or enclosures governing further technicalities (such as work assessment procedures, examples of wage/salary classifications etc.). These annexes are part and parcel of the collective agreement.

Table 3: Duration of collective agreements on pay (in months)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
West	14.0	13.4	15.1	16.2	16.8	12.7	13.8	21.5	14.1	18.1
East							4.7	23.3	16.4	19.7

Source: WSI Collective Agreement Archive.

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4 Bargaining rounds: from demands through to agreements

4.1 TEMPORAL RHYTHM

Wage and salary collective agreements are generally signed for a period of one year. The termination dates for the agreements are spread throughout the year, and the majority of agreements (70 % to 80 %) are renegotiated within the first four to six months of a year. In recent years, however, the bargaining parties have frequently also signed longer-term pay-related collective agreements for two or more years.

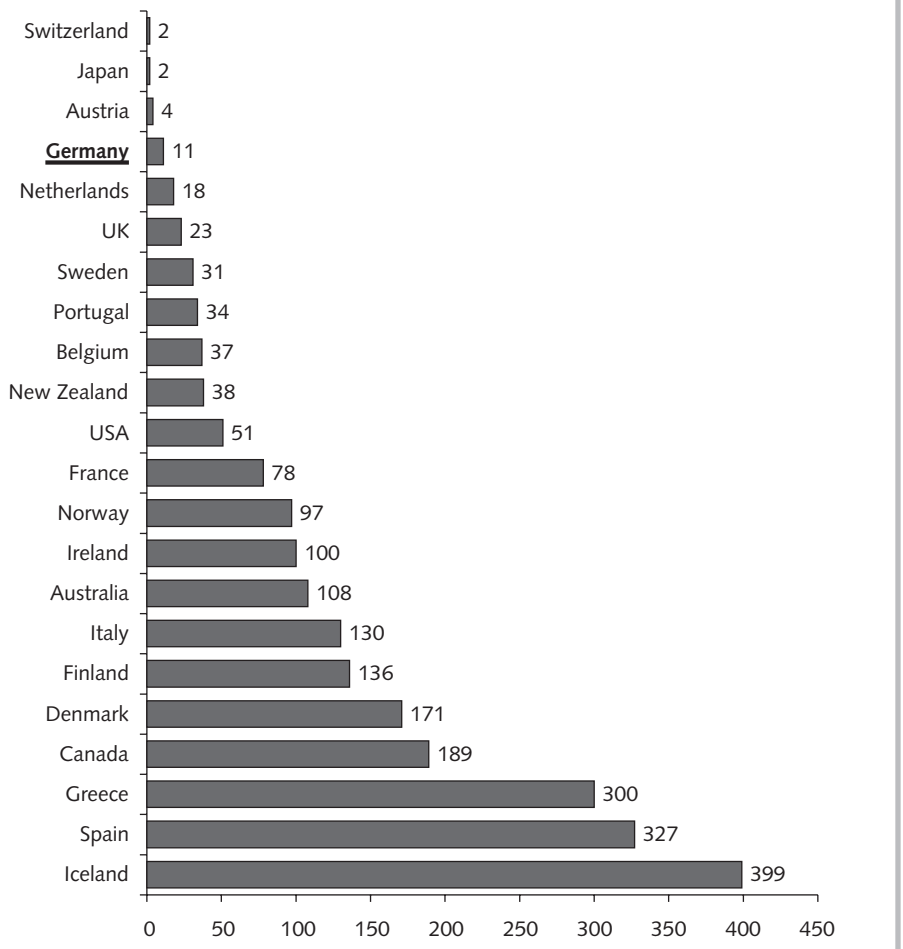
In a highly developed industrial nation like Germany, a country that is also highly dependent on exports, the collective negotiations and agreements in the manufacturing industry, and particularly in the metal industry, are of great (and often of standard-setting) importance. The (informal) overall responsibility for bargaining therefore often lies in the hands of the IG Metall trade union; nevertheless, it is generally the case that the annual agreements vary considerably in terms of content, and this reflects the differing economic circumstances in the various sectors of the economy.

