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# Pathways in Decentralised Bargaining in Europe

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References are listed by chapter.

# Chapter 1. Decentralisation of Collective Bargaining: Comparing Institutional Change and Company Practices in eight European countries

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## 1.1 A common approach in studying decentralisation in eight countries

### *Introduction of the problem*

One of the main trends in labour relations across continental Europe – started already in the 1980s – is 'decentralisation'. This involves a shift from multi-employer bargaining to single-employer bargaining with trade unions or to other workers representatives (Marginson, 2015; OECD, 2018; Traxler, 1995; Visser, 2016). This development continued in the last decade, even supported by some governments in European Member States after the Great Recession to deregulate wages and enhance labour market flexibility in the 2010s. At that time, also within the European Commission, there were voices that aimed to (further) decentralisation as an instrument to reduce the wage-setting power of trade unions (Müller & Platzer 2020; European Commission, 2012).

'Decentralisation' of labour relations is a buzzword with a container of definitions and meanings. Recent literature lends nuance to the trend of decentralisation by showing variations in national developments regarding the initiating actors and the intensity and patterns of decentralisation processes and the different factors that account for national differences (Leonardi & Pedersini, 2018; Müller, Vandaele and Waddington, 2019). In some countries, decentralisation is aimed by governments or by employers, trying to make trade unions' negotiations and collective agreements more responsive to the needs and conditions of individual companies, not only by deregulation but often by more regulation in coordinating and setting new rules for 'tailor-made' dialogue, negotiations and agreements at decentralised levels. Other decentralisation processes in Europe are more 'wild' by breaking down traditional institutions, resulting in less national and sectoral coordination in regulating employment relations. Of course, quite a number of negotiations between

employers and workers representatives take place without any influence from employer associations or from trade unions at more centralised levels. Most of the country reports show that in the last few years, a great deal of bottom-up emerged social dialogue have been initiated on issues like human resource management, social security and the impacts of the 'green transition' and COVID-19 on companies and labour. Types and degrees of decentralisation processes are the results of the strategies and power resources of the collective bargaining parties at several levels in the context of sometimes eroded or renewed institutions in collective bargaining regimes. Legislation and practices in collective bargaining by unions can meet or overlap legislation and practices in co-determination by unionised or non-unionised employee representation when the individual company becomes more the locus of employment relations at the company and workplace levels.

Why is it relevant to study decentralisation in labour relations and more specifically in collective bargaining? First, this is relevant for assessing the (future) position and roles of trade unions and employers associations at the cross-sectoral and national sectoral levels in the European Member States: do they still have representative voices and collective influences in social dialogue and labour market regulations in often more diverse societies and more neo-liberal government than in earlier historical periods? Decentralisation risks also lower collective bargaining coverage if this goes hand in hand with erosion of national and sector levels (see Sections 2 and 3). There is a big difference between disappearing social partners' institutions or social partners that adapt to new, often more differentiated, realities. Some types of decentralisation might undermine the positions of trade unions and employers associations at the national, sectoral or regional level. Second, centralised and more coordinated collective bargaining regimes seem to perform better than decentralised and less organised regimes, in terms of wage equality and employment levels (OECD, 2018, Carnero, 2020). Third, unorganised decentralisation risks a 'race to the bottom' if wage levels and other terms and conditions of employment are not anymore protected by collective agreements. Labour relations are power relations where individual workers are by definition weaker than the employer; collective bargaining by independent trade unions can (partly) compensate for this unbalance.

Recently, collective bargaining has received more attention from European political institutions, and now in a more positive light. The European Council and European Parliament reached in 2022 political agreement to promote the adequacy of statutory minimum wages and thus help to achieve decent working and living conditions for European employees. Interestingly, as collective bargaining on wage-setting is seen as an important tool to ensure that workers can benefit from adequate minimum wages, the related directive aims to extend the coverage of workers through collective bargaining and to strengthen the capacity of social partners to engage in collective bargaining (including the protection of worker representatives). In some countries, like in Italy and Sweden, this is even more important because there is no national statutory minimum wage: here the minimum wage levels are defined by the lowest wage groups of the collective bargaining agreements. Decentralisation of collective bargaining however might be at odds with the

aims of this political agreement. First, decentralisation might lower the overall bargaining coverage in European countries. Second, trade unions in European countries might have less capacity to bargain at the company level compared to more centralised levels.

### *The research approach*

This book addresses from an interdisciplinary and multi-level governance perspective, different types of institutional change in collective bargaining regimes and the underlying aims of companies, government and subsequent responses of social partners to downward pressures on the locus of collective bargaining. Through literature and documents research and around 30 in-depth case studies of company level bargaining in the manufacturing industry, retail sectors and some other economic sectors, the book chapters analyse the backgrounds, practices, stakeholders' experiences and effects of decentralisation and decentralised bargaining at the company level in eight EU Member States: France, Germany, Ireland, Italy, the Netherlands, Poland, Spain and Sweden.

This book is innovative in the field because of several reasons. First, many European studies on collective bargaining follow a more national approach through publishing monographs that are structured by separate chapters on individual countries (see for example Leonardi & Pedersini, 2018; Müller, Vandaele and Waddington, 2019). Or, international studies follow a very global approach without in-depth analysis about functioning of institutions or practices in collective bargaining (for example OECD, 2018; Visser, 2016). This book follows a thematic and sectoral approach in cross-country perspective, leading to more understanding of the functioning of institutions and variations in actors' strategies, collective bargaining practices and its results from the perspective of a certain issue of sector (see eBook). Second, it is based on investigations of around 30 case studies at the company level for understanding the approaches and behaviour of the collective bargaining parties and the effects of decentralisation processes at the *micro level*. In this case, study design, the importance and impact of (lack of) power resources of trade unions and other actors involved and the strategic choices of individual employers and workers representatives at the company level can be more clearly analysed. Both factors of the cross-country thematic approach and the case study design at the micro level have added value to the existing literature in labour relations and in collective bargaining.

The following research questions will be answered:

1. What are the backgrounds, aims and institutional pathways of decentralisation in collective bargaining structures, and what are the (new) regulative opportunities and limits in company level bargaining?
2. What are the (new) strategies, power resources and practices of employers and trade unions in shaping decentralisation and in company level bargaining? Do (non-) unionised bodies of employee representation (such as works councils) play a role as substitutes or as partners of unions in decentralised bargaining?
3. What are the results of decentralisation regarding the balance and scope of company level negotiations and the quality of agreements? Do partnerships or conflicts emerge in the

relationships between individual employers and trade unions and, if relevant, between the different representative worker bodies within the companies?

This first chapter of the book aims to present the overall comparative findings. First, Section 2 describes some basic institutional characteristics of collective bargaining regimes in the eight countries to make the point that there is a quite a great deal of variety of collective bargaining regimes within Europe and that issues and patterns/pathways of decentralisation can be only understood in the specific institutional and regulative national contexts. Section 3 will present the findings regarding the overall developments and impact of decentralisation in the eight countries in a theoretical framework of different types, meanings and impacts of institutional change in collective bargaining. Sections 4 to 7 will discuss the most important or most remarkable qualitative findings in the case studies at the micro level in the eight European countries. These sections are explorative and do not aim to be representative. However, case studies shed qualitative lights and lead to better understanding of the interplay between social dialogue and collective bargaining institutions on the one hand, and the actors' strategies and practices in decentralised bargaining at the company level on the other hand. Section 4 will focus on sectoral varieties within national systems (manufacturing and retail). Section 5 will discuss beneficial institutional and organisational factors for decentralised bargaining with quite equal power relations and balanced outcomes, based on the qualitative findings in the case studies. In Section 6, barriers and limitation will be presented as well. Section 7 gives answers to the question if decentralisation is leading to new relationships between trade unions and works councils (or other employee representation) in dual-channel systems of worker representation. In the last section, the main conclusions will be presented, together with some challenges related to (further) decentralisation.

## 1.2 Decentralisation through different national regimes in collective bargaining

The countries that are involved in this eBook represent a variety in institutions in collective bargaining regimes. There are many institutional factors that count for these cross-country differences and that are relevant in this study on decentralisation. First is the national legal framework regarding the position and rights of collective bargaining parties, and the legal effects of their agreements to their members and their non-members (by extension systems). Second is the relations between collective agreements at the different levels: national/cross-sectoral, sectoral, multi-employer (in regions or in small company groups), company and sometimes even more decentralised at the level of establishments

and departments.[1] Third is the relation between collective agreements and other workplace agreements with trade unions and/or with other bodies of employee representation such as works councils. Furthermore, main differentiating characteristics in collective bargaining regimes are collective bargaining coverage, scope of negotiating (wages and beyond) and more or less competing with (also yellow) trade unions as the workers' representatives. The eight countries do also represent a variety in the organisational, social and structural power resources of trade unions and employers (see chapters xxx).

We can cluster these eight countries in four groups, based on characteristics in production regimes and industrial relations regimes (see also chapter 4; Hall & Soskice, 2001; Crouch, 2005).

First, Ireland and Poland – despite their geographical distance – both represent a liberal market economy and both share a pluralist and fragmented industrial relations regime. Related to the low numbers of employees under sector bargaining in these both countries, Ireland and Poland are both examples of low collective bargaining coverage: 34 percent in Ireland and around 13-20 percent in Poland. Employers and trade unions in Ireland voluntarily engage in collective bargaining, so trade unions have no fundamental right to bargaining, and their agreed terms and conditions of employment are not legally binding (Paolucci, 2022). Both countries have weak or no sector bargaining and relatively far more company bargaining. In Ireland, the financial crisis in 2008 was the death knell for the long period of centralised tripartite collective bargaining that spanned the period from 1987. As an effect, the main levels at which collective bargaining takes place are the company and the workplace levels. Sectoral bargaining still occurs in a number of low-paid and weakly unionised sectors, in construction and allied sectors and in public services (Paolucci, 2022). The collective bargaining regime in Poland is even more fragmentised then in Ireland, and even came in a 'near-death experience' where the Polish legislator did not promote collective bargaining at all (Czarzasty, 2022). In Poland, fragmentation can be explained in the pre-1989 era of authoritarian state socialism, combined with bottom-up activities of trade unions movements, representing a contrasting concept of union movement (Solidarity and OPZZ). The political reform towards liberalism led to a 'vacuum' in the industrial relations system with lack of employers' commitments in national and sectoral collective bargaining institutions and lack of unions' activities at the sectoral level (id). Ireland and de facto Poland do not have legal rights for non-unionised employee representative bodies at the company of establishment levels: both countries are characterised by having a 'single-channel system' in worker representation where unions are the only worker representatives for management (Glassner, 2011), although far weaker established and developed than in Sweden (Van Guyes, 2016).

Second, Sweden represents a model of organised corporatism with high collective bargaining coverage, based on autonomous bargaining without state interventions: there is

[1] In this book, we will use the word 'workplace level' in case of more decentralised levels than the company level, such as levels of departments or establishments within the company.

no national legal minimum wage and no public extension mechanisms of sector agreements towards unorganised employers. Although sector bargaining is dominant, one could characterise the Swedish collective bargaining regime bests as being multi-level in a stable and coordinated IR system. The Swedish regime of collective bargaining is characterised by multi-level collective bargaining with elaborate involvements of trade unions at sector and local levels, with a key role for sector agreements. In Sweden, strong legal rights and consultation practices of employee participation and co-determination is carried out within a strict *single-channel* system in worker representation where trade unions take part in information, consultation and co-determination at the workplace level (Rönnmar & Iossa, 2022).[2]

Third, Germany and the Netherlands represent a model of a coordinated market economy with social partnership. The dominant level in collective bargaining is on the sector level. The biggest institutional difference with Sweden, besides some more (indirect) state influences in collective bargaining, is that Germany and the Netherlands have a *dual*-channel system in worker representation. Trade unions are the main representatives in collective bargaining, but works councils are representatives at the workplace levels and are formally not linked with trade unions. The collective bargaining coverage is medium to medium-high: 54 percent in Germany and 76 percent in the Netherlands. The role of the state in labour relations is in Germany (still) a bit less intertwined than in the Netherlands. Relatively new in Germany is the statutory minimum wage (introduced in 2015) and the instrument of extending sector agreements towards unorganised business is less used in Germany (Haipeter & Rosenbohm, 2022). The stability of the Dutch collective bargaining regime and its scope is supported by high use of the public extension mechanism in sectors where employer associations represent 60% or more of the employment in the sector (Jansen & Tros, 2022). In the Netherlands, once collective bargaining takes place at the sector level, then trade unions do not exploit activities at the company level, generally speaking (legally they can, and in some company cases, they also do). Meanwhile, in Germany, trade unions have bargaining rights on the company level if derogation clauses in sectoral agreements foresee such rights. However, this is restricted to some sectors where such clauses exist and applies only in the case of temporarily limited derogations. In Germany, works councils in larger companies (at least in some sectors like manufacturing) are involved in negotiating workplace-related working conditions or 'employment pacts', including pay above the wage norms of collective bargaining. In the Netherlands, works councils have strong legal consultation rights in the internal organisational areas, but do not have negotiation rights on topics that are already covered by collective agreements. Although institutions in both countries are roughly quite similar, we see substantially different degrees and patterns of decentralisation in both countries (Section 3) and also

[2] In Sweden, the implementation of Directive 2002/14/EC on the information and consultation of employees and Directive 2009/38/E on European Works Councils has extended the rights of the non-established trade unions, but the major rights are still attributed to representatives of the established trade unions (Pietrogiovanni & Iossa, 2017).

divergence in the developments in the relationships between trade unions and works councils in Germany and the Netherlands, which is due to the stronger presence of the trade unions in the companies in Germany (Section 7).

Finally, we can cluster the southern European countries – France, Italy and Spain – characterised by more state regulated production and industrial relations regimes. All three countries have high collective bargaining coverage, are dominated by sector level bargaining and have a relatively higher role of the state in collective bargaining. This includes extension mechanisms towards unorganised businesses. France has a longer tradition in state interventions in stimulating and even obliging company level bargaining (already in the 1980s), on top of the dominant sector level bargaining practices (Kahmann & Vincent, 2022). But also in Italy, additional bargaining on the company level takes place on wages and other topics, but then in the framework of the social partners themselves (Armaroli & Tomassetti, 2022). Spain introduced new legal reforms to promote company derogation options from provisions in sector agreements after the Great Recession (Ramos Martín & Muñoz Ruiz, 2022). Interestingly, the Spanish left-wing coalition government has restored the primacy of sectoral wage bargaining over company wage bargaining in 2021 (id.). In Italy and Spain, more or less unionised works councils or mandated representatives can formally negotiate collective agreements alongside or instead of trade unions. In France, collective bargaining rights for non-unionised employee representatives is legally embedded if no union is present.

**Table 1:** ***characteristics in collective bargaining regimes in eight European countries***

| **Country** | **Collective bargaining coverage**3 | **Dominant level bargaining regime**4 | **Status works council**5 | **Involvement works councils in wage negotiations**6 | **Trade union density** |
|---|---|---|---|---|---|
| France | 98 % | Sector | Embedded by law/social partners | Yes, if no union is present | 11 % |
| Germany | 54 % | Sector | Embedded by law/social partners (obligation when workers want to) | Informally (rare, incl. wages above the general pay scale) | 17 % |
| Ireland | 34 % | Company | Voluntary | Rare | 24 % |
| Italy | 100 % | Sector | Embedded by law/social partners (no obligation) | Yes | 34 % |
| Netherlands | 76 % | Sector | Embedded by law/social partners (obligation | Rare (but recent cases) | 17 % |

[3] Years 2017-2020. 'Proportion of employees covered by collective (wage) agreements in force among employees with the right to bargain based on combined administrative and/or survey data sources'.
4 Years 2018-2020. 'The predominant level at which wage bargaining takes place (in terms of coverage of employees)'.
[5] Years 2018-2020. Existence and rights of works council or structure for (union and non-union based) employee representation within firms or establishments confronting management are mandated by law or established through basis general agreement between unions and employers (='embedded by law/social partners'). Works councils (etc.) are voluntary, i.e. even where they are mandated by law, there are no legal sanctions for non-observance (='Voluntary'). Works council or similar *union or non-union) based institutions of employee representation confronting management do not exist or are exceptional (='Not existing/ exceptional').
[6] Four categories. (1) Works councils (or mandated representatives) formally negotiate (plant-level) collective agreements, alongside or instead of trade unions ('Yes'). (2) Works councils (or mandated representatives) formally negotiate (plant-level) collective agreements, if no union is present (and/or subject to ballot) ('Yes, if no union'). (3) Works councils is formally (by law or agreement) barred from negotiating (plant-level) agreements, but informally negotiate over workplace-related working conditions or 'employment pacts', including pay ('Ínformally'). (4) Works councils is formally (by law or agreement) barred from negotiating (plant-level) agreements and involvement of works councils in negotiating (plant-level) agreements is rare ('Rare').

| | | | | | |
|---|---|---|---|---|---|
| | | | when workers want so) | | |
| Poland | 13 % (20%) | Company | Voluntary (some legal base from 2006) | Rare (no) | 12 % |
| Spain | 80 % | Sector | Embedded by law/social partners | Yes | 15 % |
| Sweden | 88 % | Sector | Not existing (Only channel of unions) | - | 66 % |

Source: OECD/AIAS ICTWSS database, February 2022. OECD/AIAS ICTWSS database - OECD (between brackets are nuances based on our research).

## 1.3 Institutional change and pathways in decentralisation

### 1.3.1 Theoretical framework for institutional change

This book shows different forms of institutional change in collective bargaining regimes after the economic and financial crisis of 2008/2009 with different results. We see a breakdown of collective bargaining structures in Germany and Ireland and no resurrection of already earlier broken down institutions in Poland. In other countries, much change towards decentralisation, however, is gradually and incremental. But as Streeck & Thelen (2005) have argued, incremental institutional change can lead over time to real in-depth changes. Streeck & Thelen (2005) distinguish the following types of gradual institutional change that can be applied to the issue of collective bargaining and its assumed transformation towards decentralisation:

(1) *displacement*, in which dominant institutions are gradually becoming less important, while subordinate institutions are becoming more important. In the context of decentralisation of collective bargaining, this is the case when the institution of sector bargaining is replaced by the institution of company bargaining. Or, in its disorganised form, when sector or company level bargaining with trade unions are replaced by single-company arrangements where established trade unions are replaced by 'yellow unions' or non-unionised workers representatives within the company (such as works councils in dual-channel systems of worker representation).

(2) *layering*, in which new elements are added to existing institutions. In relation to our topic, this can be the case if the state adds more formal opportunities for company level bargaining through changing national legislation on collective bargaining (Rehveldt & Vincent, 2018; Vincent 2019). Also, social partners in sector agreements can add more competences to individual employers and more decentralised bodies of workers participation in traditional collective bargaining issues (Marginson, 2015).

(3) *drift*, in which existing institutions are not maintained and not adapted to changing environments, leading to less scope, meaning and function of the institution. Sector bargaining can lose a grip on reality and die out when it is not responding to the involvements and needs of (new) companies in the sector or (new generations of) workers. A development of less compliance of collective agreements might be put in this category when companies see collective agreements as 'non-relevant' or just as 'informal guidelines' that do not have to be automatically put in practice.

(4) *conversion*, in which institutions are formally not changing but are interpreted and used by actors in another way that might lead to other effects of the same institutions. For example: if employers become more powerful in industrial relation and do use collective agreements more as management instruments for efficient HRM and for company interests, instead of using collective agreements social contacts in balancing workers and employers interests, collective bargaining is changing functions (see for example Keune, Been & Tros, 2020). Baccaro and Howell (2011) showed that in some European countries centralised bargaining has been converted to 'fit the common imperative of liberalisation' (such as in Ireland, Italy and Sweden) through giving more employer discretion in the period 1974-2005.7

### 1.3.2 Evidences in types of decentralisation

In this section, I will give an overview of the most evident decentralisation trends in the eight studies countries in the theoretical categorisation of institutional change.

#### Breakdown

Collective bargaining institutions in Poland and Ireland have faced the most structural and disruptive changes in the last decades.

In Poland, the number of collective agreements is low and falling, and collective bargaining is almost dead with just less than 50 new collective agreements in both years 2020 and 2021 (resp. just 14 and 20 thousand workers are covered by these new agreements). Despite the ratification of the ILO Convention 98 and the European Social Charter, the Polish state is not promoting or supporting collective bargaining. Employers

[7] There is a fifth form distinguished: exhaustion, in which institutions gradually fade away. But as the authors themselves already acknowledge, this is not about institutional change but about institutional breakdown (Streeck & Thelen, 2005: 29).

fear obligations that can hinder their competitive powers. The Polish Trade Union Act promotes a fragmented and establishment-centred trade union movement that cannot overcome the liberal and flexible business strategies.

In Ireland, with the financial crisis, employers withdrew from social partnership in 2009 that also led to a further drop in collective bargaining coverage from 41 percent to 34 percent in the period 2009-2017 (OECD/AIAS database). The erosion of collective bargaining structures in Ireland begun already earlier; in 1985, collective bargaining coverage was at a far higher level of 70 percent. As a response to their lost power in national social dialogue, trade unions focused their strategies on transforming towards company level bargaining and towards some degree of horizontal coordination through 'pattern bargaining' in the 2010s.

### Displacement

The authors in this book found not that much evidence of direct replacements of sector bargaining by company bargaining in the eight countries. Despite some processes of intensification of company level bargaining or social dialogue at the enterprise level or growth of formal opportunities to derogate from central regulations, sector bargaining in for example France, Italy, Netherlands, Spain or Sweden was not displaced. Nevertheless, there are two examples that might be interpreted as 'displacement'.

A part of the recent legal change in the collective bargaining regime in France, might be seen as institutional *displacement* because in 2017 Macron reduced the sector bargaining agendas to four areas while appointing more topics for company bargaining. This can be interpreted as a weakening of sectoral bargaining in France (Kahmann & Vincent, 2022). However, empirical research in France conclude that such a displacement is not unidirectional because the sector level in the industrial relations system is still important and the company level lacks sometimes significance. Therefore, the main institutional mechanism of decentralisation in France seems to be better interpreted as institutional *layering* (see later).

### Layering

All the reports on countries where multi-employers (sector) bargaining is dominant, observe processes of layering in their collective bargaining regimes. Decentralised elements have been added to existing institutions, but not (automatically) leading to lower importance of institutions at the sector and/or national levels. Layering can refer to additional wage or other remuneration bargaining on the company level on top of national sectoral wage standards or can refer to additional topics in collective bargaining on the company levels.

The most evident and broadly introduced layering is seen in France as a result of the Macron laws from 2017. This is first because the government added new decentralised topics at the list for company bargaining. In this new collective bargaining architecture, coordination between levels is no longer based on the 'favourability principle' but rather on the complementarities of bargained topics (Kahmann & Vincent, 2022: 13-16). Since the

1980s, the topics for compulsory negotiation at the company level have increased over time. After the last reform, this concerns (i) remuneration, working times and the sharing of added value (like in profit-sharing); (ii) professional equality between men and women and the quality of working life; and (iii) strategic workforce planning, subcontracting or temporary employment. All remuneration rules are now solely governed by the company agreement, with the exception of agreed minimum wages, classifications and overtime premium. Within the system, since the 2017 Macron Ordinances, it is possible to adapt the methods and frequency of these compulsory negotiations by company agreement as well. A second addition in decentralised bargaining is that the government extended the possibilities for non-union representatives to negotiate with the employer in non-unionised workplaces. These reforms have indeed led to more activity at the company level. The number of agreements in companies grew from around 31,000 in 2017 to around 50,000 in 2019, incl. SMEs. Nevertheless, at the same time, sector bargaining continued being important and the use of derogation from sectoral agreements remains limited in case of 'economic survival' (Kahmann & Vincent, 2022). In addition to new topics in decentralised bargaining, sectoral agreements leave room for additional wage bargaining on the company level (mostly used among bigger companies regarding variable forms of pay like profit-sharing schemes (id).

In Germany, it have been the collective bargaining parties themselves – for example in manufacturing – that have given the stakeholders at company level regulatory competences to derogate from sector agreements (Haipeter & Rosenbohm, 2022). This cannot be interpreted as 'displacement' towards works councils, because in this derogation pathway, the trade union stays the main actor. It is estimated that around 20 percent of all companies in Germany have used some opening clause. This can be seen as part of a longer existing process of *'verbetrieblichung*' where works councils do play a bigger role than in the past (Haipeter & Rosenbohm, 2022).

Italy is characterised by a great deal of additional wage bargaining at the company level on top of the wage levels set at national and sectoral levels (Armaroli & Tomassetti, 2022). Such secondary bargaining takes place in about twenty percent of the workplace, mostly in bigger companies. In Italy, since the 2009 economic crisis, opening clauses have increased the scope for company bargaining to derogate from standards set under sectoral agreements. Cross-industry collective agreements opened up to a process of organised decentralisation: the scope of decentralised bargaining continues to be defined by National Collective Labour agreements, yet opening clauses entitle decentralised bargaining to deviate from standards set by the national agreements, provided that the derogatory agreement is approved by sectoral trade unions (see further Armaroli & Tomassetti, 2022: 10-11). Moreover, the Italian government tried to stimulate so called 'productivity agreements' at the company level enhancing flexibility in payments and working hours and direct employee participation. However, all new layered regulations in the Italian collective bargaining regime did not create much change in practices. This seems quite similar to some other countries with low impacts on (derogation) reforms in the beginning of the 2010s

(Keune, 2011). Decentralised bargaining practices in Italy seem to have grown more as a result of an intensification of (bottom-up) autonomous dialogue in large companies in the last five years on certain topics, such as health, supplementary pensions, social benefits, skills and smart (mobile/tele) working in times of COVID-19 (Armaroli & Tomassetti, 2022).

In the Netherlands, already since the 1980s, sector agreements have been cautious given options in 'tailor-made' implementations at the company level, although wages are never part of decentralisation in case of sector bargaining (Jansen & Tros, 2022). Rarely have trade unions been given bargaining rights at the company level (such as in the metal and electrotechnical industry), while a little bit moreso are works councils given extra co-determination rights in sector agreements, although not in the wage area and mostly concentrated on working hours only). So, this institutional layering within the framework of sector bargaining is not that substantial in the Netherlands. Sector parties are not that generous in delegating, also because unions are quite weak in their activities at company level (unless in case of company agreements of course) and employers do not want to 'negotiate double'. Less than in Germany, works councils in the Netherlands have no tradition in bargaining in the area of terms and conditions of employment (see Section 7).

Spain has also a tradition of additional wage bargaining in large (manufacturing) companies. Spain is the clearest example in which the *government* after the financial crisis unilaterally stimulated collective bargaining at the company level, especially on the issues of flexibility in wages and working hours (Ramos Martín & Muñoz Ruiz, 2022). This is in the context of aiming deregulation, supporting the employers' interests in economic difficult times. Such company agreements could deviate from the labour standards set at sector level, and was indeed also done since 2012 in some companies in which lower wages/hours were traded off for fewer layoffs. Trade unions saw this imposed decentralisation as a way to undermine their positions, which also led to strikes and unrest in social dialogue at national and sectoral levels. It has to be said that Spanish unions have weak positions at the decentralised level, especially in smaller firms, and (therefore) want to keep their relatively strong positions at sector level. Quite similar to other countries, the new created possibilities for derogation have had low impacts on the structure of bargaining. Or to put it in words of our theoretical model: this *layering* by adding decentralised elements has not led to *breakdown* or *displacement*. Interestingly, in 2021 the Spanish government restored the primacy of sectoral collective bargaining by preventing company bargaining with the purpose to escape the sectoral collective agreement, for example with non-representative employee representation at the local level.

In Sweden, we see an established practice of 'organised decentralisation' in many sectors of industry, coordinated in multi-level systems (Rönnmar & Iossa, 2022). Also on wages, Swedish companies negotiate with trade unions over extra wages or other remuneration elements. Despite the relatively strong traditions in regulating labour relations at the company level, there is no hard evidence on growing decentralisation in Sweden. Even stronger said, the country report observed current debates on the limits of decentralisation: both sides in the Swedish case in the public sector express a need in more

normative and binding collective bargaining regulation at national, sectoral and/or regional levels. In addition to sectoral varieties in centralisation and decentralisation, we see also more centralised patterns regarding blue collar workers in production and more decentralised patters for professional white collar workers (id).

In addition to 'institutional layering' through adding formal competencies and opportunities for decentralised negotiator, there is also the more autonomous trend in European countries of increased intensities of social dialogue or widening the bargaining agenda at company level within the given institutions, that can be interpreted as 'layering' (see Section 4.1 on 'integrated bargaining').

### Drift

In a context of decreasing membership in trade unions and in employer associations and more neo-liberal and individualistic ideas in politics and society, one should theoretically assume that there are processes where older 'traditions' as collective bargaining should gradually fade away through processes of less scope and/or less meaning for companies, workers or workplaces. Maybe such changes of 'gradual dying out' of collective bargaining in certain sectors might be the background of the earlier mentioned 'breakdown' processes in Ireland and Poland.

A kind of 'institutional drift' is the development in Germany so that, although employer associations continue sector bargaining, it is not anymore automatic and self-evident that their members follow the sector agreement that is co-signed by their association. This is a cultural change leading to less employer support in the meaning and functioning of sector bargaining and making agreements with trade unions. Companies' needs for more price competition and more flexible company strategies are also visible in other countries, but remarkable for the German case is that some employer associations in Germany created 'opting-out' opportunities in which companies can be members but without being covered by sector bargaining. Between 2000 and 2019, collective bargaining coverage fell by 16 percent from 68 to 52 percent. As a response on pressures in membership, some business organisations in Germany have created 'opted-out' options in which organised individual employers can choose for not being covered by collective bargaining in the sector (Haipeter & Rosenbohm, 2022). More than for example in the Netherlands, this leads to 'institutional drift' because of the more limited use of the external extension mechanism to cover the unorganised businesses. Institutional drift in Germany is further favoured by declining union density from 25% in 2000 to 17% in 2018. In other countries that also have faced declining trade union membership, breakdown and institutional drift are hindered by legal extension mechanisms in which non-membership among employers do not give an incentive to be 'liberated from' sector agreements. Where there is no extension asked in the Netherlands, such as in the IT sector, the same opted-out option in the employers association is visible. However, the difference with Germany is that

the Dutch employers in almost all other sectors still ask for extension to all companies in the sector (Jansen & Tros, 2022).

Although substantially quite different, also the claim in the Polish report (Czarzasty, 2022) that collective bargaining, even when it takes place, is often *ritualistic* with no substantive outcomes that could be interpreted as 'drift' (in the assumption that it was different in the past).

### Conversion

In some countries, a trend in collective bargaining is visible towards more trade union consultations and involvements in the economic, business and HR strategies of individual companies (beyond or besides negotiating wages and other terms and condition of employment). Here, collective bargaining might be converted into social dialogue that is oriented towards the companies' interests. Representing and defending worker interests might be put in second place. This factor can be seen in the cases of big firms in France. Perhaps also derogations in Germany can be labelled as conversion, as here trade unions demand investments and, in a way, try to play the role of the employer, a new kind of productivity pact in which the trade unions are demanding productivity increases so that the companies can return to the collective bargaining norm (Haipeter & Rosenbohm, 2022).

Another form of institutional conversion is sector agreements that just mimic the legal standards (Poland, general) or that regulate just very low labour standards where some trade unions are not willing to set a signature because of its low quality (Netherlands in retail). Employers can also ask the help of non-representative, employer-friendly 'yellow unions', as we have seen in cases in Italy ('pirated contracts') and in the case of the e-commerce company in the Netherlands.

In Table 2, a summarising overview is given. The pathways of decentralisation are slightly different and also broader than in Chapter 3 of the eBook.

**Table 2:** ***Types of institutional change in decentralisation in eight European countries***

| | **Uncontrolled decentralisation**<br><br>***breakdown*** | **Replacement: from sector to company**<br><br>***displacement*** | **Adding decentralised elements**<br><br>***layering*** | **Loosing grip**<br><br>***drift*** | **Other use/effect of collective bargaining**<br>***Conversion*** |
|---|---|---|---|---|---|
| **France** | - | less topics for sectors,<br>more topics for companies | More topics in company bargaining, opportunities non-union representation | | |
| **Germany** | Decline collective bargaining coverage, *opted*-out employer associations | Shifts to works councils | Opening clauses/derogation from sector agreements | Less employer support for collective bargaining | |
| **Ireland** | Collapse social dialogue central levels, bottom-up union mobilisation | | | | |
| **Italy** | | | Derogations; 'productivity agreements', broadening of autonomous bargaining in large companies | | Pirated contracts |
| **Netherlands** | | | Decentralisation provisions in sector agreements | | Non-representative unions |
| **Poland** | Low and falling collective bargaining | | | Fragmentised, workplace-centred practices | Just copy legal standards |
| **Spain** | | | Derogation options company level | | |
| **Sweden** | | | Decentralisation options in multi-layered frameworks | | |

### 1.3.3 Similarities and differences in decentralisation pathways

From a theoretical point of view, we can distinguish disruptive and structural changes in collective bargaining institutions from incremental changes that can change the meaning, scopes and impact of collective bargaining institutions. In the last category, we can distinguish four types of institutional transformation in national collective bargaining regimes, such as displacement, layering, drift and conversion. The dominant trend in the eight countries that have been studied can be labelled as gradual 'layering': more company bargaining on top of and within national and sectoral structures. This is more than institutional breakdown or displacement of national/sector structures by individual company level bargaining. Nevertheless, three countries show disrupted changes regarding a breakdown of collective bargaining: Germany, Ireland and Poland. The widely known existence of employers' pressure towards (further) decentralisation, deregulation and shaping new flexibilities at the company level have led to more divergence in terms of levels of collective bargaining and collective bargaining coverage. Institutional pathways in initiating and shaping decentralisation and flexibility at the company level are dependent on legislation on collective bargaining and co-determination, governmental policies and the strategies and power of trade unions and employers associations.

Across some countries, one might observe convergence in the way of organising decentralised bargaining through articulation in multi-layered systems, while maintaining the social partners' control-function at sectoral level. This is the case in Italy, Spain, the Netherlands, Sweden and the non-eroded parts of Germany. Degrees and methods of layering towards companies are dependent on sectors of industry, employer support in centralised structures and the power of trade unions to maintain sectoral structures and to shape (new) regulations and practices in decentralised bargaining. Union willingness to further delegate decision-making towards the management and workers representatives at even more decentralised workplace levels (such as establishments, business units or departments) is dependent on being part of a single- or dual-channel system of worker representation.

## 1.4 Sectoral varieties in decentralised bargaining

Institutional changes in national collective bargaining regimes have different impacts in sectors of industry because of different firm company characteristics, labour markets and workers characteristics, and different power resources and strategies of collective bargaining parties in the sectors. At the same time, we see sectors themselves having their own developments in business structures, technological developments, working populations and labour relations. National institutional contexts might be less significant than often assumed (Bechter et al 2012, Keune & Pedaci, 2020).

### 1.4.1 Manufacturing

There are many reasons why we would expect more organised forms of decentralisation in manufacturing sectors. One reason is simply because there is more to deregulate and to decentralise in collective bargaining institutions and sector agreements in the industrial sectors, compared to service sectors. Trade unionism and collective bargaining in Europe grew over decades of industrialisation, and the manufacturing sector played a leading role in the development of labour relations in the 20th century in Europe. In the 21st century, it is also the manufacturing sector that is an important arena for change in collective bargaining. Export-exposed manufacturing companies in Europe face increased global competition in the 21st century, increased diversification in the digital technology that they use and the continuing need for restructuring jobs and workplaces, and that all might increase the need for more 'tailor-made' responses in labour strategies and related demands for flexibility in labour costs, working hours and qualifications of the workers. It is quite commonly assumed and confirmed that the shift to post-Fordist production, with an emphasis on flexibility, has unleashed pressures for bargaining decentralisation (Traxler & Brandl, 2012). The country reports illustrates lower shares of blue collar workers and higher shares of white collar workers that mostly tends towards less unionisation and less centralisation. Also in the current years, manufacturing firms in Europe need to adapt to the global pandemic situations of COVID-19 and need to speed-up their 'green transitions', both having great impacts on jobs, quality of work, and organisation flexibility. In their global competition on prices and quality, employers might ask for (temporarily) derogations from national and sector regulation. For sure, continuing innovations in technology and organisation of work ask for continuing social dialogue with employee representatives in HR issues as well. Furthermore, the still quite high membership levels among trade unions and more established bodies of employee representation in manufacturing companies could lead to more willingness among trade unions to decentralise, and could lead to more intensified interactions with the individual employer and management at the company level.

Explained by national and sectoral path-dependencies, we see continuing cross-country heterogeneities in the manufacturing sector. From advanced multi-level bargaining in Sweden and Italy, to cautious decentralisation in the Netherlands, to a mix of coordinated and wild decentralisation in Germany and company bargaining in Ireland and Poland. On the one hand, in this sector we see attempts in making sectoral standards less strict and to leave companies more or less elbow room to deviate or to opt out. On the other hand, decentralised bargaining practices can grow through intensified use of the 'favourability principle' or through growth of autonomous bargaining and social dialogue at the company level, in addition to national and sectoral agreements, which we see more in large companies in France, Italy, Spain and Sweden. The manufacturing case studies in Ireland, the Netherlands, Poland and France describe the autonomy of the company in collective bargaining, independent from sector bargaining.

Haipeter, Armaroli and Iossa in chapter 3 state that collective bargaining in the manufacturing sector in many countries set general trends and patterns in collective

bargaining for other sectors in the countries. As in earlier decades, industrial relations in the manufacturing sector are influencing national developments in the 21st century. Where industrial social partners were innovators in collective labour relations in Fordist times, they seem now to be forerunners in organised decentralisation pathways. This finding might lead to less cross-sectoral diversification than it is often assumed.

### Integrated bargaining

More than in the retail sector, the company cases in manufacturing show collective bargaining and social dialogue on a wide range of topics, with higher performances in the power balance in negotiation processes and quality of bargaining outcomes. Interests of individual employers and trade unions are overlapping in 'integrated bargaining' practices to produce 'win-win' results in issues like labour productivity, worker sustainable employability and job protection.[8] This is not to say that no improvements could be made, such as more innovative actions at decentralised levels from more competent trade unions (for example Italy), more independent unions in large firms (for example France) or earlier involved unions in case of restructuring (for example the Netherlands).

Promising is that case studies in manufacturing across the countries found that decentralised bargaining practices have adopted recent issues related to the COVID-19 pandemic and its impacts on organisations, labour, teleworking or mobile work or other 'smart working' practices. Cooperation and negotiation at the local level recently led to the finalisation of thousands of local collective agreements on handling the effects of the pandemic at the workplace level in Sweden (see Chapter 3). Also in the Polish manufacturing case, the trade union is a participant in various COVID-19 task forces and crisis teams; remedial measures are mutually agreed and jobs are guaranteed until 2023. Sometimes the pandemic context strengthened social dialogue at company level or the connections between trade unions and bodies of employee participation within the companies. In the Dutch manufacturing case, the trade unions found a place in tripartite dialogue with the employer and works council to make new regulations in the organisation and compensation for teleworking during the crisis but also for the near future in the aim for better work-life balance for the employees.

### Employee representation

The case studies in manufacturing also suggest more activities of non-unionised representative employee participation on top of collective bargaining. Involvements of works councils on derogations and under the leadership of trade unions in the German company cases in the manufacturing are high (see chapter 3 and 6). In the Dutch manufacturing case, we see high performances of the works councils' consultation practices in HR and organisational issues (including continuing restructuring, acquisitions and

[8] *Integrated* bargaining with possitive sum results can be disentangles from *distributive* bargaining with zero-sum results (such as on wages).

transfers) but their involvements are not coming in the area of trade unions' collective bargaining on terms and conditions of employment. In contrast to the manufacturing case in Germany, the manufacturing case in the Netherlands show low interactions and low overlap between trade unions' collective bargaining and works councils' activities in employee participation, although the trade union would like to be more involved in co-determination issues (Jansen & Tros, 2022). The manufacturing case in Sweden presents a mutually reinforcing and synergetic relationship between collective bargaining on the one hand and information, consultation and co-determination on the other hand (Rönnmar & Iossa, 2022). This is supported and can be explained by the Swedish single-channel system of trade union representation where no or less tensions exist between the systems of collective bargaining on the one hand, and employee representation, information, consultation and co-determination on the other hand.

### 1.4.2 Retail

Theoretically we might assume less need for organised decentralisation in retail because of less heterogeneity in technology, work organisation and labour strategies compared to the manufacturing sector. Global competition is by definition lower, although local competition can be high. Fewer trade union memberships and fewer developments in unionised workers participation in retail companies make decentralisation a less rewarding strategy for unions. However, power relations between employers and workers are more unequal than in manufacturing, leading to the assumption that breaking down sector institutions and wild forms of decentralisation will meet less resistance from trade unions. Weak collective positions of workers are related to the many low-paid jobs, all kinds of (small) atypical employment contracts, less needs for vocational educational training/lifelong learning and short-term employment contracts among young people.

#### Fragmentation

Country reports show fragmentised and unstable collective bargaining structures in the retail sectors. In many countries, retailers miss the pressure of trade unions as a reason to coordinate, leading to a fragmentised structure of employer associations and partly non-organised retailers (with the exception of Sweden). The relatively low 'threat' of trade unions combined with the 'low productivity road' could be the reason that retailers have less incentives to be collectively organised. More than manufacturing companies, retailers can go their own individual way, such as we see in 'pirated contracts' in Italy or exclusion of the largest trade union FNV in collective bargaining in the Dutch retail. In the German retail sector, wild and uncontrolled decentralisation is the main trend, and this trend is bigger than in the German manufacturing sector (Haipeter & Rosenbohm, 2022)

Nevertheless, national institutions can limit fragmentation in collective bargaining in the retail sector. Sector agreements, also in retail, can be supported by public law that extends to retailers that are not members of the employer associations. In Sweden, the

retail sector shows quite centralised wage-setting mechanisms compared to other sectors in Sweden (Rönnmar & Iossa, 2022). There might be a structural reason for centralisation in retail, namely the high amount of SMEs. In general, many small companies in the sector might lead to business preferences in centralisation (Bulfone & Afonso, 2020). In the Netherlands, sectoral collective agreements in retail are used by SME companies as the 'HR manual' because they are too small to make themselves HR policies. Retailers and trade unions might have a common interest in setting a level playing field in the sector regards to wages and other labour costs (although at low level) to prevent a real risk of a 'race to the bottom' in terms and conditions of employment.

## Employee representation

Lower levels of union representation in the retail sector does not mean that alternative bodies of non-unionised employee representation fill in the gap. On the contrary, works councils in Germany, the Netherlands and France are to a lower extent established in retail than in manufacturing, and are mostly more weak than the councils in manufacturing as well. Also in Italy we see a combination of many factors that lead to lower representation of workers in retail companies by unions and by other (non-unionised) employee representation: lower union density, smaller company sizes and more presence of 'atypical' workers groups (migrants, young workers, flexible contracts). 'The need of large and geographically dislocated companies to uniform labour conditions across their many establishments is shifting the focal point of decentralised bargaining from single workplaces towards the group or corporate level, thus widening the gap between second-level collective provisions and their signatory parties on the one hand, and workers and their shop floor representatives on the other hand' (Armaroli, & Tomassetti, 2022: 62).

The revitalising 'case study' in Germany in the fashion discounter along the consecutive and interrelated steps in i) successful installation of a works council, ii) unionisation of its staff, iii) recognition of the trade unions to enter collective bargaining and finally iii) strategic cooperation between unions and the works council, seems quite unique and is not representative for the German retail sector (Haipeter & Rosenbohm, 2022: 68-70). At the same time, however, this case study shows potentials in organising workers in a context of bad working conditions – and bringing individual companies (back) into collective bargaining regimes – that might be copied in other companies as well.

### *Union power resources*

Power resources of unions are low in the retail sector because of the earlier mentioned fragility in collective bargaining structures, low degrees of consultation and co-determination activities at the workplace, and because of trade unions' low memberships (with the exception of Sweden). Low memberships are related to the workers' characteristics. Many employees in retail are of young age, female, low skilled and have small part-time and other flexible labour contracts (see chapter 4). Lack of a fundamental social base of trade unions has, first, effects on low acceptance or sometimes even hostility

among employers towards unions. This factor has strong implications in Ireland and Poland where the majority of retail employers do not recognise unions for collective bargaining within its highly voluntarist system. Once they are recognised, the two Polish retail-cases show barriers for trade unions to develop activities in real practice that limits their affective influence in improving terms and conditions of employment (Czarzasty, 2022). All retail-cases across the countries suggest more unequal balance in bargaining processes and quite limited outcomes of the negotiations. The lack of power of the established trade unions in the Netherlands led to agreements in retail with only signatures of smaller or 'yellow' unions (Jansen & Tros, 2022). The Dutch retail case points to deteriorating labour standards when trade unions were not anymore welcome at the bargaining table in the distribution centres of a large supermarket.