4.2 BARGAINING DEMANDS AND OPINION FORMATION IN THE TRADE UNIONS

Several weeks or months before the collective agreements expire, the debate begins in the trade unions and companies on potential demands. In most trade unions, the special bargaining departments put together more or less comprehensive information material during the initial phase of this process. Occasionally, the executive committees of the trade unions also publish specific recommendations on the level of possible pay demands. In the process of opinion formation, the past agreements, the current and anticipated economic situation of the sector in question as well as of the overall economy, and the development of the cost of living all play an important role. The trade unions traditionally base their pay demands on three elements: compensation for expected inflation, participation in the increasing economic strength of a sector as expressed in the growth of productivity, and an additional "redistribution component" designed to correct the relationship between profits and employee remuneration in favour of

Fig. 1: Scope of labour disputes - 1991/2000

- Average annual no. of lost working days per 1.000 employees due to labour disputes -



Belgium: without 1998; Greece: 1990/1998; France and Japan: 1991/ 1999.

Source: ILO; OECD; The cologne institute of business research.

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dependent employees. This process of debate and discussion culminates in a decision on demands by the relevant bargaining commission made up of representatives from the most important companies in the area covered by collective bargaining.

4.3 NEGOTIATIONS

The pay-related collective agreements can generally be terminated with notice of four weeks; negotiations mostly begin shortly after the agreements expire and normally comprise several negotiating sessions covering a number of weeks. Difficult negotiating rounds can sometimes last several months. The overwhelming majority of negotiations are concluded without any labour disputes. Far more frequent occurrences in this context are short-term work stoppages and "warning strikes" with the aim of exerting pressure on employers during the negotiating process. Where applicable, the new collective agreement comes into force with retroactive effect, ensuring seamless continuity with the expired agreement. In some cases, the bargaining parties agree on lump-sum or one-off payments to cover the period that has elapsed since the preceding agreement, or they agree to one or more "zero months" during which remuneration remains at the previous collectively agreed level. As mentioned above, the duration of the pay-related agreements is generally 12 months, although – in recent years – the trade unions have also shown a willingness to enter into two- or three-year collective agreements.

In many sectors with regionally structured agreement areas, such as the metalworking industry, negotiations take place more or less simultaneously in the various areas, and it is not until well into the negotiations that it becomes clear which region will sign the first agreement. This agreement is often then transferred to the other agreement areas. While the overall volume of the pay-related agreement normally remains the same, it is not uncommon for the different areas to adopt different structures for their pay increases.

4.4 ARBITRATION

Even though, compared to other European countries, the process of collective bargaining in Germany has taken place with a relatively low level of conflict (in terms of the frequency and intensity of strikes) for a number of decades, there have been a number of major labour disputes that represent watersheds in the development of the collective bargaining process. In most rounds of negotiations, however, the parties succeed in reaching agreement without any labour dispute. One instrument that is used fairly frequently is arbitration. Following the highly problematical experience with the instrument of compulsory state arbitration between the two world wars – and particularly towards the end of the Weimar Republic – the trade unions attached major importance to voluntary provisions in this area after the Second World War. As a result, the instrument of compulsory state arbitration no longer exists. In many agreement areas, this process has been replaced by arbitration agreements that stipulate precise procedures for arbitration to resolve negotiating conflicts. In line with these provisions, one of the bargaining parties can call for arbitration if the collective negotiations do not end in agreement and have been declared as failed. Automatic arbitration is only provided for in exceptional cases (in the construction sector, for example). The arbitration commissions are made up of equal numbers of representatives of the negotiating parties and one or two impartial chairpersons. If no agreement is reached or if the proposal of the arbitrator who is chairing the sessions is not accepted, the process is terminated without a result. Most arbitration agreements stipulate compulsory initiation of proceedings (with the exception of the metalworking industry) but no obligation to reach an agreement. In most cases, there is an obligation on the parties to maintain industrial peace until the end of the arbitration process.

4.5 STRIKES

If collective negotiations fail (and if any arbitration procedures have not provided a result), the trade union can call a strike. The right to strike is directly derived from the freedom of association guaranteed by the Basic Law and is an essential precondition for effective bargaining autonomy. The right to strike is not covered specifically in German legislation, but a series of differentiated rulings by the Federal Labour Court over the years have created a certain degree of structure in this area. The most important principles can be summarised as follows:

– The strike must be geared towards an objective that can be regulated by collective bargaining.
– The strike must not take place during the period of obligation to maintain industrial peace (period of duration of the collective agreement or during arbitration proceedings).
– The strike must be "sponsored" by a trade union, or a trade union must retrospectively take responsibility after the effect.
– So-called political strikes that are aimed at prompting the state to take some form of sovereign action are prohibited.
– The principle of appropriateness must be observed. This means, for example, that a labour dispute must be the last resort ("ultima ratio").
– Any necessary maintenance and emergency work must be performed during the strike.