### 1.4.3 Conclusions

Comparing the case studies in the two sectors lead to the conclusion of more organised decentralisation in manufacturing and more wild decentralisation in retail, linked to different structural characteristic of companies and workers and different trade unions' power resources. This research confirms the statement that 'sectoral differentiations in industrial relations do not replace national differentiations in industrial relations' (Bechter, Brandl & Meardi, 2012), because national institutions matter in the way that they can prevent collective bargaining in the retail sector not to fall 'too deep' and to maintain sector institutions. Both levels are more or less equally important, although different by country. In Sweden, national characteristics in high trade unions memberships and multi-layered collective bargaining seem to produce less sector variety than other countries. In Germany, the difference in unionisation between the two sectors leads to more erosion of sector bargaining in retail. In the Netherlands and Italy, it leads to agreements with fewer representative unions in retail and lower labour standards in collective agreements in retail. In the Netherlands because this is an employer strategy to bypass the legal extension of sector agreement with larger and stronger trade unions. In Italy, employers can use national structures to organise flexibility and competitiveness functions (Armaroli & Tomassetti, 2022: 61). In a context of general bad working conditions in retail, trade unions across Europe try to organise and activate workers in large retail companies to build up company level bargaining (Ireland, Germany) or to fight for continuation of their position at company level (Netherlands, Poland). In manufacturing, trade unions have more established positions to bargain on 'higher end' topics like productivity, restructuring, and competitiveness.

Nevertheless our research makes clear that there are more 'divisions' than sector. Especially in Italy, sector differentiation seems to play a less dominant role than company size and position in the value chain. The Italian report conclude that the two-tier model of organised decentralisation do not fit anymore the large companies at the top-end of the value chain and neither the small companies at the lower positions of the value chain. The first group prefers fully decentralised bargaining at the company level, and the preferences

of the second group leads to a centralised – though highly 'perforated' – bargaining model, for example by loopholes within traditional collective bargaining and treats by pirated contracts' (Armaroli & Tomassetti, 2022: 60-62).

## 1.5 Beneficial factors in balanced decentralised bargaining

Before going in depth about beneficial conditions in company level bargaining, it is first important to stress that decentralisation and company bargaining is not something that is by definition something good or to be preferred above multi-employer bargaining. It has to be balanced and fair in its intention, its dialogue and negotiation processes and its outcomes. Indicators for *balanced* company bargaining that were integrated in the case study methodology are:

- embeddedness in a legal framework and broader collective bargaining regime with employers' commitments
- access of established, representative and independent trade unions to the bargaining table at company level
- relatively equal power positions between individual employer and worker representation in professional negotiation processes
- broader scope of bargaining agenda's than only wages and working hours (but also job protection, education, co-determination, consultation in HR and business strategies), or to put it in a game theory: not only distributive bargaining (trade-offs, zero-sum game) but also integrated bargaining with win-win outcomes (Walton & McKersie, 1965)
- bargaining outcomes that are not only beneficial for the employer and the company but also beneficial to employees

Labour relations and collective bargaining are based on power relations between employers and employees and between collective bargaining parties. Trade unions are central in organising and representing the less powerful stakeholders: the workers. Also in this study we focus on the power in the position and strategies of trade unions in collective bargaining, specifically in their responses on state and employers initiated decentralisation, but also in their own initiatives to represent employees on the company or workplace level.[9] Literature distinguishes four different dimensions of power resources of trade unions (Müller & Platzer, 2018; Müller et al, 2019; etc.).10 The first dimension is '*institutional power dimensions*' relating to trade unions' legal recognition in collective bargaining at the

[9] Employer associations have also the distinguished power resources dimensions. But we do not focus on this here.

[10] Where trade unions are central in this study, as written before, these dimensions of power resource might theoretically be broadened to employers and their associations.

several levels and the rights and obligations of the bargaining parties at the several levels. Institutional factors are also relating to legal and regulative support for employers in multi-employer bargaining and its (legal) extension to unorganised employers. The second dimension concerns '*organisational power resources*': the capacity of trade unions in organising and participating in social dialogue and collective bargaining, and more specifically also in controlling decentralisation and influencing company level bargaining. Organisational power is not only dependent on unions' factors, but also on the support provided by employers and the state for allowing and facilitating union organising and union's activities to increase their membership (Müller et al 2019: 634-635). The third dimension concerns '*societal power resources*' or 'communicative power resources', such as the ability of unions to take part in public discourses, to shape public opinion and to forge alliances with other actors of civil society, such as NGOs, political parties and social movements (Müller & Platzer, 2018: 305). Countries with involvements of trade unions in tripartite social dialogue with the government and business associations or in network with employers' organisations do give trade unions social support and recognition, also regarding individual companies. Dialogue with unions can be part of a socially responsible strategy of companies, in the same way as dialogue with NGOs in environmental issues can give companies a better social image. Academic literature gives also a fourth dimension, namely '*structural power resources*' (Schmalz, Ludwig and Webster, 2018). Structural power refers to the position of wage earners in the economic system, in the production process and in the labour market. It is a primary power resource as it is available to workers and employees even without collective-interest representation. Chapter 7 has included this dimension in its analysis.

Along with the first and second dimension of power resources, I will go more in depth by using evidence from the case studies in our research. The third and fourth dimension have not or just indirectly been subject in our research.

### 1.5.1 Institutional factors

Union power resources on the company level is not enough; it is necessary to maintain multi-employer agreements in order to shore up bargaining coverage and to set safety nets and norms for company level bargaining (see also Visser 2016, Ibsen & Keune 2018). These positive effects of national and sectoral institutions for coordinating decentralisation can be clearly seen in France, Italy, Netherlands, Spain and Sweden. Unions in Ireland and Poland are lacking these institutional power resource, and in Germany trade unions cannot compensate for the holes that have been made in declining coverage levels of sector agreements. Furthermore, unions need to be recognised as representative bargaining party for workers towards individual employers. In more elaborate multi-layered models – such as in Sweden, Italy and France – trade unions have more access to (additional) collective bargaining at the company level. Clear and supportive regulations about the conditions for company level bargaining and its relationships with national and

sectoral collective bargaining is needed. In legal perspective, it is France that regulates the most details in this, such as topics to be regulated at company level and the conditions set for unions and non-unionised worker representation in representing the employees. Also Italy (and Spain?) have an elaborated institutional frameworks by law and national and sectoral agreements for regulating the articulation between the levels. It is Sweden where only social partners regulates centralisation and decentralisation in employment relations.

Within the multi-layered frameworks, vertical coordination practices among employers (associations) and among trade union representation on several levels are relevant. Most country reports point to the need of assessments of (proposals for) local agreements by national or sectoral union representatives, combined with fallback clauses of minimum standards set at national and/or sectoral level. This is to prevent risks of non-beneficial ingredients in local agreements for trade union members and other employees that might be the result of potential inequality of bargaining power at the local level. Exceptions are Ireland and Poland where sectoral and national bodies almost have disappeared and decentralised bargaining is not conditioned by national or sectoral regulation. Filling the gap of a lack of vertical coordination, trade unions in Ireland have initiated some new forms of informal horizontal coordination.

A major advantage of single-channel systems is that the labour counterpart to management at company level has a broader mandate anchored in collective bargaining, and in multi-level structures is also has better means of communication and articulation with higher-level actors (Nergaard et al. 2009). The Swedish cases illustrate that clear national and sector regulations on employee representation and information, consultation an co-determination at local level is enhancing successful negotiation and implementation of local collective bargaining. Dual-channel systems are extra challenged by the need for clear demarcations in jurisdictions for trade unions and for works councillors or other representatives in employee participation. The Dutch case studies show recent experiments with works councils as representative party in negotiating terms and conditions of employment at the company level, leading to undermining the position of trade unions, to conflicts and to unclear roles and powers in the 'triangle' of employers – trade unions – works council (see Section 7).

### 1.5.2 Organisational factors

Beside a supportive institutional framework, trade unions' membership rates in the companies are crucial in decentralised bargaining. This relates to the *access* to the bargaining table as a representative party, relatively equal power relations between employer and trade unions in *negotiation processes*, and bargaining *outcomes* that are beneficial for employees. Let us not forget: memberships are the biggest source of financial resources for trade unions. Decentralisation is expensive because of the high amounts of negotiation tables at the decentralised level and the related efforts that has to be made to

collect local information, to build up a broad range of skilled local negotiators and to maintain internal coordination.

Where unions at company level are relatively weak in membership (such as in Spain and the Netherlands), trade unions have not that much to win to diffuse their activities towards company levels. In other words, they need to focus their limited resources at higher collective levels. But where trade unions have high membership in companies – within or without the framework of sector agreements – they can profit from a robust social base in their negotiations with management (see also Toubøl & Strøby Jensen, 2014). The case studies in Sweden highly confirm the importance of high trade union memberships and long traditions in bargaining and social dialogue structures as beneficial factors, also when new challenges are coming, such as regarding the corona-pandemic or teleworking.

Another beneficial factor is the competence of trade unions in social dialogue and collective bargaining at the company level. This is partly related to the earlier mentioned factors, but these factors are not enough; bargaining rights and trade unions' memberships do not guarantee high competence. The Italian cases show that high unionised levels among employees do not automatically lead to strong capabilities in defining positions and organising effectiveness in decentralised bargaining. Trade unions' competence in decentralised bargaining involves company specific knowledge, bargaining and dialogue skills and experience, and also capacity to translate individual worker needs into a coherent collective approach. The case study in the manufacturing sector in Poland claims that despite a low supportive institutional structure in the country, the strong positions for trade unionists in the company have been the result of proactive and decisive trade union practices.

Interestingly, some case studies consist of innovative actions of trade unions to (re-) engage with workers and workplaces through decentralised bargaining. Irish cases show proactive unions in re-engaging union base through company bargaining with management. At the same time, they mobilise their members, develop shop stewards negotiating skills and try to follow a strategy of pattern bargaining towards other individual companies in the sector (such as pharma). Also in Germany, union strategies of (re-)connecting with the rank-and-file and workplaces plays a role through strengthening and new involvements of trade unions in company bargaining and through starting new co-operations with works councils to recruit new members. Successes for German unions in establishing and continuing decentralised bargaining are to a high extent dependent on the question if works councils are able and willing to collaborate with unions, for example in concession bargaining when companies in manufacturing are in crisis. Local derogations from sector agreements in the German metalworking industry and concessions from trade unions in wages and working hours are going hand in hand with improvements in employment protection, investment promises and extension of co-determination responsibilities. The case in the German fashion retail company can be read as a success story in local organising: after the union helped the employees to install a works council, the council helped the union to be recognised as negotiating party by the employer. From another point of view is also the

Dutch case in an e-commerce firm innovative in the sense that the trade union started an experiment with new direct forms of individual workers participation in collective bargaining (referendum, voting) to engage with non-unionised individual employees and to increase its representativeness.

Less unidimensional are the conclusions about the benefits of co-operations between trade unions at sectoral level and those at company level. In the well-developed multi-layered regimes in Sweden, there are rather tight vertical communications in trade unions organisations, that appeared to work well. Also in other countries, local trade unionists are supported by sectoral representatives. But the French and Dutch manufacturing cases show quite autonomous positions and functioning of union delegates at company level. Support seems not always to be needed and too much sectoral interferences can hinder autonomous bargaining at the company level as well.

### Employers' support

Organisational power of trade unions is not only dependent on unions' characteristics, such as memberships and competence, but also dependent on the employers' commitment in collective bargaining structures and company support in trade unions positions and actions in decentralised bargaining. Generally speaking, well established and professional relations between individual employers and trade unions in negotiating wages have tendencies to be broadened by trade unions' involvements in other issues, such as working hours, job security, education etc. In these practices, the scope of 'distributive bargaining' with zero-sum results is growing towards 'integrated bargaining' in win-win situations with positive sum results (Walton & McKersie, 1965). This is made clear in all cases in Sweden and some manufacturing cases in Italy, Germany, the Netherlands, France and Ireland. Related to this is that many case studies concern large companies characterised by high labour productivity where quality matters in competitiveness and not only prices. The quality of relationships and bargaining processes are here mostly characterised as being mutually trustful, collaborative, professional and continuing/sustainable. Here, management uses strategically trade unions for social support in their policies in competitiveness, technology, digitalisation, HR management and sometimes environmental issues as well. Trade unions gain in established positions, broader involvements, and when smart also in reconnecting with workers, workplaces and employee representative bodies. In short, when the agendas in social dialogue and collective bargaining at the company level go beyond the classical topics of wages and working hours, integrated bargaining with win-win results can strengthen decentralised bargaining. Nevertheless, there is a limit when collective bargaining are seen by the employer as just an efficient and effective HRM-tool in creating social support and worker motivation (such as suggested some of the case studies in Ireland, Italy and France). There is also a limit when trade unions become (too) dependent on the employer's financial resources what can hinder autonomous agenda setting and independent power on the side of trade unions on the long-term.

Case studies in France, Italy and the Netherlands speak about a development of (re)centralisation within the large companies in manufacturing where collective bargaining at the corporation level enhance harmonisation between departments and workplaces regarding labour contracts and HRM policies and prevent competition on wages between the several establishments or departments. Efficiency in bargaining processes and in contract-formation are other reasons for large employers to do so. In these cases, workers participation continued to be at the decentralised workplace levels, strengthening the observation that collective bargaining by unions and (non-/party-) unionised employee participation are quite parallel practices within large companies.

## 1.6. Barriers and limitations in decentralised bargaining

Although the majority of the case studies can be called 'best cases', the country reports also give information on barriers and limitations in decentralisation processes and in decentralised bargaining practices. Institutional and organisational power resources of trade unions in collective bargaining and in organising (or preventing) decentralisation are in some countries and sectors low, and might be further hindered strategies of the state and employers.

### 1.6.1 Institutional factors

Poland and Ireland show the most institutional barriers in decentralised bargaining. Irish and Polish unions lack the support of social dialogue and collective bargaining at the national and sectoral levels. Trade union here are also confronted with low bargaining rights, making them extra vulnerable for the employer's willingness to accept them as a worker representative party (or not). Especially the Polish report – and to a lesser extent – the Irish report – show high fragmentised and high workplace-centred employment relations while cross-sectoral confederations of trade unions do exist. As earlier stated, in Poland fragmentation can be explained by the longer existing vacuum between state and workplaces, with lack of employers' unions' activities at the sectoral level. Furthermore, in Poland, collective agreements are concluded for unlimited duration, leading to discouraging the employers from entering into collective bargaining if there are no possibilities for adjusting or renegotiating the agreements. Irish cases show more success in company level bargaining but also in a context of eroded institutions on national and sector level. Polish trade unions seems to enjoy less successes in establishing 'compensating' practices at the company level, compared to Irish unions.

Also in less voluntarist models in employment relations, established trade unions can meet closed doors, for example when 'yellow unions' take that position in Italy or in the Netherlands. Sector bargaining can also be a strategic instrument for companies not to have to talk nor negotiate with trade unions anymore: they have 'outsourced' this to an external

party (read 'employers association') and may find here a legitimisation for not having to interact with trade unions at the company level at all.

The lack of (the use of) a legally extension of sector agreements to unorganised employers in Germany is a barriers for German trade unions to control decentralisation processes and to establish alternative positions at the company level. The unorganised company is just free in its choice to bargaining with unions or not.

### 1.6.2 Organisational factors

Where high trade union membership is a beneficial factor, low membership is definitely a barrier in decentralised bargaining. This can be illustrated in weaker and less balanced bargaining in retail, where 'pirated' bargaining with 'yellow unions' have more chance to exist because of the less strong organised established trade unions in the sector. Fewer memberships also led to serious lack of financial resources for building up trade unions competences in company level bargaining.

Lack of unions' engagement and knowledge about workplaces, jobs and employees within companies is another barrier for decentralisation and decentralised bargaining. Dual-channel systems of worker representation give trade unions structurally a disadvantage in connecting to workplaces, but might give trade unions a power resource if both unions and works councils are open to partnership constructions. German manufacturing cases show the opportunity of trade unions' good practices to cooperate with works councils. At the same time hoverer, one have to be careful to generalise this for all companies and sectors in Germany. The shares of companies and employees without representation by a works council seems quite high (Haipeter & Rosenbohm, 2022: 16-17). On the on hand, this limits the trade unions power in structural collaboration with works councils. One the other hands, it means also that when a company is not anymore covered by collective bargaining, this decentralisation falls 'deep' without a 'buffer' from works councils. In general, across the studied countries, the majority of the cases show low levels of relationships between bodies of collective bargaining and bodies of employee representation at workplace levels.

#### Lack of employers' support

In all European countries, we might see some hostile, non-committed or non-supporting employers in decentralised bargaining. In the case studies from Poland, we see the most non-committed employers (except the Polish company that is part of a multinational with a German mother). Sometimes hostility even occurs by not allowing to establish a trade union or not communicating with trade union representatives. Sometimes this occurs with a minimum level of social dialogue or consultation but without collective bargaining. These cases in Poland can be understood in the context of an national model of pluriform industrial relations with traditionally low activities in collective bargaining. However, there are non-institutional factors in play. In Ireland, also a pluriform model, the cases describe more willing employers that find a link with their company strategies. In the Netherlands, with its overall institutional stability, we see in the retail case an employer that

has not anymore faith in collective bargaining with the trade unions and do risk new conflicts with established trade unions while breaking a long tradition in decentralised bargaining by excluding unions at the bargaining table.

We do not have to forget that besides trade union, also employers can 'lose' or 'risk' something when they introduce decentralised bargaining. Companies that start making collective agreements can be afraid of losing competitiveness against other companies that are not bound by collective bargaining at all or that are covered by (cheaper) sector agreements.

## 1.7 Towards new relations between unions and other employee representation?

### 1.7.1 Single- and dual-channels in workers representation

Patterns of decentralisation are influenced by single or dual channels of worker representation within companies. In single-channel systems, where workplace representatives are elected and/or delegated by trade unions, unions can keep substantial control over decentralisation processes (Ibsen & Keune 2018). In dual-channel systems, where employees are represented by works councils, the relationships between sector and local negotiators are often weaker and more fragile, reducing the control of unions over decentralisation (Nergaard et al. 2009). This control depends on the extent to which works council members in these dual-channel systems are members of the trade unions and on the extent in which works councils and trade unions are cooperating at the workplace and company level. Therefore it can be assumed that trade unions in dual-channel systems are more hesitant and cautious to decentralise because of the risk of diffusion of their control and powers. On the other hand, when works councils are more unionised or have partnership relations with unions, trade unions might be more willing to give works councils rights to derogate from sector agreements. At least in theory, trade unions in dual-channel systems might use works councils as a power resource in collective bargaining at the company level. Trade unions can use the institution of works councils in their strategy for better engagement with workers and their needs within companies, to recruit more members and to unionise the councils (Haipeter, 2020). Decentralised bargaining on derogations can give unions and the works councils the opportunity for revitalisation and for co-operations between the two bodies of worker participation (Haipeter, 2021).

The Swedish case studies confirm the theory that single-channel systems are characterised by stronger and collaborating relationships between sector and local negotiators in collective bargaining, leading to higher trust and willingness among trade unions on national, sectoral and multi-employer levels to decentralise towards company level (Rönnmar & Iossa, 2022). Workers representatives at the several levels are from the

same ‘party’ and there is no risks of involvements of competitive, non-unionised worker representatives.

Germany and the Netherlands are two countries that have an elaborated, legally established dual-channel system in worker representation. In both countries, collective bargaining between employer(s) with trade unions in legally demarcated from consultation and co-determination rights for works councils within the company (see Chapter 6). Fundamentally, these are separate legal fields. Only when collective bargaining parties do give jurisdictions to works councils or if works councils are supported by trade unions will both fields partly overlap. This is in contrast to the more ‘mixed channels’, somewhere between pure single and pure dual channels in worker representation in France, Italy and Spain, where trade unions can have formally delegated members in bodies of employee representation within the companies.

Italy and France have a more mixed-channel model in worker representation: in between the pure single-channel system and pure dual-channel. In Italy, there are two channels for workplace representation. The unionised RSA, only for organisations under sectoral and/or company collective agreement, and RSU with both unionised and non-unionised elected representatives (Armaroli & Tomasetti, 2022: 11-12). In practice, both channels are not that different and both have links with sectoral trade unions. Interestingly, the Italian findings suggest processes of decoupling between collective bargaining on the one hand, and shop floor representation on the other hand. First, among large and geographically dislocated companies that prefer uniform labour conditions across their many establishments, what is shifting the focal point of decentralised bargaining from single workplaces towards the group or corporate level? Second, the Italian report points to a weakening role of workplace representation and difficulties for unions in bridging shop floor workers organising and collective bargaining when trade unions are passive in organising new elections for RSU and/or are focusing on collective bargaining procedure at the more centralised company level (Armaroli & Tomasetti, 2022: 62).

Interesting is the case of France. On the one hand, unions can set up a union section and appoint one or more union delegates as soon as they obtain at least 10 percent of the votes in workplace elections (Kahmann & Vincent, 2022). On the other hand, to offset the fact that non-unionised companies, mainly SMEs, could not bargain because of a lack of union delegates, successive legislation has extended the possibilities for non-union representatives to negotiate in non-unionised workplaces. Contrary to Germany and the Netherlands, French legislation is guiding the decisions about unionised and non-unionised bargaining parties and signing bodies, while these factors are more in the hands of companies and factual power relations between employers and trade unions and works councils in Germany and the Netherlands. Furthermore, in France the scope of decentralised bargaining is guided by legislation of ‘obliged issues’, be it in negotiation with union delegates or with non-union representatives. This might theoretically work as an incentive in the collective bargaining system for trade unions to present oneself as being the

best representative body for negotiating. However, it is not clear that this has led to higher membership rates in France.

### 1.7.2 Changing relationships between unions and works councils?

Relationships between the institution of the works councils and the institution of trade unions are effected by the trend of decentralisation in collective bargaining. The legal demarcations of 'functions' in co-determination versus collective bargaining and rights and powers between channels and stakeholders might be called into question. This can be coordinated by social partners themselves. As written earlier, some sector parties in Germany introduced 'opening clauses', not only in the earlier mentioned topic of working hours, but now also to re-negotiate wages in a negative way for workers. Downward derogation from wage levels or collective wage increases in sector agreements, is and was never possible in the Netherlands, not for trade unions nor for works councils at the company level. In Germany, trade unions have the formal lead in negotiating opening clauses and case studies show the importance of co-operations between trade unions and works councils in these areas. In the Netherlands, trade unions continued keeping more distance to works councils. Trade unions in the Netherlands are very strict in their strategy of regulating minimum levels set at the sector level without any option of derogation (Jansen & Tros, 2022).

More similar are Germany and the Netherlands in the wider topic of working hours and restructuring. This can be understood in the assumption that trade unions bargain for 'hard money' in distributive bargaining processes (say wages and other payments), while works councils bargain in issues where interests of the employer and workers are overlapping. The aim of co-determination legislation in both countries is not only to represent worker interests but also to enhance the working of the company's organisation (this is called the 'double aim' of the Act on Works Councils in both countries).

Interestingly, the trade unions in both countries seem to differ in their strategy towards works councils. FNV, the largest trade union in the Netherlands, is strongly against a bigger role of works councils consulting/negotiating company regulations about primary terms and conditions of employment. They point to the council's and councillors' dependencies on their employer, the missing of a strike weapon, and lower expertise and negotiation skills in collective bargaining. In Germany, the pressure of employers towards decentralisation is higher. IG Metall in Germany do not have fewer memberships than FNV in the Netherlands, but they miss the power resource of the legal extension mechanism as in the Netherlands. Many German employers can directly profit from 'opted-out' from the employer associations, while unorganised Dutch employers in most of the sectors are still confronted with the extended coverage of sector agreements. Unions can offer flexibility to individual employers in Germany by joint activities and collaborations with the works council, while at the same time revitalising their rank-and-files (Haipeter, 2021). This is illustrated in the two manufacturing cases in Germany. In stricter applying the dual-channel structure and giving a very limited role to works councils in the implementation of collective agreements, one

might also say that Dutch trade unions miss the opportunity to (re-) connect with workplaces and their rank-and-files (see further Chapter 6).

## 1.8 Conclusions and challenges for the future

### 1.8.1 Concluding findings

Already since the 1980s, collective bargaining institutions have been decentralised in European countries. The main initiators are employers that aim for more flexibility in labour relations at the company level and more deregulation in collective terms and conditions of employment at national and sectoral levels. 'Tailor-made' negotiations and collective agreements at the company level might give individual employers more opportunities in adapting wages and other labour regulations to the companies' competitive and strategic needs and their changing (specific) environments. In the last decade, this trend of decentralisation has gone further. After the European wide crisis since 2009, some national governments have made new legislation to (further) stimulate company level bargaining with trade unions, such as Spain, Italy and France. Trade unions across countries and across sectors of industry have respond differently on the employers' demand for decentralisation and on the new legal opportunities for decentralised bargaining. Mostly trade unions feel forced to be in a more defending position, or to block derogation options in collective agreement or to regulate new bargaining rights for trade unions (and sometimes non-unionised employee representatives) on the company level.

Types and patterns of decentralisation in labour relations and in collective bargaining are dependent on national institutions, power resources of stakeholders and their strategies. In the voluntarist and pluralist models of industrial relations, the employers' and political interests in decentralisation led to a further institutional breakdown or collapse in social dialogue and collective bargaining in the 2010s. This pathway in decentralisation is evident in the country reports on Ireland and Poland. Remarkably, also the German model of coordination in collective bargaining has partly eroded and show disruptive features from its past. In other European countries, processes of decentralisation have been shaped incrementally within more or less continuation of national and sectoral structures. This pathway can be seen as institutional layering, adding decentralised bargaining opportunities to derogate from national and sectoral regulations or to add topics or extra bargaining rights to bargaining at the company level. These incremental changes however can have big impacts on the relative shifts towards the company as the locus of labour relations and towards more power for local negotiators and local workers representatives.

Varieties across countries, sectors and different sizes of companies can be further explained by power resources and related strategies of the stakeholders. Especially trade unions play a crucial role in coordinating, organising and shaping decentralisation processes in multi-layered collective bargaining structures. Case studies in this book point to some

important factors that benefit decentralised bargaining with balanced negotiation processes and outcomes. First of all, the importance of having supportive institutions and rules at the central levels in for providing safety nets in wages and other labour standards and providing norms for company bargaining. Beneficial factors are also the higher unions' membership rates in companies, unions' competences in local negotiations and innovative actions in re-engaging with workplaces and workers within companies. Of course, employers' commitments in regulating decentralisation and in decentralised bargaining is essential. Trade unions have more institutional and organisational power resources in manufacturing sectors than in for example the retail sectors. High productive firms and larger companies seem to count for more practices in decentralised bargaining and with more powerful trade unions in more balanced negotiations. Low price competitors and SMEs count for fewer beneficiary structures in decentralised bargaining practices.

In analysing and discussing decentralisation, it is even important to focus on its opposite: centralisation from company level to sectoral and national level. How far can you go with decentralisation? Re-centralisation is an evident sign of the limits in decentralisation. The French and Spanish report mention recent institutional changes towards centralisation nowadays. At the end of 2021, social partners in the metal industry in France signed a national sectoral agreement in the sector to replace from 2024 the existing 78 territorial agreements in France (Kahmann & Vincent, 2022: 28). In Spain, the earlier reform towards decentralisation is recently reversed by the national government in 2021 for better guaranteeing the primacy of sector agreements with representative, established trade unions (that were never in favour of derogation options). It is logical that the recent EU call to stimulate collective bargaining coverage to provide for better and decent minimum wages – and to make national action plans for this – will be better met by national and sectoral bargaining than by only company level bargaining. Although it has to be also said that high bargaining coverage can go hand in hand with 'layering' in collective bargaining institutions and types of organised decentralisation.

### 1.8.2 Challenges for trade unions and other stakeholders

Neo-liberal policies of governments and (organised) business in the 2010s have often put trade unions in a defensive position. International financial and political bodies have for long time pushed in the direction of deregulation and flexibility in labour market and have challenged the trade unions' agendas in securing terms and conditions of employment. Generally speaking, this context has had negative impacts on the social power resources of trade unions. After a collapse or gradual erosion of collective bargaining structures, it is difficult to rebuild trust and to set up new bargaining patters. Not seldom, the trade union movement in society is (unfairly) framed as an institution for the older generations of workers, what can make employers even more hesitant to initiate dialogue and collective bargaining with unions in their companies. Of course, it is the challenge of the unions themselves to represent also the new generations of workers and to show that they are competent partners to discuss innovative sectoral and company strategies and to agree on

terms and conditions of employment and working conditions, also in the context of the 'green transitions'. But at the same time, building these organisational power resources will have more success with better social and institutional power resources in collective bargaining and broader social dialogue and consultations in political and administrative debates and decision-making.

Sufficient union membership in the companies where unions are bargaining parties is a very important conditional factor in powerful and sustainable collective bargaining practices, for being representatives and to finance trade unions' activities including those at the local levels. Nevertheless, generally speaking, these membership levels are in serious decline in almost all European countries (Vandaele 2019). Many trade unions interviewed in this study worry about membership, social involvement and 'attitudes' among younger workers' generations in trade unions and works councils activities (maybe with the exception of Sweden). Social dialogue and collective bargaining at the company level demand for trade unions representativeness and commitments of the companies' workers. The picture that arises from the country reports is teaching us that maintaining the position of trade unions aside individual employers seems to be challenging enough. Strengthening of these unions' positions in the future is often not expected. Although it has to be also said that some local cases studies in innovative trade unions' actions in re-engaging with workplaces and workers has been observed as well (for example Ireland and Germany).

Another related challenge is the shift in employment over sectors. Manufacturing is in decline and counts less and less blue collar workers. Service-oriented sectors are still growing, while they have less established structures in collective bargaining at sector and company level and mostly also are less strong bodies of employee representation within the companies.

Broadening or updating the bargaining agendas can help to preserve trade unions' involvement in social dialogue and collective bargaining at the company level. Several cases report new topics such as COVID-19, organisational developments towards more sustainable production, digital transformation of work and job-to-job transitions in case of unemployment threats. Not that much mentioned is the topic of flexible work, although highly relevant for attracting new generations of workers in trade unions' activities, at least in countries with high numbers of flexible workers such as the Netherlands.

Do trade unions have to bridge the gap between collective bargaining and employee representation at lower levels? It is crystal clear that trade unions always have to have an eye on the specific working conditions and needs of workers in their relation to their jobs and the organisation in which they work for better representation and in organising worker motivation to become trade union members. It is also clear that unions should have a task in strengthening voice options for workers at decentralised workplace levels and might organise collective bargaining more bottom-up (see for example Mundlak, 2020). It is less clear from our study if that also includes more partnerships with works councils or more involvements of workplace *representatives* (for example works councils). Is it realistic in terms of position and skills to ask works councillors to bargain with their own employer

about wages? Collective bargaining and workplace consultation and co-determination are different fields and have different legal backgrounds and legal aims. Very interesting are the best practices in co-operations between trade unions and works councils in the German manufacturing sector. But not to be forgotten is that these structures were not really aimed for by trade unions originally and they have to be understood as a strategic and smart response of trade unions in the Germany manufacturing sector. These practices cannot that easy be transplanted towards other German sectors or other countries. Even at the Dutch manufacturing company DSM, very near the industrial *Ruhrgebiet*, works councils do not give trade unions a bigger role in non-wages issues like organisational development and do not structurally cooperate with trade unions to recruit new members at the workplace.

Employers are essential in their commitments to collective bargaining, in co-regulating decentralisation and of course in decentralised bargaining practices. In some country reports, divisions and polarisation within the representation of employers at national and sectoral levels have been observed, also when it comes to collective bargaining (for example Italy and the Netherlands). In other countries, such as Poland, Ireland and Germany, employers' disengagement with collective bargaining suggest that employers' organisations are becoming more business associations. Fragmentation and lower business' commitments in collective actions among employers risk further 'institutional drift' in which existing collective bargaining institutions are not maintained/sustainable, leading to less scope, meaning and function. Sector bargaining and employer associations can lose their grip on reality or die out.

Decentralisation is a real risk for further erosion of collective bargaining coverage in the Member States. Countries who are dominated by single-employer bargaining show lower collective bargaining coverage rates. In the recent proposal for a directive of the European parliament of the council, it is argued that collective bargaining on wage-setting is an important tool to ensure that workers can benefit from adequate minimum wages. Therefore is makes indeed sense also to aim for extending the coverage of workers through collective bargaining. For reaching this aim, it not only makes sense to maintain national and sectoral collective bargaining structures but also to organise new forms of centralisation in the countries that are dominated by single-employer bargaining or by no collective bargaining at all. A target of 80 percent collective bargaining coverage is a big challenge for many European Member States and might only be reachable with new sector agreements and the legal mechanisms of extension towards non-organised businesses. However, this book shows that decentralisation can go hand in hand with maintaining sectoral institutions in labour relations and with innovating sectoral agreements. Although centralisation is important for collective bargaining coverage and in securing decent wages and working conditions for all (independent of specific companies and workplaces), the call or decentralisation will never end, to meet the employers' needs in flexibility and workers' needs for social dialogue and (added) collective bargaining, tailored to their specific working environments.

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# Chapter 2.
# Decentralised Bargaining and the Role of Law

Niels Janssen

## 2.1 Introduction

In the underlying research project of this book, the status and development of decentralised bargaining in several European countries have been studied. In general decentralised bargaining means the development from (more) centrally conducted or controlled collective bargaining about employment conditions to bargaining at lower levels. Decentralised bargaining can refer to various developments. In the first place, decentralisation is referred to when the decision-making power in the existing consultations or decision making is spread over several actors and groups. In administrative law, this can include the transfer of powers from the State to provinces or municipalities. In the negotiations on employment conditions, one can think of a decrease in the importance of collective bargaining due to a decrease in the scope of collective agreements, or a decrease in sectoral collective agreements and an increase in consultation at the company level.11 Related to this form of decentralisation, but not quite the same, is when the existing national or sectoral agreements create more room for specific needs of companies and employees in the form of deviation possibilities. Examples are different options or alternatives within the collective agreements or so-called opt-out regulations, but also deviation possibilities and forms of coordination between different levels.12 Finally, decentralisation can refer to the involvement of the works council in the formation of employment conditions.13 In this case, the decision-making power is not necessarily distributed among actors, but consultations are held with stakeholders who are less centrally controlled. At its core, decentralisation always involves changes in the existing system that entail the reduction of central control or coordination in consultation. In countries where there is no central consultation structure, it is difficult to speak of decentralisation because the decentralised consultation in those

[11] See for example T. Haipeter and S. Rosenbohm, Codebar – Comparatives in Decentralised Bargaining. Country Report: Germany 2022, p. 19 et seq.
[12] In all the countries studied with a certain sectoral structure, this form exists to a greater or lesser extent
[13] N. Jansen and F. Tros, Codebar – Comparatives in Decentralised Bargaining. Country Report: The Nederlands 2022, p. 21 et seq.

countries is usually the existing consultation structure. Poland and Ireland are cases in point.14

It is true that the various country reports show that the moment when decentralisation appeared on the political agendas (and whether decentralisation is still on the agenda) varies somewhat from country to country, but it also follows from these reports that the motive of decentralisation is quite similar in the various countries. That motive is, in the main, strongly economic in nature. In Sweden, the Netherlands, Germany and France, it was or is considered necessary, because of increased international competition, for companies to be able to adapt more easily to economic developments in order to remain sufficiently competitive. Decentralised bargaining could be helpful in this respect, or so the idea was or is.15 In countries such as Italy and Spain, the 2009 crisis seems to have been a key driver of encouraging decentralised bargaining.16 Companies should be given more space to move with economic changes that threaten their survival. Although the motive for decentralisation is similar, the same cannot be said about the extent and manner in which decentralisation has been or is being pursued and who initiated it. The decentralisation process differs widely from country to country and the question is what role the national legal framework regarding collective bargaining plays in the decentralisation process. It is interesting to investigate which legal mechanisms or instruments are used to shape decentralisation and what role the existing legal structures play in this process.

Legal systems differ greatly at the level of detail, and so does the legal design of collective bargaining (hereafter also referred to as collective bargaining law). In order to examine the role of law on the decentralisation process and to compare countries, I have selected four aspects of collective bargaining law that (may) influence the emergence of the existing consultation structure and therefore (may) also influence changes to that structure as a result of decentralisation. These four aspects are: i) the bargaining and contractual freedom of collective bargaining parties; ii) the possibility of declaring collective agreements generally binding; iii) the relationship between the sectoral collective agreement and the company collective agreement and the relationship between collective agreements and the law and iv) employee representation in collective bargaining. In section 2 I will discuss these aspects in more detail. In Section 3, I will analyze the decentralisation process. This is not about analyzing outcomes, but about analyzing the legal instruments or mechanisms that are used in the context of decentralisation. More specifically, I will discuss the role of the legislator in the decentralisation process and the use of different legislative instruments and the coordinating or non-coordinating role of social partners.

[14] J. Czarzasty, Codebar – Comparatives in Decentralised Bargaining. Country Report: Poland 2022; V. Paolucci, W.K. Roche and T. Gormley, Codebar – Comparatives in Decentralised Bargaining. Country Report: Ireland 2022.
[15] See for example M. Kahmann and C. Vincent, Codebar – Comparatives in Decentralised Bargaining. Country Report: France 2022.
[16] See for example I. Aramoli (in collab with P. Tomassetti), Codebar – Comparatives in Decentralised Bargaining. Country Report: Italy 2022.

## 2.2 An analysis of the legal design of collective bargaining

### 2.2.1 Introduction

The right to collective bargaining contributes significantly to social justice because inequality of power is compensated for. In addition, collective bargaining in the form of collective agreements offers the business community the opportunity to act in a self-regulatory way, which means that it can respond to market developments more quickly and with greater focus than if it had to wait for the legislature to act. Legislation and regulations can remain limited, particularly by means of sectoral collective agreements that can be declared universally binding. Collective agreements also contribute to cost reductions for employers, reduce uncertainty about wage costs and exclude competition on employment conditions so that employers can make better forecasts. In short, collective bargaining and collective agreements can be useful for positive socioeconomic development, labor peace, stable labor relations and the proper functioning of the labor market.17

The collective agreement is an important outcome of collective bargaining. The law applicable to collective agreements varies greatly from country to country. While international and European treaties recognize the right to collective bargaining,18 those treaties simultaneously take into account the national context of collective bargaining and collective bargaining law.19

There are major differences with regard to, for example, the legal status of a collective agreement and the effect on the individual employment contract. For this study, I analyze the different systems in terms of four aspects that (might) influence the formation of the existing structure in practice and are therefore also important when changing that structure as a result of decentralisation. These four aspects are: i) the bargaining and contractual freedom of collective bargaining parties; ii) the possibility of declaring collective agreements generally binding; iii) the relationship between the sectoral collective

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[17] See about the benefits of collective bargaining: *Communication concerning the application of het Agreement on social policy presented by het Commission to the Council and to the European Parliament* (Commission of het European Communities, COM(93) 600 final 14 December 1993), Brussel; HvJ EG 21 September 1999, case C-67/96 (Albany); International Labour Conference, 101st Session, ILC.101/III/1B, Giving globalization a human face (General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008), Report III (Part 1B)), p. 17-18 and, more recent, *Proposal for a Directive of the European Parliament and of the Council on adequate minimum wages in the European Union* {SEC(2020) 362 final}, p. 2-3.

[18] ILO-Conventions nrs. 87 en 98; artikel 11 Convention for the Protection of Human Rights and Fundamental Freedoms; artikel 28 EU Charter of Fundamental Rights

[19] See for example: Article 4 ILO-Convention 98: *Measures appropriate to national conditions shall be taken, where necessary to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers of employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements*; Article 28 EU Charter: *Workers and employers, or their respective organisations, have, in accordance with Union law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.*

agreement and the company collective agreement and the relationship between the collective agreement and the law and iv) employee representation in the process of employment conditions formation.

### 2.2.2 Freedom of collective bargaining: freedom to contract and negotiate

In many of the countries studied, there is no (basic) legal obligation for employers to enter into a collective agreement. Collective bargaining freedom means that whether a collective agreement is entered into depends primarily on i) the willingness of employers and ii) the power of trade unions to enforce a collective agreement. Employers often have not only the freedom to enter into or not enter into a collective agreement, but also the freedom to join or not join an employers' association that can then conclude a collective agreement at the sector level. However, the extent to which employers have the freedom under the law to participate in collective bargaining (and at what level) does not appear to be a decisive factor in shaping collective industrial relations in a country. Indeed, in Poland and Ireland there is little or no collective bargaining at the sectoral level, whereas in other countries (e.g., the Netherlands, Germany, Spain, and Italy) sectoral bargaining is the main pillar of existing bargaining.

In Poland, the absence of consultation at the sectoral level seems to be mostly related to the reforms of the political system and the circumstance that employers do not see the benefit of sectoral negotiations.20 In Ireland, there was a period when wages were negotiated at the central level, but the crisis in 2009 put an end to that as employers put an end to central-level consultation. However, after that period, consultations at company level became more coordinated. In this context, we speak of pattern negotiations in Ireland.21

In the Netherlands and Germany, the sector model emerged after World War II as a result of the circumstance that employers and employees tended to organize themselves on a sectoral basis. As a result, collective agreements also came into being at the sectoral level, and although the importance of the sectoral collective agreement has declined in Germany, sectoral consultation is still dominant in the Netherlands and Germany. In the Netherlands, the sector model has been an important foundation of the further design and development of the labor market and its regulation. The Dutch consultation model is known as the polder model in which social partners share responsibility for socio-economic policy. In Italy, the sector model is mostly the result of the idea prevailing since the 1980s that - similar to the Dutch polder model - employers and employees should play an important role in shaping labor market policies and social laws and regulations.22 This is also called responsive regulation and tripartite consultation and delegation of regulatory powers are important components of this concept in the Italian context. As a result, a consultative system of

[20] J. Czarzasty, Codebar – Comparatives in Decentralised Bargaining. Country Report: Poland 2022, p. 4 and 14.
[21] V. Paolucci, W.K. Roche and T. Gormley, Codebar – Comparatives in Decentralised Bargaining. Country Report: Ireland 2022, p. 11.
[22] I. Aramoli (in collab with P. Tomassetti), Codebar – Comparatives in Decentralised Bargaining. Country Report: Italy 2022, p. 8-10.

several layers of collective consultation has emerged in which central consultation and the sector play an important role.

In France and Sweden, the freedom of employers within the framework of collective bargaining is limited by law, in the sense that in France employers are obliged to negotiate with unions on certain topics at the sector level. As a result, sectoral consultation also has a legal basis. In Sweden, employees have a strong right to enforce collective consultation and this has helped to create a strong national and sectoral consultation system.

Based on the country reports, the emergence of a particular bargaining structure seems to depend mainly on historical, political and cultural factors and much less on the legal design of collective bargaining law. As a result, a fully liberal system with a lot of freedom for social partners to conclude collective agreements does not necessarily lead to the absence of a centrally (national and/or sectoral) driven consultation system and the lack of a strong embedding of social partners. The legal design of collective bargaining can contribute to the preservation of existing structures. From the country reports of the countries with a less liberal system, such as France and Sweden, the limited freedom of employers to enter into a collective agreement or not, and with which unions and at what level, does seem to have a direct influence on the emergence of certain bargaining structures. In these countries, the limited freedom of employers seems to have led to highly institutionalized collective bargaining in which the sectoral collective agreement plays a more important role than the company collective agreement. It follows from the country reports that the degree to which collective bargaining is centralized (nationally or sectorally) is mainly determined by non-legal factors and that the legal form of collective bargaining can help creating and maintaining a certain structure.