Regular strikes are generally preceded by a ballot requiring approval by at least 75 % of the trade union members. Alongside regular strikes, it is also admissible to stage short, limited "warning strikes" – even during negotiations that are still ongoing and have not yet failed, but not until the period of obligation to maintain industrial peace has expired. It is generally accepted that a strike (temporarily) suspends the rights and obligations arising from the employment relationship. These rights and obligations continue to exist but are without effect. There is, for example, no entitlement to receive remuneration. However, the trade union members receive from their union a strike support payment that is, as a rule, equivalent to two thirds of their gross income. If the bargaining parties reach agreement following a strike, the result of negotiations is submitted to the members for approval in a second ballot. A majority of at least 75 % no-votes is generally required to reject the result of collective negotiations.

4.6 LOCK-OUTS

In line with prevailing legal opinion, and based on the principle of parity, the employers can make use of the instrument of lock-outs. This means they can react to a strike by the trade unions by implementing a lock-out. This option is limited by the rulings of the Federal Labour Court, and the principle of appropriateness also has to be observed in this case as well. If, for example, less than 25 % of the employees in an area covered by an agreement are called on to strike, then a lock-out of 25 % of the employees is admissible. The legal consequences of a lock-out from the point of view of the employees are the same as the consequences of a strike. As trade union members, they receive a strike support payment; however, this does not apply in the event of a "cold lock-out" (suspension of production outside the dispute area as a reaction to strikes in the area in which the dispute is taking place). In this event, the amended Section 116 of the German Promotion of Employment Act rules that employees outside the "dispute area" who are indirectly affected by the strike are not entitled to receive unemployment pay if a demand is made there that is identical in type and scope to the main demand in the labour dispute.

5 Outlook for future development

During the last 15 years, bargaining policy and the system of collective agreements in Germany have been subjected to major pressure for change. German reunification, ever-fiercer international competition, and persisting and still increasing mass unemployment have resulted in far-reaching changes in the political and socioeconomic framework for (and not only for) bargaining policy. The formerly solid societal consensus regarding the regulation of working and income conditions by means of sector-based association-level collective agreements ("regional collective agreements") is crumbling. Within the industry and employers' associations, there are increasing calls for extensive dissolution of sector-level collective agreements and greater autonomy at company level in this area. Radical market-oriented forces demanding the elimination of the "bargaining cartel" are gaining ground. And where the federations are sticking by sector-based collective agreements, we can observe increasing subject-based and regional fragmentation of the collective agreement landscape. Only recently, for example, some public sector employers have called the uniform collective agreements that cover the entire public service sector into question, demanding specific agreements for the individual German *laender*.

Against the backdrop of this change, the bargaining parties have gradually restructured the collective agreements since the end of the 80s – in sometimes highly conflict-ridden disputes. One general trend that runs like a thread through more recent bargaining practices is the differentiation and flexibilisation of collective agreements and collectively agreed standards. The leeway for adapting collectively agreed provisions and standards to company requirements has increased considerably. In some sub-sectors. the "decollectivisation" of bargaining policy is leading to a strong shift in regulatory powers towards the company level. This applies not only to new content-based issues like qualification and further training (topics that cannot be definitively regulated by sector-level collective agreements anyway) but increasingly also to limited or permanent deviation from collectively agreed standards when companies find themselves in severe difficulties. The more widespread this development, the greater the risk to the regulatory status of the regional collective agreement. It is therefore not surprising that the interest-representing bodies at company level view this development with a great deal of scepticism. The majority of works and staff councils adopt a critical-to-oppositional attitude towards the decentralisation of bargaining policy – out of fear of a shift in the company-level balance of power towards the employers. Whether the trade unions will succeed in establishing a new balance between collective bargaining policy and company-level agreements in the coming years remains to be seen.

One question that remains open is the future development of the relationship be-

tween collective agreement-based and statutory fixing of minimum standards. On the one hand, collective bargaining is increasingly taking on responsibility for social policy issues – such as implementation of the legal regulations in the area of phased part-time retirement and pensions. On the other hand, there is a growing need for statutory instruments to underpin working and income conditions as well as the system of collective bargaining per se. At the same time, however, this is the main target for the criticisms of the radical market-oriented players in the overall process. The demand for a "new autonomy" of companies and the abolition of many of the state regulations governing the labour market calls the basic principles of the German (and European) labour market models into question. As a result, the dispute over the future development of the German system of collective bargaining in general and of the institution of the regional collective agreement in particular is of fundamental significance.