### 2.2.3 The declaration of collective agreements as generally binding

Most of the countries studied have a system of declaring collective agreements to be generally binding. The declaration of binding nature of collective agreements is often seen as an act of substantive legislation and means that the binding collective agreement applies to all employers and employees who fall within its scope. The declaration of binding effect extends the scope of the collective agreement, but its significance for the collective bargaining process is broader than just the widening of the scope of the collective agreement. A numerical approach to the declaration, in the sense that the declaration ensures that the collective agreement applies to a larger percentage of workers, does not do the instrument justice. This is because the extension not only has direct consequences for the scope of regulation of current collective agreements, but also influences the conclusion of collective agreements and the form of collective bargaining. After all, the possibility of being declared binding appears to be an important incentive for collective bargaining because it excludes wage competition by unaffiliated employers, and a major goal of the declaration of binding is therefore the stimulation (or maintenance) of collective bargaining. The possibility of binding agreements not only encourages collective bargaining in general, but also that collective bargaining is conducted particularly at the sectoral level, since as a

rule only sectoral collective agreements are eligible for binding agreements. By declaring them binding, collective agreements can include agreements on, for example, wages, which can then apply to the entire sector. As a result, coordination at a central level means that legislation can be dispensed with, and in that sense the extension contributes to self-regulation of the social partners.23

The possibility of declaring collective agreements binding is not necessarily a guarantee of centrally directed consultation at the national and/or sectoral level. Polish collective bargaining law provides for the possibility of extending collective agreements, but this possibility is not used and sectoral consultation is almost non-existent in Poland.24 In this sense, the mere presence of the possibility of binding agreements does not say much about the extent to which collective bargaining is centrally controlled. This is confirmed by developments in Germany. German law includes the possibility of declaring collective agreements binding, and this possibility was frequently used. In recent years the instrument has been used less, and this is mainly due to the declining degree of organization on the employers' side. As a result, the instrument of the declaration of binding effect in German law has been adapted in the sense that the criterion for declaring it binding has been relaxed. However, this change has not resulted in more collective agreements being declared binding. The importance of sectoral collective agreements is decreasing in Germany, while it has become easier to declare collective agreements generally binding.25

Also, the absence of the possibility of generally binding does not seem to be decisive for the extent to which there is sectoral collective bargaining. Irish and Swedish law do not allow for the possibility of generally binding, and whereas in Ireland there is hardly any sectoral consultation, in Sweden sectoral consultation is an important pillar of the existing bargaining model. The absence of the possibility of generally binding seems to be compensated in Sweden by agreements at the national level.

The majority of the countries surveyed have the possibility of generally binding, but this possibility does not seem to be decisive for the design of collective bargaining and the extent to which there is central control through consultation at the national or sectoral level. After all, Polish law does provide for the possibility of declaring a collective agreement binding, but Polish collective bargaining is characterized by decentralized consultation at the company level. Swedish law, on the other hand, does not allow for the possibility of generally binding, but Swedish collective bargaining is centrally controlled in which the sectoral collective agreement is an important pillar of collective bargaining. The possibility of declaring collective agreements generally binding can make an important contribution to centralized control of the negotiations. The system of declaring collective agreements binding can contribute to the self-regulation of social partners and is therefore a suitable

[23] N. Jansen, *Een juridisch onderzoek naar de representativiteit van vakbonden in het arbeidsvoorwaardenoverleg*, Deventer: Kluwer 2019, chapter 7.
[24] J. Czarzasty, Codebar – Comparatives in Decentralised Bargaining. Country Report: Poland 2022, p. 9.
[25] T. Haipeter and S. Rosenbohm, Codebar – Comparatives in Decentralised Bargaining. Country Report: Germany 2022, p. 19.

instrument in systems that involve social partners in the formation of socio-economic policy and legislation, such as the Netherlands and Italy.

### 2.2.4 Conflict rules and deviation options

Discussions or issues inherent in the collective bargaining process are those related to the overlap of the scope of collective agreements, as a result of which two sectoral collective agreements may apply to an employment relationship or that an employment relationship may be subject to both a sectoral collective agreement and a company collective agreement. The applicability of two collective agreements often leads to problems because the employment conditions agreed in both collective agreements maybe not correspond and this raises the question of which collective agreement or which collective agreement provision has priority. Rules in collective bargaining law that determine which collective bargaining agreement or which collective bargaining provision takes precedence in the event of concurrent and conflicting collective bargaining agreements can be referred to as so-called conflict rules. In countries where sectoral consultation is an important pillar of collective bargaining, collective bargaining law contains rules that give precedence to the sectoral collective agreement in the event of clashing collective agreements. How these conflict rules are shaped, however, differs from one legal system to another.

In the Dutch and German systems, the consequence of declaring a collective agreement generally binding is that it has become a form of public law that takes precedence over purely private agreements. The clash between two collective agreements that have both been declared universally applicable is avoided as much as possible by not declaring one of the collective agreements universally applicable where there is an overlap in their scope.26 It is then up to the social partners to resolve the overlap in scope. If there is an overlap between two collective agreements that have both been declared non-binding, the problem is, in principle, solved by the binding effect of collective agreement law. An employer has the power, via collective labour agreement law, to prevent his employment relationships from being governed by two different collective labour agreements.27 If a company falls within the scope of a sectoral collective agreement that has been declared binding and it wishes to apply its own company collective agreement, this is only possible if: i) the sectoral collective agreement leaves room for this; ii) parties to the sectoral collective agreement grant permission; or iii) the minister asks for dispensation from the sectoral collective agreement.28

Under Polish law, it is not possible to deviate from a sectoral collective agreement to the detriment of the employee through a lower regulation. Derogations in favor of the

[26] N. Jansen and F. Tros, Codebar – Comparatives in Decentralised Bargaining. Country Report: The Nederlands 2022, p. 8-11.
[27] N. Jansen and F. Tros, Codebar – Comparatives in Decentralised Bargaining. Country Report: The Nederlands 2022, p. 8-11.
[28] N. Jansen and F. Tros, Codebar – Comparatives in Decentralised Bargaining. Country Report: The Nederlands 2022, p. 8-11.

employee are therefore possible. Given the fact that Polish employers like to be competitive as much as possible, the lack of deviation possibilities from the sector CLA could mean that the sector CLA is anything but popular in Poland. Polish employers appear to be afraid of competition from other employers who are not bound by a collective agreement and do not see the benefits of a level playing field with regard to employment conditions.29

In France, until the major reforms of the 21st century, the principle of the most favourable provision also applied, i.e. that a sectoral collective agreement could be deviated from only to the benefit of employees.30 In the French system, sectoral collective agreements usually contain minimum regulations, which can therefore be deviated from in favor of employees in, for example, company collective agreements.31

In Sweden and Italy, collective agreements contain many delegation rules that thus ensure coordination between different layers of collective bargaining.32 The collective agreements usually contain rules on how to deal with and/or clash with collective agreements. In Spain, the law stipulates the conditions under which a sectoral collective agreement can be deviated from.33

Another doctrine of collective law that is also an important subject of collective bargaining concerns the possibilities of derogation from laws and regulations. Such possibilities do not exist under Polish law34 and also Ireland does not seem to have this possibility, while the other systems examined do have statutory derogation options for the law. In many cases, these derogations are in the form of clauses, for example in Spain, the Netherlands, Germany and Sweden. The possibility to deviate from the law can be seen as an important incentive for collective bargaining and makes collective bargaining attractive for employers.

In summary, in systems where the sectoral collective agreement plays an important role and collective agreements are negotiated at different levels, the existence of conflict rules are indispensable. It is striking that in Polish law there is little room for deviations from sectoral collective agreements and that laws and regulations cannot be deviated from by collective agreement either, and that in Poland the sectoral collective agreement is hardly important. Therefore, there seems to be a certain link between the presence of conflict rules and deviation possibilities from the law and a sectoral consultation structure, but it is not clear whether the sectoral consultation is (partly) the result of the existence of conflict rules (in other words: that the presence of conflict rules positively influences the sectoral

[29] J. Czarzasty, Codebar – Comparatives in Decentralised Bargaining. Country Report: Poland 2022, p. 9.
[30] M. Kahmann and C. Vincent, Codebar – Comparatives in Decentralised Bargaining. Country Report: France 2022, p. 11.
[31] The Netherlands has a similar system. See: N. Jansen and F. Tros, Codebar – Comparatives in Decentralised Bargaining. Country Report: The Nederlands 2022, p. 8-11.
[32] M. Ronnmar and A. Iossa, Comparatives in Decentralised Bargaining. Country Report: Sweden 2022, p. 10 et seq. and I. Aramoli (in collab with P. Tomassetti), Codebar – Comparatives in Decentralised Bargaining. Country Report: Italy 2022, p. 9.
[33] A. Munoz Ruiz and N. Ramos Martin, Codebar – Comparatives in Decentralised Bargaining. Country Report: Spain, p. 3.
[34] J. Czarzasty, Codebar – Comparatives in Decentralised Bargaining. Country Report: Poland 2022.

consultation) or that the presence of conflict rules is mostly a result of a sectoral consultation created by other circumstances.

### 2.2.5 Employee representation

Under Dutch law, collective agreements can only be entered into by employee associations with full legal capacity (trade unions). Trade unions are not subject to any further requirements in collective bargaining law regarding, for example, independence or representativeness. Dutch law thus guarantees that any trade union can enter into collective agreements. In addition, from a legal point of view, every trade union has equal opportunities to enforce consultation and strengthen negotiations. This puts every trade union in the same starting position. Whether or not trade unions succeed in realizing their objectives depends on extra-legal factors in the industrial relations arena.35 Works councils can negotiate on employment conditions in the Netherlands, but the results of these negotiations are not a collective agreement and are of lower legal order than the collective agreement, in the sense that a collective agreement in principle prevails in case of conflict. The possibilities to negotiate with works councils combined with the lack of a strong position of trade unions in the companies can lead to undermining the position of trade unions when the negotiation of employment conditions shifts from sector to company. The German system is similar to this.36

In Poland, the works council is virtually non-existent. In Swedish law, all trade unions enjoy the same basic legal rights of freedom of association, general bargaining, collective bargaining and collective action. Instead of establishing certain procedures or criteria for representativeness, Swedish law does grant privileges to so-called established unions, i.e., unions that are currently or ordinarily bound by a collective agreement with the employer (or the employer's organization).37 Established unions enjoy far-reaching rights to information, primary bargaining and co-determination. The employer is obliged to negotiate primary employment conditions with the trade union before making decisions on major changes in the employer's business and operations, such as restructuring, layoffs, changes in work organization and appointments of new managers, or the employment conditions or employment relationship of a member of the trade union, such as transfers and changes in working hours. Such consultation shall take place first at the enterprise level and then at the sector level.

Italian law does not impose requirements on trade unions in the context of representativeness with regard to entering into collective agreements. Works councils can

[35] N. Jansen and F. Tros, Codebar – Comparatives in Decentralised Bargaining. Country Report: The Nederlands 2022, p. 8-13.
[36] T. Haipeter and S. Rosenbohm, Codebar – Comparatives in Decentralised Bargaining. Country Report: Germany 2022, p. 1-10.
[37] M. Ronnmar and A. Iossa, Comparatives in Decentralised Bargaining. Country Report: Sweden 2022, p. 10.

also enter into collective agreements under Italian law. This is comparable to Spanish law.[38] In order to avoid undermining the position of representative trade unions, Italian law does stipulate that further requirements are imposed on trade unions before a collective agreement can deviate from the law. This privilege therefore does not accrue to all trade unions, but only to the most representative trade union.[39]

France has a system of trade union elections that determine which trade union has the authority to enter into collective agreements from time to time. If there is no trade union at the enterprise level, then negotiations can also be held at the enterprise level with an employee delegation. Depending on the size of the company's workforce, it will be determined how that employee representation and the collective agreement will be created.[40]

In the countries involved in the Codebar project, collective bargaining took its dominant form in the second half of the 20th century. In that period, the degree of organization of trade unions was generally still considerable, the number of trade unions was still manageable and those unions were still mostly centrally controlled, and works councils were still relatively new. In most countries, this led to a consultative structure in which levels of consultation were attuned to one another and the sector collective bargaining agreement occupied an important place. The emergence of new alternative trade unions, the decline in the membership of established trade unions and the normalization of the works council as a discussion partner within the company have changed the playing field of collective bargaining. In some countries, this has led to legislation on collective bargaining and the authority to enter into collective agreements. This new legislation seems to have been motivated primarily by the goal of preserving existing structures, or at least to counteract the undermining of the position of established trade unions in the collective bargaining process. In countries where sectoral bargaining is an important pillar of employment negotiations, the decentralisation of employment negotiations has meant that established unions lose ground in collective bargaining, because in the existing structures the presence of established unions at the firm level is generally less evident.

## 2.3 Decentralised bargaining instruments and mechanisms

[38] I. Aramoli (in collab with P. Tomassetti), Codebar – Comparatives in Decentralised Bargaining. Country Report: Italy 2022, p. 12 and A. Munoz Ruiz and N. Ramos Martin, Codebar – Comparatives in Decentralised Bargaining. Country Report: Spain, p. 6.
[39] I. Aramoli (in collab with P. Tomassetti), Codebar – Comparatives in Decentralised Bargaining. Country Report: Italy 2022, p. 12.
[40] M. Kahmann and C. Vincent, Codebar – Comparatives in Decentralised Bargaining. Country Report: France 2022, p. 13.

As I touched on in the introduction, decentralised bargaining can point to various developments in collective bargaining. For this contribution, I have distinguished three main forms. First, the decrease in the importance of collective bargaining through a decrease in the scope of collective agreements or a decrease in sectoral collective agreements and an increase in bargaining at the firm level. Related to this form of decentralisation, but not quite the same, is when the existing national or sectoral consultations, in the form of derogation options, create more room for specific needs of companies (and employees working in them). This is the second main form. Finally, decentralisation can refer to the involvement of the works council in shaping terms of employment and that is the third main form. In this section, I discuss for each main form what tools or mechanisms can be identified that are deployed or used to shape and streamline the decentralization process. I discuss the role of the works council in conjunction with the second main form.

### 2.3.1 Reduced scope of the collective agreement and fewer sectoral collective agreements and more consultation at the enterprise level

In few of the countries surveyed has there been a marked decline in the scope of collective bargaining or a decline in the number of sectoral collective agreements and simultaneous growth in the number of company collective agreements. In many of the countries surveyed where the sectoral collective agreement is an important pillar of collective bargaining, that sectoral collective agreement seems to lead a fairly stable existence. The decentralization of collective bargaining in these countries usually manifests itself in the second main form, whereby more room has been created at the sectoral level for consultation at the company level. Only in Germany is there a clear decline in the scope of the collective agreement and a decline in the importance of the sectoral collective agreement, while legislation does not seem to have played a role in this. In fact, new legislation, by which I mean the broadening of the possibility of declaring a collective agreement binding, seems to be more in favor of the sectoral collective agreement. The result of the decline of the sectoral collective agreement in Germany seems to be a decline in the degree of organization on the employers' side and the introduction of the possibility for employers to be members of employers' organizations without being bound by a collective agreement. Shifts in this first main form seems to be mainly the result of employer strategies and that also fits in with the existing consultations in Poland and Ireland in which employers do not seem to feel like consulting at the sector level. As I discussed in Section 2, legislation seems to have only a modest effect on the genesis of the prevailing consultation structures. In particular, non-legal aspects have led to centralist consultation structures and although these structures do appear to be supported by legislation and regulation, non-legal aspects also appear to have led to the greatest changes.

Nevertheless, some mechanisms or instruments can be identified that may (in any case) give rise to changes in the existing structure by making the sectoral collective agreement less attractive in a legal sense. In Spain, for example, the law was initially amended to give the company collective agreement priority over the sectoral collective

agreement. This did cause a shift in the existing structure in Spain. After considerable criticism, particularly from trade unions, this change was reversed and the old structure seems to be recovering. In French legislation, a subdivision has been made in terms of the subjects of the employment conditions consultations that must be discussed at the sector level or company level respectively. The shift of topics from the sector consultations to the decentralized consultations, could potentially have the effect of making the sector consultations less important. Because certain (important) subjects must still be discussed at the sector level, the effect of the legislation is rather that decentralized consultation has increased while retaining consultation at the sector level. Finally, I would like to mention the tax legislation in Italy that stimulated consultation at the decentralized level. Because of the embedding of the sector collective agreement in the existing structure, the tax legislation has not had the effect of reducing the importance of the sector collective agreement but rather of increasing the number of company collective agreements. The legislation has led to more intensive alignment or coordination of different levels of consultation.

### 2.3.2 More space for decentralised bargaining

In all countries with a certain sectoral bargaining structure, decentralised bargaining has been shaped mainly through the binding of more space for decentralised agreements in sectoral collective agreements. It follows from the country reports that this has happened in a variety of ways.

In the first place, sectoral collective agreements have become more of a framework for further elaboration of all kinds of regulations at the decentralized level. This development is sometimes accompanied by a change in the content of consultation within the sector, as a result of a separation between subjects that are negotiated at the sector level and subjects that are left to decentralized consultation.41 As touched on above, the French law even distinguishes between subjects that are negotiated at the sector level on the one hand and at the company level on the other.42 Sometimes the framework-setting nature of sectoral collective agreements becomes visible through the use of opening clauses in sectoral collective agreements. Such clauses entail that certain parts of the sectoral collective agreement can be deviated from (often conditionally) by the decentralised consultations. The use of opening clauses is happening in Germany, the Netherlands, Spain and Italy, among other countries. Opening clauses in sectoral collective agreements allow unions at the sectoral level to maintain control over the formation of employment conditions in the sector while offering opportunities to companies to better tailor some employment conditions to the wishes and needs of companies and workers and this is also called

[41] See I. Aramoli (in collab with P. Tomassetti), Codebar – Comparatives in Decentralised Bargaining. Country Report: Italy 2022, p. p et seq.
[42] M. Kahmann and C. Vincent, Codebar – Comparatives in Decentralised Bargaining. Country Report: France 2022.

coordinated decentralisation. This coordination often relates not only to the content of the consultation, but also to the parties to the consultation. These may be trade unions operating at the company level and often under the central direction of a trade union federation, but also, for example, works councils under the control of trade unions. If a certain control or direction of sectoral unions over employee representatives at the local level is lacking, then sectoral unions are, as a rule, less inclined to leave subjects to decentralized consultation or to include opening clauses.

More room for decentralized consultation can also be created by making it possible by law or collective agreement to deviate from collective agreements. In Spain and Italy it has been made possible by law for decentralized consultations to deviate from sectoral collective agreements. Such deviation possibilities allow decentralization of employment conditions formation to take place in an uncontrolled manner often at the expense of sectoral consultation. In Italy, trade unions have responded to these legal derogation possibilities by making agreements in the sectoral collective agreement on how decentralized consultation will be involved. In Spain, the change in the law was reversed due to persistent criticism from trade unions. Uncoordinated decentralized consultation can also be an issue in systems in which there are few requirements for trade unions or in which works councils can consult on employment conditions and, in addition, there is a great deal of freedom for employers to enter into collective agreements. Decentralized consultation (possibly even with works councils) can then be used to undermine sectoral consultation.

## 2.4 In conclusion

Firstly, based on the country reports, the emergence of a particular bargaining structure seems to depend mainly on historical, political and cultural factors and much less on the legal design of collective bargaining law. As a result, a fully liberal system with a lot of freedom for social partners to conclude collective agreements does not necessarily lead to the absence of a centrally (national and/or sectoral) driven consultation system and the lack of a strong embedding of social partners. The legal design of collective bargaining can contribute to the preservation of existing structures. From the country reports of the countries with a less liberal system, such as France and Sweden, the limited freedom of employers to enter into a collective agreement or not, and with which unions and at what level, does seem to have a direct influence on the emergence of certain bargaining structures. It follows from the country reports that the degree to which collective bargaining is centralized (nationally or sectorally) is mainly determined by non-legal factors and that the legal form of collective bargaining can help creating and maintaining a certain structure.

Secondly, the majority of the countries surveyed have the possibility of generally binding, but this possibility does not seem to be decisive for the design of collective bargaining and the extent to which there is central control through bargaining at the national or sectoral level. After all, Polish law does provide for the possibility of declaring a

collective agreement binding, but Polish collective bargaining is characterized by decentralized consultation at the company level. Swedish law, on the other hand, does not allow for the possibility of generally binding, but Swedish collective bargaining is centrally controlled in which the sectoral collective agreement is an important pillar of collective bargaining. The possibility of declaring collective agreements generally binding can make an important contribution to centralized control of the negotiations.

Thirdly, in systems where the sectoral collective agreement plays an important role and collective agreements are negotiated at different levels, the existence of conflict rules are indispensable. There seems to be a certain link between the presence of conflict rules and deviation possibilities from the law and a sectoral consultation structure, but it is not clear whether the sectoral consultation is (partly) the result of the existence of conflict rules (in other words: that the presence of conflict rules positively influences the sectoral consultation) or that the presence of conflict rules is mostly a result of a sectoral consultation created by other circumstances.

Fourtly, decentralised bargaining can point to various developments in collective bargaining. In general, it cannot be said that the importance of collective agreements has declined, significantly more collective agreements are concluded at the corporate level and the importance of the sectoral collective agreement is decreasing significantly. However, the trend of decentralisation has led to collective agreements becoming more of a framework for further elaboration at the decentralised level. The strategy of the trade unions seems to be aimed at creating more opportunities for employers and employees to arrive at a package of employment conditions that is more in line with the wishes of the company, while retaining control at central and company level. Legislation has been used to stimulate decentralised bargaining, for example the creation of possibilities for derogation in the law, a distribution of subjects over different layers of consultation in the law and tax advantages. The effect of this legislation is often that agreements on coordination are made during bargaining. Where decentralised bargaining takes place in a coordinated manner, social partners are generally more positive about decentralisation than when uncoordinated forms of decentralisation are involved.

# Chapter 3. Decentralisation of Collective Bargaining in the Manufacturing Sector

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## 3.1 Introduction

The manufacturing sector has been the stronghold of collective bargaining and, more general, of industrial relations institutions and actors in many advanced political economies for decades. The strengthening of trade unions and – mainly – sectoral collective bargaining as well as the increase of wages and the improvement of working conditions in the post-war world from the 1950s to the 1980s have their roots to a large degree in the manufacturing sector with its big mass production firms that have fuelled economic growth and became characteristic for the Fordist era of that time. Moreover, it was the manufacturing sector which set the wage norms in a process of pattern bargaining for collective bargaining in other sectors.

However, since the Fordist era the fate of the sector has changed. Its shares of total employment or GDP growth declined, and the composition of the workforce in manufacturing shifted from blue to white collar employees which in many countries have been much weaker organized by trade unions than the blue collar workforce. Moreover, former collective bargaining structures changed in a process of decentralization. As we will show in this paper, this process neither has led to a breakdown of trade unions and of collective bargaining in the manufacturing sector nor has it destroyed its role as a pace-setter of norm setting by collective bargaining in advanced political economies.

Today, the role of the sector as a pacesetter has changed. It became a pacesetter in shaping the process of decentralisation in its organized form (Traxler 1995). In that the sector differs from many industries of the private service sector in which organised decentralisation is less developed and disorganised decentralisation plays a much bigger role (see chapter X on retail in this book). This does not mean that there is no disorganised decentralisation taking place in the manufacturing sector, but it is less radical or less severe than in the service sector and it is mitigated by the many forms in which organised decentralisation has developed.

This chapter is about these forms of decentralization and the challenges that are going along with them for the actors of collective bargaining in the manufacturing sector. This refers to trade unions and the employers and their associations, whose interest in collective bargaining depends very much on the strength and the capabilities of the trade unions; that is why Franz Traxler once has labelled them “secondary organisers” (Traxler 1999). It is the trade unions, which try to defend the collective bargaining systems against erosion, and it is they who try to control and organize decentralisation in a way that is compatible with the preservation of centralised bargaining norms, sometimes against the employers, sometimes by joining forces with them against the state. In this chapter, we want to tackle the following questions: What are the forms of decentralisation that can be observed in the manufacturing

sectors of the countries under scrutiny our comparative analysis? What are the reasons for the differences in the concrete paths of decentralization between the countries? How do unions try to coordinate and organise – what we will call "articulate" – decentralisation? And, finally, what are the main challenges and problems the actors face in this process?

Our analysis is based on the country reports of eight countries from the EU – France, Germany, Ireland, Italy Netherlands, Poland, Spain and Sweden – produced in the CODEBAR-project. These reports contain industry studies of the manufacturing sector as well as company case studies. As these case studies will be referred to throughout our analysis, they are listed here to give an overview (Table 1).

**Table 1: Case studies from the manufacturing sectors**

| Cases | Country | Subsector | Type of Firm | Employees (in country) |
|---|---|---|---|---|
| Aero | France | Aerospace | Parent Company | 43000 |
| Axis Communications AB | Sweden | IT | Parent Company | 2500 |
| DSM | Netherlands | Food, Bioscience | Parent Company | 3800 |
| Electric France | France | Energy | Parent Company | 15500 |
| Enel | Italy | Energy | Parent Company | 59000 |
| Lacroix | Poland | Electronics | Foreign Subsidiary | 2000 |
| Lights | Germany | Electronics | Parent Company | 1500 |
| Metal Forming | Germany | Metal | SME | 400 |
| Metal Industries | France | Steel | Foreign Subsidiary | 250 |
| Pfitzer | Ireland | Pharma | Foreign Subsidiary | 600 |
| TenarisDalmine | Italy | Steel | Subsidiary | 2100 |
| VW | Poland | Automotive | Foreign Subsidiary | 11000 |

The analysis is structured in three steps. In a first step, we give an overview of the structures of collective bargaining and its actors in the manufacturing sectors of our sample countries. Here we also want to assess the role the sector still is playing in the overall national systems of industrial relations. In a second step, we want to identify the different pathways of decentralisation in the manufacturing sector and the commonalities and differences that can be observed between the countries of our sample. At the same time, we will identify the reasons for these commonalities and differences in terms of institutional configurations of the systems of collective bargaining, the resources and strategies of its actors or the role of the state as legislator. A third step will focus on the activities of articulation. How do the trade unions organise and coordinate the process of decentralization? Given that collective bargaining systems today are multi-level systems like the trade unions as well, activities of the latter more and more have to deal with the active articulation between these levels. The

chapter ends with conclusions about comparative aspects, pathways and the articulation of decentralized bargaining in the manufacturing sector.

## 3.2 The manufacturing sector: industrial relations and collective bargaining characteristics

### 3.2.1 Characteristics of the manufacturing sector

This section introduces the main characteristics of industrial relations and collective bargaining in the manufacturing sectors of our sample countries by highlighting elements of continuity as well as elements of transformation. The manufacturing sector is multi-faceted, and industrial relations characteristics and pathways of decentralisation in this sector vary depending on industries, company sizes, social partners, and the interplay between sectoral collective bargaining, company-level collective bargaining, and legal framework.

The manufacturing sector encompasses a broad variety of industries, ranging from, among others, automotive, chemical, electric, food, and metallurgic branches. This aspect is reflected by our sample countries . The diversity of case studies encompasses companies in the chemical and pharmaceutical sectors (Ireland, Netherlands, and Spain), the metalworking sector (France, Germany, Italy, and Poland), the tech sector (Sweden), and the electric sector (France, Germany, and Italy).

The size of manufacturing companies also varies. The manufacturing sector is composed of multinational companies with headquarters and production sites in different countries as well as medium- and small-size companies that produce mostly for the national market, but more and more internationalise their production operations as well. This feature is reflected by our case studies of the manufacturing sector which include multinational companies (France, Ireland, Netherlands, Poland, and Sweden), large-size companies mostly producing for the national market within supply chains (France and Italy), and medium-size companies, one of them with production locations abroad (Germany). In two cases (Ireland and Poland), the selected companies are subsidiaries of multinationals with main headquarters abroad.[43]

Overall, our national and company case studies highlight the importance of the manufacturing sector in relation to the national labour markets and industrial relations systems. They also emphasise how companies in the manufacturing sector still employ a significant share of the national workforce. For instance, in France employment in the manufacturing industry represents 10.3% of total employment in the country, while in Sweden 17.7% of the total active workforce is employed in the manufacturing industry, which has the second largest share of employees after retail (Medlingsinstitutet, 2022), and in Germany about 9% of the overall employment rate is in the metal sector. A 2019 report published by Eurofound shows that, as for the year 2017, the employment share of the manufacturing sector across the countries selected in our study, ranges from slightly above 20% in Poland to slightly below 10% in the Netherlands, with Germany and Italy having a share near 20% (Eurofound, 2019). The Eurofound report also shows that, with the exceptions of France, Italy and Sweden, all the other countries investigated here present positive trends in the average annual growth of employment in the manufacturing sector (Eurofound, 2019). At the same time, however, the Eurofound report shows negative

[43] Please note that some national reports have more than one case study in the manufacturing sector.

predictions as for the impact of the manufacturing sector on national GDP in all countries investigated (Eurofound, 2019).

From a historical perspective, the manufacturing sector has constituted the backbone of industrial relations developments across Europe in the 20th century. According to Crouch (1993: 290), the socio-economic dynamics of the sector (large-size companies, high productivity, large workforce, etc.) enabled the institutional development of organised capital and labour. However, already in the 1990s, he drew attention to the beginning of a progressive downturn of the sector in terms of downsizing of production and the workforce employed, which in his view marked the beginning of an overall decline of industrial relations institutions in Europe. This prediction – whether or not it has come true – shows the central relevance of the manufacturing sector in analysing and understanding general developments in industrial relations.

The transformation of industrial relations and collective bargaining in the manufacturing sector also concerns the composition of the workforce. The employee employed in this sector is often portrayed as the 'archetypical blue-collar worker', who emerged with the Fordist mode of production (Crouch and Voelzkow, 2004: 7). The French report highlights the high average age of the workforce in the French metalworking sector. A similar account is found in Poland, where trade unions encounter difficulties at company level in engaging younger generations of employees in their activities (Czarzasty, 2022: x). Despite the historical preponderance of blue-collar work in manufacturing, in some countries it is possible to identify a progressive shift towards an increasing share of white-collar employees in the sector. For instance, this is highlighted in the Swedish report, which studies a Swedish multinational company that has delocalised most of its production abroad while maintaining the managerial headquarter and Research & Development office in Sweden. The manufacturing sector in Germany shows a similar development; here the share of white-collar workers has outpaced the blue-collars' share since the middle of the last decade (Haipeter, 2016). Also, one of the case studies analysed in the Italian report describes a similar shift. In this case study, focusing on a large-size electric company, the shift towards a majority of white-collar employees is explained with the introduction of new technologies and new organisational structures in the electric sector, which has then required the company to recruit different types of skills in order to match the needed tasks.

Despite those elements and overall descending trends in collective bargaining across Europe (see Waddington, Müller and Vandaele, 2019), industrial relations structures in the manufacturing sector still appear strong. Figures on trade union and employers' organisation density and collective agreement coverage rate are still relatively high and show stable patters. For instance, trade union density in the sector is 75 % in Sweden,[44] 31% in Italy, 58% in Germany and 21 % in the Netherlands; employers' density is instead 100 % in France, 50 % in the Netherlands, 48% in Germany and 49 % in Italy; collective agreement coverage is 100 % in France, 95 5 in Italy and 92 % in the Netherlands.[45] Overall, the country reports stress the high scores of the manufacturing sector in terms of trade union and employers' organisation density as well as in terms of collective agreement coverage.

[44] Data from 2020. The data refers to the average between blue- and white-collar employees (Medlingsinstitutet, 2022).

[45] These data have been provided by national authors involved in the CODEBAR project.

### 3.2.2 The role of the manufacturing sector for industrial relations and collective bargaining

According to the national reports the manufacturing sector is to a large extent representative of the country-specific industrial relations system. In industrial relations systems characterised by trade union pluralism, such pluralism is also largely present at the company level in the manufacturing sector (see France – and here in bigger enterprises- and Italy). In this regard, the Italian case highlights how the trade union pluralism that characterises the overall industrial relations system is also present at company level where various trade unions cooperate (and disagree) within the company-level bodies for workers' representation. Also, the Swedish case study in the manufacturing sector reflects the overall principles of trade union organisation in the country, including the dominance of nationwide industrial unions, where blue-collar employees are organised and represented by an LO-affiliated trade union, white-collar employees by a TCO-affiliated, and university-graduate employees by SACO-affiliated trade unions (where the organisation in craft unions is important and various SACO-affiliated trade unions collaborate at company level within a 'SACO council'). The Swedish report also stresses the tight cooperation between trade unions at sectoral and company levels, which is a primary characteristic of Swedish industrial relations (Rönnmar & Iossa, 2022; see also Rönnmar, 2019).

In industrial relations systems with a dual system of employee representation with trade unions responsible for sectoral collective bargaining agreements and works councils formally independent from the unions responsible for workplace agreements, works councils play an important role in manufacturing companies – as in the case of the Dutch and German systems. In these cases, company-level industrial relations are characterised by tensions in the coordination between employee representative actors and not always easy , with well-established and well-functioning works councils that cooperate, or enter into conflict with, trade unions (see also below Section 4). This is linked to the often large size of companies in the manufacturing sector, which favours formation of works councils and at the same time ensures a high grade of trade union density and coverage of collective agreements. In this regard, it is worth noting that in the Netherlands, works councils are present in 88% of manufacturing companies, while in Germany, around 65% of manufacturing employees are reported to be employed in companies with works councils.

Collective bargaining in the manufacturing sector in many countries set general trends and patterns in collective bargaining at national level and for other sectors. Given its relevance, the manufacturing sector is the most influential sector for the evolution of industrial relations across the other sectors at national level and in particular as regards collective bargaining decentralisation trends. The national reports stress this element of continuity and confirm that the manufacturing sector sets patterns for national-level cross-sectoral industrial relations, including pathways of decentralisation. This 'pacemaker pattern' for industrial relations in the manufacturing sector is particularly evident in the Swedish context,[46] where the trends towards decentralisation have been initiated by social partners in the manufacturing sector with the signature of a separate collective agreement in 1983 between the engineering and metallurgical employers' organisation, the Association of Swedish Engineering Industries (*Teknikföretagen*, named *Sveriges Verkstadsförening* at that time) and the trade union of metallurgical workers IF Metall, the largest sectoral trade union affiliated with LO (Thörnqvist, 1999; Baccaro and Howell, 2017). Ever since, sectoral collective bargaining in the manufacturing sector has set the 'standard' for an evolution towards decentralisation in other sectors. In Sweden, the relevance of the manufacturing

[46] A similar finding is highlighted in the Italian report.

sector (and in particular its metallurgic branch) is also strengthened by the fact that it belongs to the export sector. Negotiations on wage-setting in the manufacturing sector affect and influence wage-setting in other sectors through the mechanism of the 'industry norm' ('*industrimärket'*). This mechanism was introduced with the 1997 'Industrial Agreement' as a way to ensure that salaries on the labour market would not increase at a percentage higher than the growth of the national economy. It uses the degree of international competitiveness of the Swedish economy as a way to control the inflation caused by wage increases and to keep the Swedish economy competitive. Thus, the 'industry norm' has a normative effect in other sectors, as trade unions and employers' organisations adopt it as the 'norm' for wage increases in collective negotiations at sectoral level (Medlingsinstitutet, 2020; Kjellberg, 2019). The 'industry norm' anchors the wage increase of Swedish employees in various sectors of the labour market to the wage increases set by national, sectoral collective agreements in the industrial export sector, i.e. in key branches of the manufacturing sector (Rönnmar & Iossa, 2022: 13 and 43)

In the Swedish case, the influence of the manufacturing sector on the general evolution of industrial relations and collective bargaining appears stable. While this finding could have been expected for a system like the Swedish, which is characterised by high levels of trade union and employers' association density as well as by an articulated and coordinated system of representation and collective bargaining (Ahlberg & Bruun, 2005; Rönnmar & Iossa, 2022), this element emerges – however, on a smaller scale – also in a country like Ireland, which is characterised by a high degree of decentralisation and very low degree of coordination between levels (Paolucci, Roche & Gormley, 2022). The Irish report illustrates how collective bargaining at the pharmaceutical multinational company PharmaCo became 'a trend setter' for collective bargaining nation-wide also beyond the manufacturing sector. PharmaCo belongs to a sector that was less affected by the 2008 economic crisis (Gunnigle et al., 2018;), and is one of a number of multinational firms in the chemical and pharmaceutical sectors, that continued to observe existing collective agreements and award pay increases even in the aftermath of the 2008 recession (Paolucci, Roche & Gormley, 2022: 18). The Irish report mentions that multinational firms in these sectors introduced forms of 'pattern bargaining' that set the trend in the sector as well as beyond it at a cross-sectoral level. This mechanism is described as 'without precedent in Irish industrial relations' (Paolucci, Roche & Gormley, 2022: 18). Such an evolution is described as a trade union strategy aimed at making wage negotiations in strongly unionised firms in these sectors standard-setter for general collective bargaining trends. According to the national report, SIPTU identified the pharmaceutical sector as strategic for influencing national collective bargaining across sectors due to the highly skilled employees and to the international competitiveness of the sector in relation with the national economy (Paolucci, Roche & Gormley, 2022: 30, see also below Section 4).

A further common trait that emerges from the national reports is the effect on industrial relations and collective bargaining in the manufacturing sector of factors like economic crises, international competition, relocation of production, and changes in technology (Müller *et al.*, 2018). These are all aspects that have contributed to a transformation of fundamental industrial relations institutions in the manufacturing sector and to a decrease of collective agreement coverage and trade union as well as employers' organisation density in countries like Germany, and to a lesser extent also Italy and the Netherlands. Nevertheless, the national reports display a number of cases in which industrial relations at company level in the manufacturing sector occurs on good terms and often with the aim of dealing in a positive manner with the effect of sectoral and company crisis. For instance, the case studies analysis provided by the French report stresses the role of company-level industrial relations for the achievement of more 'centralised' collective bargaining

within the company groups. While the report highlights this aspect as mainly a managerial strategy to ensure uniform working and employment conditions across the different establishments of the groups and to reduce the number of negotiations and bargaining venues, it is interesting to note the interplay with the overall policy and legislative trends at national level to favour decentralisation. In the Swedish context, instead, the flexibility ensured to company-level industrial relations and collective bargaining within a system of 'organised decentralisation', enabled social partners in the manufacturing sector to deal with the consequences of economic crisis as well as the Covid-19 pandemic by using company-level collective bargaining instruments, such as collective agreements on short-time work.. The Swedish (1976:580) Co-determination Act assigns a right to primary negotiations to the trade union that is bound by a collective agreement applied in the company. The employer has an obligation to negotiate with the trade unions before making decisions regarding important alterations in the employer's activities and business, such as restructuring, redundancies, work organisation changes and appointments of new managers, or the employment conditions or employment relationship of a member of the trade union, such as transfers and working-time changes (Rönnmar & Iossa, 2022: 10).

It is interesting to notice that also in this regard industrial relations and collective bargaining in the manufacturing sector have influenced national developments. The first collective agreements on short-time work were concluded and implemented in the manufacturing sector to deal with the effects of the 2008 and 2009 economic crisis. The short-time work scheme was later extended to the overall Swedish labour market, and complemented by statutory regulation and state financial support, see the (2013:948) Act on Support for Short-time Work (see Kjellberg, 2019; Glavå, 2010). A similar finding emerges from the German report. It describes how the instrument of agreements on short-time work-schemes has been widely used across sectors to manage the economic consequences of the Covid-19 pandemic. Like in Sweden, the instrument had its first 'boom' in the financial crisis and mainly in the manufacturing sector. Additionally, actors could make use of other instruments to reduce working times in the pandemic, among them the reduction of weekly working times to safeguard jobs which has been formalised since 1995 through the mechanism of 'opening clauses' in collective agreements in the metallurgic sector (Haipeter & Rosenbohm, 2022). These clauses would allow for collective reductions in working time – for certain groups, departments, or whole establishments – with the aim of safeguarding employment by enabling company-level parties to agree on reductions in working hours from the collectively-agreed norm of 35 hours per week down to 30 hours per week, with a proportional cut in pay. In return, the employer would commit to not introducing compulsory redundancies for up to a maximum period of 12 months (Haipeter & Rosenbohm, 2022: 31). However, in contrast to the Swedish example, these agreements have not been negotiated in the form of collective bargaining agreements but in the forms of workplace agreements between managements and works councils. This fact sheds light on the functional equivalence that might exist between the different institutions of single and dual systems. In conclusion, our findings from the CODEBAR project highlight an advanced presence of organised decentralisation of collective bargaining in the manufacturing sector.

## 3.3 Pathways of decentralisation in the manufacturing sector

### 3.3.1 Six Pathways

Decentralisation of collective bargaining is an overarching trend in the manufacturing sectors of the eight political economies under scrutiny. However, this common trend shows rather

significant differences between the countries, depending very much on their institutional configurations of collective bargaining and the power and strategies of its actors, the concrete procedural norms on decentralization in the collective regulations that have been agreed on by the collective bargaining actors and, finally, the role of the state as a legislator. Given these differences, what do the pathways of decentralization in our eight countries look like in detail?

Today, the starting point for decentralisation of collective bargaining in most countries is the industry level. Wherever the national cross-industry level has played an important role in collective bargaining in the past – like in Sweden or Ireland – it has lost its former role and is important today only in one respect: as the level for dealing with some general rules of collective bargaining across sectors as it has been the case for example in Italy. In these two countries no national minimum wages exist so far. Here the minimum wage levels are defined by the lowest wage groups of the collective bargaining agreements only, but based on a high coverage of collective bargaining. In the other countries the minimum wages are forming a baseline for wages also in the manufacturing sector, whereas, in most – but not all – of the countries analysed here minimum standards of collective bargaining in this sector are positioned well above this baseline so that the minimum wages do not play a more exposed role.

Decentralisation of collective bargaining in the manufacturing sectors of the countries under scrutiny is following six pathways (Table 2). Some of them are more or less coordinated and agreed or at least accepted on the industry level so that we can speak of pathways of organised decentralisation, whereas some others are disorganised in the sense that they undermine centralized collective bargaining. The six pathways of organised decentralization are the following: First, there is wage setting on company level taking place in addition to the industry level and increasing the wage levels defined there; second, additional topics of collective bargaining are negotiated on company level; third, the industry level agreements contain opening clauses for workplace agreements on company level by works councils; and fourth, either industry collective bargaining agreements or state legislation allows derogations from collective bargaining norms on company level. This fourth type is at the interface between organised and disorganised decentralization, depending on how far derogations have the capacity to undermine the industry norms of collective bargaining and how far and how effective they might be controlled by the collective bargaining actors with respect to their spread and their contents. The two remaining forms are disorganised without any doubt: fifth, the erosion of collective bargaining coverage in the sector; and sixth, the full decentralization of collective bargaining in the sense that no collective bargaining takes place on the industry level any more – here decentralisation has switched from a process to a state of affairs.

**Table 2: Pathways of decentralization in the manufacturing sector**

| | **Additional Wage Bargaining on Company Level** | **Additional Topics of Collective Bargaining on Company level** | **Opening Clauses for Works Councils** | **Derogations on Company Level** | **Erosion of Collective Bargaining** | **Full Decentralisation** |
|---|---|---|---|---|---|---|
| **France** | Firms with union presence | Introduced by the state | | Legally possible but not practiced by social partners | | |
| **Germany** | Only workplace agreements by works councils | Introduced by social partners (Future Agreements) | Mainly on working time flexibility and reduction | Derogations established | Decline of coverage | |
| **Ireland** | | | | | | Full decentralisation with some coordination |
| **Italy** | Additional wage | Introduced by | | Legally possible | Application of | |

| | | | | | | |
|---|---|---|---|---|---|---|
| | components | Social Partners | | but not practiced by social partners | alternative collective agreements | |
| **Netherlands** | | | Mainly on working time flexibility | | | |
| **Poland** | | | | | | Full decentralisation without coordination |
| **Spain** | Big firms | | | Legally possible but not practiced by social partners | | |
| **Sweden** | All types of firms | Introduced by social partners | | | | |

These pathways are spread in an uneven way among the industries across the countries with some countries combining two or more of them; in the German case, even five different pathways can be identified, in the case of Italy four and in France three. In the two cases of full decentralization, Ireland and Poland, no other forms of decentralization can be observed for obvious reasons. In the following, the six forms of decentralisation in the manufacturing sector will be analysed in a comparative way based on the industry reports and case studies of our country sample. How far are they shaped by actors' strategies, procedural norms of collective bargaining and institutional structures or state regulations? The case studies can be located in different subsectors of the manufacturing sector; however, we will compare them as illustrations of the respective national manufacturing sectors as a whole.

### 3.3.2 Additional Wage Bargaining on Company Level

The first form of organised decentralisation in the manufacturing sector refers to wage increases or wage components trade unions and companies negotiate on company level. This type of additional bargaining is very prominent in Italy and Sweden. Also in France and Spain, collective bargaining takes place on company level of big companies mainly besides the minimum standards of industry or regional agreements, which are usually extended by the state. In Germany, finally, additional negotiations might take place in big companies as well, but in this case, they are conducted by the works councils instead of the unions and, therefore, have the form of workplace agreements. In Italy, additional bargaining takes place in a complementary form to the sectoral agreements negotiated by the social partners. This possibility has been formalised in a cross-sectoral agreement between the employers' association Confindustria and the three main unions – CGIL, CISL and UIL – in 2014 (Armaroli & Tomassetti 2022This rule leaves room for secondary bargaining on company – and regional level, which is important for SMEs – to add additional wage components to the sectoral defined wage minimum. According to the data, secondary bargaining takes place in about 21% of the workplaces in the whole economy, with the manufacturing sector among those with a higher coverage of secondary agreements due to the above average number of bigger companies in this sector. The additional wages can have the form of either fix components or productivity based – or in other ways variable – wages; the latter, according to a survey by the biggest employers' association, include 45% of all companies covering 80% of the workforce in the manufacturing sector. The coverage stands in a positive correlation with the company size (Armaroli/Tomassetti 2022).

In Sweden, the role of wage bargaining in national sectoral agreements has been modified by the 1997 'Industrial Agreement' (Rönnmar & Iossa, 2022: 12). Here employers' associations and trade unions agreed that wage setting will no longer take place on the cross-sectoral level and that sectoral collective bargaining agreements would be transformed into

framework agreements indicating wages for newly employed workers and setting guidelines for management regarding wage increases on the company level. In the Swedish manufacturing sector, wage setting in collective bargaining covers both more decentralised and more centralized forms within the broader trend of decentralisation, ranging from defining mandatory provisions for the wage levels to guarantee wage increases or the definition of salary pots for wage increases. The more decentralised patterns of collective bargaining agreements exist in the areas of professional white-collar work, whereas the more centralized patterns cover the blue-collar workers in production (Iossa/Rönnmar 2022).

France and Spain are different cases in the sense that here company level bargaining is less systematically linked to the collective bargaining agreements which in both countries are extended by the state. In France, to take one of the two countries, sectoral collective bargaining agreements define the respective minimum wages for different job demands and professions and leave open the room for additional wage bargaining on company level. Additional bargaining takes place in all establishments with union presence, however, substantial differences to the minimum standards are confined to big firms mainly. In the manufacturing sector, the bargaining structure is rather fragmented with a high number of territorial collective agreements, a problem that has been taken up by employers' associations and some of the trade unions who agreed on a new national sectoral agreement to replace the former agreements at the end of 2021. On the company level, wage agreements more and more focus on variable and individualised forms of pay like profit-sharing schemes. In the case of Electric, negotiations on wages take place on the level of legal entities and are only weakly linked to sectoral agreements as they take place before the sectoral agreements are negotiated (Kahmann/Vincent 2022). The Spanish case is similar to the French one in the sense that it is the bigger firms where additional wage increases can be realised by the trade unions, which at the same time fuels company strategies of outsourcing and offshoring in these companies to reduce costs (RodrÍguez et al 2019).

In Germany, additional collective bargaining has not been established although it was discussed among and within trade unions – and especially within the metalworkers' union IG Metall – already in the 1970s when a positive wage drift in the bigger companies indicated an economic room of manoeuvre for collective bargaining on company level. At that time, it was the resistance of the works councils which has led to the trade unions refraining from this idea. Improving wages on company level was an important source of legitimacy for the works councils, and they did not want to transfer this advantage to the union. Since then, wage bargaining on company level occurred in the form of workplace agreements by the works councils, and this was more and more formalised in agreements on profit sharing, mainly in the bigger firms and mainly in the automotive sector. This pattern does not apply to the Netherlands because works councils do not bargain on additional wages – and neither do trade unions bargain on extra wages in the context of a sectoral agreement. For both Germany and the Netherlands it is the specific institutional structure of collective bargaining and the dual representation channel in these two countries which explains the non-existence of additional wage bargaining in these countries.

### 3.3.3 Additional Topics of Collective Bargaining on Company Level

The relevance of other topics of collective bargaining on company level has increased in the manufacturing sectors under scrutiny too. Here again, Italy, Sweden and France are among the countries in which this trend is important, with the social partners in Italy and Sweden and the state in France pushing forward this development. In Spain and Germany, the trend of additional bargaining topics in manufacturing is much less significant, although not absent, as some examples in these countries show.

In Italy, the starting point of this development were the activities of the social partners on company level. According to the database of ADAPT, they developed new topics for collective bargaining, among them welfare measures like healthcare benefits or pension schemes which were addressed in 43% of all company agreements in 2017 – compared to a spread of only 27% in 2015. While the coverage of these measures increased rapidly, other topics like the opportunity to convert variable pay into working times or measures to improve work life balance are still less common but also growing in importance. Beyond this, digitalization and telework have become important topics of company bargaining, the latter fuelled very much by the Covid-19 pandemic. Some agreements also focus on the ecological transformation of companies in terms of defining rules for "just transitions". This trend of negotiating additional topics in company bargaining has been accompanied by participatory practices, which are to improve labour-management collaboration, and the rules for this can also be negotiated in company level agreements (Armaroli/Tomassetti 2022). The development in Sweden shows similarities to the Italian one in the sense that here also new topics are developed and negotiated on company level; here the topics mentioned in the country report are cooperation and codetermination, working time and annual leave or coping with redundancies (Rönnmar/Iossa 2022).

In France, however, the process of company collective bargaining developed top down. Here it was the state which defined additional topics for company bargaining, a process with a tradition lasting back already to the 1980s when company level collective bargaining was made compulsory. The last step of this process has been the Macron laws from 2017, which gave the company level a priority over the other levels of collective bargaining for three areas of topics: first remuneration, working times and the sharing of added value (like profit sharing); second professional equality between men and women and the quality of working life; and third strategic workforce planning, subcontracting or temporary employment. Company level bargaining has proven to be ambivalent for the trade unions, as can be shown by the example of strategic workforce planning at Electric. Here the trade unions now get better information and are more involved, and where employees get more opportunities to participate in career planning, however, at the same time, company bargaining offers the opportunity for the company to use it as an instrument of cost cutting and workforce reduction (Kahmann/Vincent 2022). The widening of the firm-level regulatory agenda has contributed to a loss of importance of sectoral collective bargaining in the bigger companies in France. The working conditions in large French enterprises like Electric or Aero are mainly defined by company-level agreements. Similarly, in Italy, representatives from TenarisDalmine declare that apart from issues like disciplinary procedures and individual employment contracts, which are thought to be more genuinely discussed at the sectoral level, collective bargaining at their company could be self-sufficient as regards a number of topics, like working time, wages and skills.

Spain and Germany are far less exposed in terms of additional bargaining. In Spain, the traditionally dominant issue of additional bargaining on company level are wages; however, some new topics of additional bargaining have developed or gained importance like health and safety, retirement, redundancy processes and equality plans. In Germany, company bargaining on additional topics is even more rare; here the only topic in the metalworking industry are the so called "future collective bargaining agreements" which have been created in the industry collective bargaining agreement of 2021 and which are to cope with long term processes of socio-ecological transformation. They were demanded by the metalworkers' union IG Metall in order to influence the process of transformation on company level. There is no list of topics defined for this except the fact that they are to

increase competitiveness and innovation capacities and to safeguard jobs with innovative measures, whatever the concrete topics might be. The reason for the far less developed culture of company collective bargaining on additional topics in Germany – and, even more, in the Netherlands – is that many of the topics of additional collective bargaining are dealt with here by the works councils in the form of workplace agreements.

### 3.3.4 Opening Clauses for Works Councils

Whereas single channel countries decentralization is organized along the union channel and within the collective bargaining system, in the dual systems of Germany and the Netherlands – and respectively in their manufacturing sectors – decentralization to a large extent takes place in the form of opening clauses in collective bargaining agreements which delegate certain topics to the participation of works councils on workplace level. This means that the treatment of these topics no longer lies in the hands of the collective bargaining actors, but in those of the works councils as workplace actors which, at the same time, can mobilise their legal rights to cope with them.

In the Netherlands, sectoral agreements have become more and more framework agreements for decentralized bargaining, leaving broad scope for activities of works councils to improve or shape collective bargaining norms in the companies. In the 1990s, the focus was very much on "variable and flexible working hours and on possibilities to open for deviating regulations in maximum working hours by day, week or month" (Tros 2022). In the metalworking sector, the trade unions were able to implement new bargaining rights at the company level within the sectoral agreements. Today, tailor-made regulations on company level based on the consent with works councils are widespread in the sector. It is estimated that around 70% of the companies use flexibility options concerning holidays and more than 40% make agreements about on-call duties. However, there are also topics characterised by bargaining or consultation rights of the trade unions, e.g. if a company wants to reduce the – positive – wage drift, or if a company wants to deviate from legal standards with respect to shift work or working time schedules, or if a company wants to be excluded from the sectoral agreements and negotiate its own company agreement. As the case study of DSM shows, a grey area of responsibilities between works councils and trade unions is reorganisation, with the works councils having the right to be informed and consulted on these issues and the unions having the right to negotiate about the terms and conditions of collective dismissals.

Also in the German metalworking sector flexible working times are at the heart of the opening clauses for works councils. There are four topics of flexible working times addressed in the collective bargaining agreements of the industry (Haipeter/Rosenbohm 2022): First flexible working hours in the form of working time accounts; second, provisions on workplace quotas on extending individual agreed working hours up to 40 hours a week; third, opening clauses to allow for collective reductions in working time down to 30 hours per week; fourth, individual working time reductions: Individual employees may reduce their weekly hours from 35 to 28 hours for a period of up to two years with a corresponding reduction in pay, but still retaining the status of full-time workers. A second element of individual working time reduction refers to the option to use an additional payment introduced in 2018 for eight additional free days a year. Additionally, since 2006 some of the wage agreements include deviations from pay settlements, allowing companies to postpone payment of the industry-level settlement for a couple of months or reduce or postpone agreed lump-sum payments. Any such step must be agreed with the works councils and IG Metall.

### 3.3.5 Derogations on Company Level

Derogations from sectoral collective bargaining might also be regarded as an additional topic of collective bargaining on company level. However, it shows a big difference to the additional bargaining discussed above. Whereas additional bargaining is about norms that complement the norms of industry collective bargaining, derogations are about norms that substitute industry norms by undercutting them. Among the countries under scrutiny, this practice has become widespread only in the German manufacturing sector. However, the legal possibility of derogations has been introduced in three of the other countries as well.

In France, Spain and, in different way, Italy, the state has changed the labour laws in order to give companies the opportunity to derogate from industry collective bargaining agreements. Whereas in Italy and Spain this initiative has been a reaction on the financial crisis and the coverage of these countries by the European Stability Mechanism, in France it was a political strategy to improve competitiveness. In Italy possibilities for deviations from sectoral provisions were envisaged in cross-sectoral collective agreements in the first place, the legal regulation allowing this came after and with some differences. However, in all the three cases these legal changes had little practical effects. Only in Spain it was observed that wage restraint in the manufacturing sector was enhanced by the legal changes – however, largely without formal derogating from collective bargaining agreements (Rocha 2017). The reason why derogations did not become a common practice in the manufacturing sectors of these countries was that the social partners did not support the regulation. Not surprisingly, it was the trade unions, which in the first place, albeit to different degrees, were not willing to accept derogations. However, also the employers and their associations did not insist on negotiating derogations but refrained from this option, either informally or even formally like in Italy. Here the employers' association Confindustria and the big trade unions in a cross-sectoral agreement from 2011 agreed not to apply the legal possibility to derogate, leaving some room for applying the possibilities for derogations established by social partners. The motives of the employers and their associations to behave this way were manifold, among them trade union resistance, the fear to send out negative signs to employees and customers or the avoidance of wage competition (also Ruiz/Martín 2022).

Given these orientations, derogations either were not practiced like in France or they have been practices, but only in a small number of cases like in Italy or Spain; in the latter case, management has introduced derogations unilaterally in some companies without trade union representatives being present. It is these orientations towards derogations, which make the difference to Germany (Haipeter/Rosenbohm 2022). Germany is the only case in our sample where derogations have become an important practice of collective bargaining in the manufacturing sector. The reason for this is the shift of orientations and strategies of the employers' associations that took place during the 1990s. Looking at the metal industry, the umbrella association of the employers, Gesamtmetall, since then has favoured the idea of more or less radical decentralization of collective bargaining. Undercutting of minimum standards has become an explicit part of this strategy. In the years 2003 and 2004 the opportunity structure for the associations improved when the federal government threatened to introduce opening clauses for derogations from collective bargaining agreements by law in case the social partners in the metal industry do not find a solution for this. This was the background for the agreement of 2004, which formalised the practice of derogations in the metalworking industry. The agreement specified that derogation agreements were possible, provided that jobs would be safeguarded or created as a result and they would help to improve competitiveness and ability to innovate, as well as investment conditions.

However, it soon became evident that the employers' associations themselves had no interest in controlling derogations. Consequently, it fell to the trade union to exercise control, which became an urgent issue for the union as more and more cases appeared in which works

council had already agreed to management's demands before the union had been even asked for its opinion or taken any part in the negotiations. Consequently, *coordination guidelines* were drawn up by the trade union during 2005, including norms about transparency, about responsibilities and about information and participation of trade union members in decision-making. Based on the implementation of these rules, derogations became far more a quid pro quo than pure concession bargaining. The material concessions made by employees are usually matched by *counter-concessions* offered by employers like employment protection, investment promises, the extension of codetermination rights in controlling the agreements or in attending certain measures to improve competitiveness, or profit-sharing arrangements for workers to benefit if the situation of the firm improves – just to name three of the topics. The data available indicates that the coverage of opening clauses for derogations is between 10% and 20% among the companies bound by collective agreements.

### 3.3.6 Erosion of Collective Bargaining

Like derogations, the trend of erosion of collective bargaining coverage indeed has taken place mainly in the German metalworking industry, but also, to a minor degree and in different forms, in the Italian one. In Germany, this form of disorganised decentralisation was favoured by three factors: first, the lack of extension of collective bargaining agreements, an instrument that impedes erosion in France, Spain and the Netherlands and also exists in Germany, but is not used in the industry because of a general resistance of the employer associations and also because of a resistance of the trade union which feels strong enough to bring companies back into the agreements; second, the lack of legal support for collective bargaining minimum standards like it can be observed in Italy, where employees could demand the payment of wages according to the collective agreements and where the opting out of FIAT from the employers' associations remained a single case (although it was heavily debated at that time); and third, the decline of organising power of the employers' associations – and the insufficient power of the trade union to enforce or motivate employers – especially SMEs – to join the associations, which marks the key difference to Sweden. However, as will be shown, it is the employers' associations and their strategies that are key to understand the erosion of collective bargaining in the German metalworking industry.

According to membership data from the umbrella association Gesamtmetall, collective bargaining coverage – which is identical to the membership density of the associations – declined of more than 20 percent points compared to the early 1990s to 47 per cent of the employees in 2020. This decline is a result of individual decisions of employers to opt out from the associations or not to join them. However, disorganised decentralisation has also been actively promoted and hence legitimised by the employers' associations of the sector as well. The instrument for this has been the establishment of 'opted-out' associations, the membership of which does not require involvement in or compliance with collective bargaining. By 2020, more than 13 per cent of employees in the metalworking and electrical industry worked in companies with opted-out membership, a doubling since 2006 when the opted-out associations were admitted to Gesamtmetall, which publishes such membership data. The importance of opted-out associations is even greater when looked at from the perspective of the number of companies involved. By 2019, 15.7 per cent of companies in the metalworking industry were members of opted-out associations, higher than the 12.9 per cent that were members of the regular employers' associations that comply with industry agreement. The divergence between organisational density as measured in terms of companies and by employees can be explained by high shares of SMEs among the members of opted-out associations. (Haipeter/Rosenbohm 2022).

Signs of erosion of (representative) sectoral collective bargaining in the Italian manufacturing sector derive from the increase of collective agreements signed by non

representative trade unions and the possibility for employers to apply them in a context of no legal erga omnes efficacy of representative collective agreements. The application of alternative agreements, either signed by trade unions other than CGIL, CISL and UIL or signed by federations of CGIL, CISL and UIL covering different sectors (i.e., services), is an issue of increasing concern to social partners and policy makers. Even though it mainly affects the tertiary sector and more generally labour-intensive branches operating in outsourcing, Armaroli & Tomassetti (2022) point to its diffusion also in the field of plant planning, supply and application, energy efficiency services and facility management. Employers in the industry are represented by the association Assistal, which adheres to Confindustria and signs the main national agreement for the metalworking sector along with Federmeccanica. However, as reported by CNEL (2021), there are at least ten more NCLAs aiming to cover the branch, which are not signed by metalworking sectors' social partners.

### 3.3.7 Full Decentralisation

Full decentralisation – in fact the final state of the process of decentralisation – can be obeserved in two of our sample countries, Ireland and Poland. Here full decentralisation became the dominant state of affairs in the manufacturing sector – and the rest of their economies with some exceptions in Ireland. However, within this general picture there are some important differences between these two countries.

In Ireland, industry collective bargaining has a weak tradition; the centralization of bargaining since the late 1980s and up to the financial crisis in 2009 took place in the form of cross-sectoral tripartite social dialogue, and trade unions were traditionally organized around occupations and professions, but only weakly at the industry level. When the employers' associations collectively withdrew from the social pact in 2009, there were little institutional structures of industry collective bargaining to build on. However, the process of decentralisation following this step was framed by a "protocol" to guide collective bargaining in private and public firms. This was followed by a phase of concession bargaining on firm level. However, coverage of collective bargaining remained robust especially in the export oriented manufacturing sector with its multinational firms. In this situation the manufacturing division of SIPTU, the biggest Irish union with a main focus on the manufacturing sector, developed a new strategy to target the strongly unionised firms especially in the chemicals and pharmaceutical industries to change the wage trends and to agree on wage increases of 2% per year which were to set the trend in the sector as a whole. This approach to implement a new form of pattern bargaining and to replace concession bargaining in the framework of company bargaining proved to be rather successful in the following years with the pay norm of 2% wage rise widely accepted. An important precondition for this kind of coordination within decentralised bargaining has been the organisational power of the union in this sector and the fact that it developed a strategy to mobilise shop stewards and to improve the participation of members in collective bargaining, especially in the core companies of the pharmaceutical industry.

The contrast to Poland shows that the Irish manufacturing sector represents a kind of coordinated company bargaining, whereas in Poland such a coordination is largely absent. Here trade unions and collective bargaining have become marginalised with a collective bargaining coverage of about 20% in the whole economy, based on a low trade union density of about 12%. It is this low union density combined with a reluctance of employers to engage in collective bargaining – for reasons also related to the complicated legal procedures to get rid of those agreements - which explains the low collective bargaining coverage and the persistence of company bargaining (Czarzasty 2019). Coordination of wage bargaining within the competing trade unions is largely absent. In the manufacturing sector, it is in the

subsidiaries of multinational companies that unions have the strongest position and collective bargaining is most widespread. One of the main examples for this is the Polish subsidiary of VW, Volkswagen Poznan. However, the forms of trade union structures and collective bargaining that can be observed here are rare and concentrated on bigger firms in the Polish manufacturing sector in which fragmentation of collective bargaining and strong union competition go hand in hand. This makes a re-centralisation of collective bargaining much more unlikely than in Ireland.

## 3.4 Articulation and the role of the actors

### 3.4.1 The issue of vertical coordination between the sector and company level

As contributing to the 'depth' of bargaining - originally formulated by Clegg, 1976 and more recently conceptualised by Paolucci & Marginson, 2020 and Müller et al., 2019 - the relationship between sectoral and local industrial relations actors is particularly important for collective bargaining structure and therefore for the way decentralisation works along the different paths described above. Articulation of workplace level actors – in the sense of coordination and monitoring on the one hand and support and consultancy on the other hand – on and between the different levels of bargaining and industrial relations is a crucial factor for the development of common strategies as well as for the enhancement of resources and capabilities to influence workplace outcomes (Lévesque & Murray, 2005). It is therefore not surprising that the issue of coordination, performed by both labour and capital, has emerged, to varying extents, from all national reports. Table 3 below summarises the main findings as regards the labour side of vertical articulation.

**Table 3: Patterns of Articulation in the Manufacturing Sectors**

| Country | Institutional context | Ideas on decentralisation | Vertical coordination practices |
|---|---|---|---|
| France | Two tier collective bargaining structure / Dual channel of workplace representation | Company-level bargaining interpreted very positively, as a way to invigorate workers' participation and enable union delegates to better defend and represent employees' concerns (CFDT)* | Control on the compliancy of company agreements; Support mainly provided in SMEs with low union presence; Coordination favoured by trade union delegates also working in sectoral structures |
| Germany | Two tier collective bargaining structure / Single channel of workplace representation led by works councils | IG Metall traditionally trying to play a role at the decentralised level despite the formal dual character of industrial relations. | Organising strategies aimed at the establishment of works councils; Support during derogatory negotiations; Works councils as targets in national or regional projects for the improvement of codetermination practices |
| Ireland | One tier collective bargaining structure / Single union channel of workplace representation | The collapse of social partnership seen as a challenge for the largest trade union SIPTU. Efforts to re-engage at the workplace level. Positive assessment of decentralised bargaining in well-organised sectors. | Contribution to company-level bargaining agenda; Information and practices' sharing; Training for shop stewards |
| Italy | Two tier collective bargaining structure / Single union channel of | The extension of decentralised bargaining seen as a priority (FIM-CISL). Company-level | Sectoral trade unions as signatory parties of some decentralised agreements; |

| | | | |
|---|---|---|---|
| | workplace representation | bargaining should supplement sectoral provisions by improving and adapting them (FIM-CISL, FIOM-CGIL). | Coordination; Support |
| Netherlands | Two tier collective bargaining structure / Single channel led by works councils | Trade unions' focus on centralised levels and acceptance of the exclusive role of works councils at company level. | Coordination with works councils limited to specific issues; Consultation occurs rarely |
| Poland | One tier collective bargaining structure / Single union channel of workplace representation** | N.A. | Enterprise-level union structures but feeble sectoral union structures |
| Spain | Two tier collective bargaining structure / Dual channel of workplace representation | Trade unions not against decentralisation but against the type of decentralisation imposed by government. | Coordination reported when trade unions negotiate in large enterprises |
| Sweden | Two tier collective bargaining structure / Single union channel of workplace representation | Importance of creating fruitful conditions for company-level bargaining to improve and adapt sectoral regulations (IF Metall, SACO-affiliated Swedish Association of Graduate Employees). | Consultation; Support; Control on the quality of company-level agreements |

* Rehfeldt & Vincent, 2018

** Works councils have been introduced by Polish law in 2005, but their development is still very limited.

By and large, vertical articulation performed by trade unions appears to be particularly affected by the various types of institutional channels of workplace representation. Single union channels of representation or dual channels with a prominent role of trade union bodies or delegates in decentralised bargaining, would seem to ease the engagement of sectoral trade unions in workplaces. However, the impact of these institutional factors interacts with the organisational strength of sectoral trade unions as well as their ideas and perceptions on decentralisation, thus reinforcing the argument that coordination may partly depend upon social partners' beliefs, interpretations and discourses (Ibsen, 2015). Interestingly, among the various analysed countries, the most coordinated and structured efforts to liaise with employee representatives in workplace issues, would have been made by sectoral trade unions in the apparently unfavourable institutional contexts of Ireland (dominated by company-level bargaining) and Germany (characterised by a dual industrial relations' system). In the following lines, we will deepen these strategies and those implemented in the other considered countries.

Firstly, in countries with a single union channel of workplace representation, sectoral trade unions are found to exert a significant influence at decentralised level, by the means of information, consultation and support towards employee representatives. This is the case of Sweden, where there are frequent consultations between workers' representatives and the regional or national trade union structures, as demonstrated by the analysis on the Lund site and headquarters of Axis Communications AB (Rönmar & Iossa, 2022). And this is the case of Italy, where despite the bargaining autonomy entrusted to the workplace labour representation structure (called RSU), local trade unionists are found to directly sign decentralised agreements together with RSU members in certain companies. Notably, at TenarisDalmine, local representatives of the trade union federations, FIOM-CGIL, FIM-CISL and UILM-UIL are usually committed to company-level collective bargaining over macro labour topics, while RSU members autonomously participate in daily discussions with the

company and negotiations over organisational and technical topics in single areas or departments. Despite the separation of their respective fields of action, the relationships between the two actors are close: they talk and coordinate with each other every day in order to build a shared path to collective negotiations; in addition, local trade unionists can intervene to support their delegates in area-specific discussions in case of conflicts with management, and the RSU members who received most of employees' votes in the elections, can participate in restricted meetings with the company, along with local trade unionists (Armaroli & Tomassetti, 2022).

In the decentralised context of Poland with no history of extended multi-employer bargaining, instead, sectoral trade unions are depicted as feeble and this feature would seem to compromise their relationship with enterprise-level union structures (Czarzasty, 2022). By contrast, in Ireland, where the latest era of centralised social partnership lasted for 22 years up to 2009, national trade unions are pretty strong and interpreted the end of tripartite bargaining as both a challenge for their role and an opportunity to get closer to their members. As a result, the manufacturing division of the largest trade union, SIPTU, chose to take advantage of certain favourable structural conditions of the pharmaceutical sector (i.e., high degree of internationalisation, steady demand for products, reliance on a highly qualified workforce) to decisively re-engage in workplace issues, by enhancing the skills of sector-level officials and shop stewards for decentralised bargaining. The events at one site of PharmaCo clearly display this strategy: shop stewards regularly attend the SIPTU College, where they gain a wide range of hard and soft competences in industrial relations; and a trade union official co-directs, along with a chairman elected by the workforce, the workplace representation structure (called Committee) and provides information on the status of pay talks in other relevant companies of the sector. The coordinating strategy implemented by SIPTU in the pharmaceutical sector has been progressively formalised and become a pattern setter, firstly in the manufacturing and then in other industries (Paolucci, Roche & Gormley, 2022).

France and Spain are characterised by a dual channel of workplace representation, with trade union delegates and structures privileged in bargaining processes. These countries also show a certain degree of coordination. However, in France, the intensity of sectoral trade unions' involvement in workplaces may vary according to certain organisational conditions, like the availability of resources for trade union delegates in workplaces and the role of the latter in the respective trade union organisation. Indeed, at the multinational company Electric, where trade union delegates are endowed by management with sufficient time-off, funds and training to exert their functions, they also boast a significant deal of autonomy from trade union federations in company-level collective bargaining. By contrast, French trade unions are found to support more actively their delegates in small and medium companies with a low union presence and less resources. A peculiar case is that of Metal, where only the trade union CFDT operates and the trade union delegate also serves on a part-time basis as the general secretary of CFDT at the departmental level and is a member of the trade union's national executive committee. For this reason, the trade union delegate is well informed of pay trends and bargaining results in many other companies of the sector: these information and data then influence collective negotiations at Metal. Moreover, in France, there might be divergencies in the degree of involvement of different sectoral trade unions in the workplace, depending on their various types of internal organisation and democracy. Unlike CGT, CFDT has a reputation for centralism and therefore for stronger coordination by sectoral structures (Kahmann & Vincent, 2022).

Finally, in countries with a workforce representation essentially led by works councils, the engagement of sectoral trade unions with works councils is not straightforward, depending on the perception of their respective roles and functions. For instance, in Germany,

following the progressive delegation of regulatory functions - mainly on working time - to works councils as well as the introduction of opening clauses on derogations in sectoral collective agreements to be negotiated between trade unions and single employers, the metalworkers' organisation IG Metall has increasingly engaged at the workplace level in an effort to effectively 'organise decentralisation'. The trade union has traditionally committed itself to playing a role at the workplace and company level despite the formal dual character of German industrial relations. Moreover, the union believes that there cannot be prospects of successful decentralised negotiations without or in opposition with works councils. Therefore, IG Metall currently develops 'organising' strategies aimed, among others, at the establishment of works councils in companies; liaises with existing works councils and ensures their support during derogatory negotiations; targets them in national or regional projects (i.e., Better not Cheaper, Work 2020) for the improvement of codetermination practices (Haipeter & Rosenbohm, 2022). By contrast, and despite the very similar institutional setting, trade unions and works councils in the metal and electro-technical industry in the Netherlands have still not found areas of effective coordination and cooperation at the workplace level. An important explanation for this may derive from the fact that traditionally, Dutch trade unions have focused on centralised levels and accepted the exclusive role of works councils at company level. As a result, not every works council member is affiliated to trade unions[47] and only a limited proportion of works councils receive advice and consultation from trade union officials[48]. Works councils have therefore stronger ties with management rather than with trade unions (Jansen & Tros, 2022).

Overall, major problems for the labour side of vertical articulation derive from low rates of trade union density and coverage of workplace labour representation structures, especially in new business activities (e.g., information technologies, research and development) and among young, female and high-qualified workers. Low unionisation rates are, moreover, likely to jeopardise the coordination between sectoral trade unions and works councils in dual-system countries, since it significantly relies on the fact that works councils' members are affiliated to trade unions (Haipeter & Rosenbohm, 2022; Jansen & Tros, 2022). In France, challenges may arise also from the evolution of the institutional setting and more precisely, from the opportunity to perform collective bargaining in small non-unionised companies granted to non-union representatives and even individual workers, following the 2017 Macron ordinances (Kahmann & Vincent, 2022).

As for the capital side, although evidences are fewer, certain practices of vertical articulation like information, consultation or assistance in decentralised negotiations are performed by employers' associations too, especially in some multi-tier collective bargaining systems like France and Germany (Haipeter & Rosenbohm, 2022; Kahmann & Vincent, 2022). For instance, during derogatory negotiations in the German metalworking sector, the employers' association, Gesamtmetall, either directly conducts the bargaining process or provides advice to companies. Its involvement is meant, firstly, to assess whether an increase in derogations signals a need for reforms of the industry agreement, and secondly, to exercise control on possible sensitive cases in which derogations might change the conditions for inter-firm competition in a market (Haipeter & Rosenbohm, 2022). Importantly, also in the

[47] There is no representative research about the proportions of trade union members in works councils in the Netherlands. However, in 2015, a survey among 436 works council members counted 64% of trade union memberships among the respondents (Snel et al., 2016). Van den Berg et al. (2019) counted 39% of organised works council members.

[48] A comparative study from WSI/Hans-Böckler-Stiftung about works councils in Germany and the Netherlands estimates that almost 60% of the works councils in the Netherlands never/hardly receives advice from trade unions, compared with 28% of the works councils in Germany (Van den Berg et al., 2019).

decentralised context of Ireland, the main employers' confederation, IBEC, is found to make certain coordination efforts at the company level. After the collapse of social partnership, it agreed with the trade union confederation, ICTU, on a protocol aimed at orienting collective bargaining in private and commercial state-owned companies. Moreover, although it is unusual for IBEC to directly participate in company-level bargaining, one of its representatives sits at the negotiation table of PharmaCo, given the company's role as a pattern setter in collective bargaining in the pharmaceutical sector (Paolucci et al., 2022). By and large, the involvement of employers' associations at the workplace level is structurally circumscribed by the limited coverage of decentralised bargaining across SMEs especially in Italy, Spain and the Netherlands (Armaroli & Tomassetti, 2022; Muñoz Ruiz & Ramos Martín, 2022; Jansen & Tros, 2022). It is thus no wonder that in the Netherlands, small and medium companies in the metal and electro-technical industry are covered by a specific collective agreement, whose normative standards are already differentiated according to various branches and can be subject to deviation at firm level only in very few cases (Jansen & Tros, 2022). Similarly, in Italy, a shift backward from the workplace to the sector has been reported with reference to the regulation of multi-weekly working time, which is no longer delegated to decentralised bargaining as difficult to be performed especially in small and medium metal companies (Armaroli & Tomassetti, 2022). Membership's interests are therefore crucial in explaining the actions of employers' associations also in the field of collective bargaining, which in turn are relevant for the definition, evolution and maintenance of national collective bargaining structures. The case of Germany is exemplary in this sense, since in an effort to contrast the decline in their membership rates, many employers' associations allowed member companies not to apply sectoral collective agreements (so-called 'opt-out' option), thus exacerbating a process of erosion of sectoral collective bargaining (Haipeter & Rosenbohm, 2022; see for more details also Paragraph 3.6 of this Chapter).

### 3.4.2 Firm-level coordination issues in multi-actor and multi-tier collective bargaining structures

Horizontal and vertical coordination issues as well as problems of collective bargaining effectiveness may arise not only between sectoral bargaining and firm level but also within firms. There are two factors which trigger company-level articulation problems: union pluralism and a multi-establishment corporate structure, sometimes interacting with one another.

Firstly, in countries characterised by union pluralism (like France, Spain and Italy), competition and frictions are found to affect different trade unions and/or delegates belonging to different organisations. Divergencies in the ideas, values and strategies of the various trade unions operating at company level can engender breakups of the labour side unity in negotiations, as shown by the cases of Electric and Aero in France. Here, CGT union delegates – which are mandated by the federations – have not always signed decentralised collective agreements along with the other representative trade unions at the workplace level (Kahmann & Vincent, 2022). Competitive relationships have been reported also in the analysis on TenarisDalmine in Italy, where the quality of the interactions between trade union delegates was compromised at the turn of the 2000s-2010s years, by the signature of 'separate' collective agreements at the sectoral level. They are so named because they were signed by the most representative trade union federations with the exception of FIOM-CGIL, which depicted them as detrimental to workers' rights and bowed to employers' demands (Armaroli & Tomassetti, 2022).

In addition to inter-organisational differences, problems of collective bargaining coordination and effectiveness may arise also from the presence of a plurality of orientations

within a single trade union organisation. In this regard, it is worth mentioning that a certain working time arrangement established in the TenarisDalmine collective agreement, signed by all representative trade unions (FIOM-CGIL, FIM-CISL and UILM-UIL), was not easily accepted and applied at the steel shop, due to the presence of a radical fringe of the trade union FIOM-CGIL which was against the deal (Armaroli & Tomassetti, 2022).

By contrast, more collaborative relationships and greater coordination between different workers' organisations are reported in countries such as Ireland and Sweden, where workforce representation is organised by category (e.g., blue-collars, white-collars, professionals and university graduates, craft workers, etc.) and there is not usually competition on members. However, divergencies on collective bargaining topics can occur also between trade unions representing different workers' categories, especially if they are involved in the same negotiation table. This happens at DSM in the Netherlands, where VHP, gathering senior and professional staff, does not support the policy of the most representative trade union FNV regarding a levelling of wages (Jansen & Tros, 2022). Similarly, with reference to one site of FoodCo in Ireland, Paolucci et al. (2022) point to the lack of communication between SIPTU, representing the large majority of employees, and Connect, gathering craft workers, and subsequently, their inability to conduct joint or at least coordinated negotiations. This situation, albeit uncommon in Ireland, clearly shows that horizontal coordination on collective bargaining between different trade unions cannot be taken for granted and largely depends upon the quality of personal relationships between single trade unionists (Paolucci et al., 2022).

To further complicate this picture, it must be highlighted that firm-level collective bargaining cannot be considered as a one-tier regulation field. The geographical expansion and organisational fragmentation of corporate structure have ended up adding one or more layers to collective bargaining, taking place at group, subsidiary, establishment and even department level in most of the analysed countries. Specularly, as regards workforce representation, there are evidences of site-level employee representatives, central coordinating structure at company or group level as well as European or Global Works Councils. As observed by Rönmar & Iossa (2022), vertical articulation across different collective bargaining levels and their respective actors in multi-establishment companies can follow very different logics and pathways, depending on the very specific internal practices and procedures, which can be more or less formalised. For instance, vertical coordination attempts are performed within TenarisDalmine in Italy, where a company-level collective agreement, signed by local trade unionists and usually renewed every three years, acts as a framework, whose general provisions, especially in the field of work organisation, are developed in more detail and adapted in single establishments and/or departments by employee representatives. As regards the contents of departmental agreements, they are found to be similar but not the same, depending on the specific power relations in single areas (Armaroli & Tomassetti, 2022). Similarly, at the French company Aero, there is a group-level collective agreement giving a pay range, which every subsidiary agreement is required to stay in, whereas with regard to other topics, company-level actors boast greater autonomy from the group management (Kahmann & Vincent, 2022).

With specific regard to horizontal coordination across different sites, it can be made even more complex by the presence of different trade unions. For example, the bargaining rounds at two Irish sites of FoodCo, respectively covered by SIPTU and Unite the Union (a British trade union with a representation scope overlapping with SIPTU and also operating in Ireland), are not synchronised and a common trade union strategy is lacking: this uncoordinated situation is however described as quite exceptional in the country's decentralised bargaining landscape (Paolucci et al., 2022).

Importantly, a centralisation trend in collective bargaining has been detected in some multi-establishment firms in the Netherlands, Italy and France, where collective regulations are increasingly agreed at group/corporate level, with little room for maneuver (except for few topics mainly related to working time and work organisation) left to workplace-level social partners. On the one hand, this trend can contribute to make labour regulations homogeneous across the different establishments, thus reducing the chances for intra-firm competition and related discontent, which is apparent, for instance, at TenarisDalmine in Italy. At the company, indeed, some trade unionists and delegates would complain about the fact that over the years, partly due to the atypical character of the area, priority has been given to collective bargaining at the steel shop, leading to wage increases which were slightly higher than in other departments and different working time regimes (Armaroli & Tomassetti, 2022). On the other hand, centralisation in decentralised bargaining may be blamed by trade unionists to progressively enlarge the distance between workers and the actors and fora of negotiations, hence compromising union legitimacy and workers' interest in applying for workplace representation roles, as proved by the experience at Electric in France. Here, according to the CGT central delegate, centralisation of company-level industrial relations would be engendering more and more difficulties for trade unions in mobilising workers and persuading them to stand in professional elections for works council mandates (Kahmann & Vincent, 2022).

Finally, the quality of industrial relations processes and outcomes in multinational enterprises can depend upon coordination with foreign trade unions operating at different sites in Europe, also within the framework of European or global workforce representation structures. For instance, at the Volkswagen site in Poznań (Poland), relationships with trade unionists from the German headquarters who sit in the group's supervisory board are deemed as important for the Polish union to access to relevant corporate information. Moreover, at Lacroix plant of Kwidzyn (Poland), contacts with foreign trade unions were instrumental in the process of foundation of the European Works Council, which in turn is now a leverage for frequent interactions between trade unions from different plants in Europe and a valuable source of information about managerial strategies and decisions (Czarzasty, 2022).

## 3.5 Conclusions

Decentralisation of collective bargaining is an overarching trend in the manufacturing sectors across Europe. In all these countries decentralization has taken place in the one or the other way. We have distinguished six pathways of decentralisation in our chapter, ranging from different forms of organised decentralisation to forms of disorganized decentralization, the latter also including the state of full decentralization with collective bargaining located on company level only. Given these variety of forms, it can be stated that the manufacturing sector has a leading role as a trendsetter of decentralization within the respective economies. However, we argue that this is not necessarily to be regarded a sign of weakness of collective bargaining and its actors in this sector, but rather to be interpreted as an element of continuity and as an indicator of relative strength compared to other sectors, as in most of the cases decentralization was kept within the margins organised decentralization. Even in the cases of full decentralisation the manufacturing sector is doing better than many other sectors in terms of collective bargaining coverage and wage increases. The control of decentralization is in many countries based on a collective bargaining coverage or trade union density, which is above the average of the economy. This leading position of the sector in decentralization at the same time signals a shift of the role the sector plays in defining the overall pattern of collective bargaining in the economies. Whereas in former times the manufacturing sector

has been the core of pattern bargaining of wages in many countries, it today is forming a centre of new patterns of decentralization. Where its role as pace setter of wages remained like in Italy or Sweden, it is more in a sense of guaranteeing the competitiveness of the economy. In other cases, like Germany, the former pattern has dissolved in the last decades because of the low wage growth in the service sector.

However, these pathways of decentralization can be observed in the manufacturing sectors of the countries to very different degrees, with some countries, like Germany and Italy being affected by most of them, whereas manufacturing in some countries only show one or two of these pathways. Additionally, the timing of decentralization is very different; in some cases, the financial crisis of the years 2008 and 2009 played an important role for – in these cases state-led – decentralization, whereas in other cases decentralization has been a trend developing over decades. There are different factors that can help to explain these varieties within decentralisation of collective bargaining. One of them are the institutional differences of the countries of our sample in terms of the channels of representation. In countries with single channels formed by trade unions only or in dual channel systems with trade unions as actors of local bargaining, organized decentralization mainly takes the form of additional collective bargaining either on wages or on new topics, which are located on the company level. In the systems with singe channels led by works councils, the topics for the company level are usually dealt with by works councils in terms of workplace agreements, either as a part of their usual business or based on opening clauses in the sectoral collective agreements if these topics refer to issues dealt with in these agreements.

A second factor is the role of the state as a legislator framing the legal context collective bargaining. In many of our cases, the state has played an active role in decentralization. In the financial crisis, in Italy and Spain the state has created a legal frame for derogations, in France the state has developed this possibility later, and in Germany it put pressure on the collective bargaining actors of the manufacturing sector to define an opening clause in the collective agreements for this purpose. In Ireland, the state has not maintained the practice of the national social pacts in the financial crisis, and in Poland, finally, the state has created complicated legal regulations for the after-effects of collective bargaining agreements when they have expired which leads companies to refrain from collective bargaining.

A third important factor for the varieties of decentralization in the manufacturing sector, finally, are the strategies, resources and capabilities of the collective bargaining actors, the trade unions on the one and the employers' associations or single employers on the other hand. In most of our countries, it is the employers' camp, which is the driving force of decentralization. Striving for decentralization employers demand either collective bargaining regulations that are more tailored to what they consider as the needs of companies and establishments, or they opt for less and weaker regulations which allow them to reduce labour costs. However, looking at the employers' associations of the manufacturing sectors in the sample countries, it can be stated that there are some fundamental national differences regarding the employers' orientations. On the one hand, in countries like Spain, the Netherlands and Italy, most of the SMEs are covered by sectoral bargaining but are not willing to perform decentralised bargaining, mainly due to high transaction costs and the reluctancy to involve trade unions in their work settings. In the Italian metalworking sector, there has even been a regulatory shift backward from the workplace to the sector as regards the regulation of multi-weekly working time, which is no longer delegated to decentralised bargaining as this is difficult to be performed in certain SMEs. On the other hand, in Germany, Ireland and Poland and, at a lower extent, in Italy, employers show an interest to avoid either sectoral regulations or collective bargaining at all; in Germany, the employers'

association of the sector have successfully enforced both derogations to fall short of sectoral wage norms and "opted-out" associations which break with the obligation to implement sectoral bargaining norms for a company when being a member of the associations, in Ireland the employers left the tripartite social dialogue in the financial crisis and in this way dissolved national and sectoral collective bargaining, and in Poland many companies refuse from collective bargaining with trade unions in the first place. In Italy, employers in labour-intensive and outsourcing branches may be attracted by the application of 'cheaper' non representative sectoral collective agreements to remain competitive. However, in most of the countries, the employers largely refrained from the strategies of disorganised decentralisation, even when, like in France, Italy and Spain, the state has created opening clauses for derogations by law. Whereas in Spain and Italy this was used only in a small number of cases, in France it is virtually absent. In the German manufacturing sector with its widespread use of derogations it was only thanks to the coordination efforts of the trade union that it was possible to reconcile the practice of derogations with sectoral collective bargaining.

However, decentralisation has also proven to be in favour of the trade unions as well for two reasons. On the one hand, it might bring negotiations closer to the employees, so that the motivation to take part in labour actions might increase and the legitimacy of the trade unions improves. In this way, it allows to combine collective action and organising efforts of the unions at the workplace. On the other hand, decentral regulations might increase the autonomy of workers for instance in terms of the options of working time flexibility they can make use of, which might increase their satisfaction with their labour representatives.

However, our analysis also shows the importance of articulation between the different levels of trade union interest representation – or workers representation by works councils – practiced by the trade unions as a precondition for organised decentralisation. It is trade union articulation in the sense of coordination and monitoring on the one and support and consultancy for the local level on the other hand which has proven to be a core precondition for the practice of organized decentralization. Trade unions have to coordinate and control local bargaining in a way that minimum standards defined on sectoral level are adhered to at company level; and at the same time they should also control local parties in those cases where company bargaining takes place outside the scope of sectoral bargaining. Moreover, they have to ensure that the local actors have resources and skills at their disposal to be able to negotiate collective agreements effectively. Skills can be enhanced by training programs or consultancy given by the unions. Among the most advanced practices in this era are the campaigns of the German IG Metall to activate works councils to cope more effectively with new topics like digitalisation, which is a step beyond reactive consultancy. However, trade union articulation in the manufacturing sectors in many countries is far away from being encompassing or sufficient, either because of a lack of resources of the unions' headquarters or because of a lack of trade union – or works councils – presence on the level of companies or establishments, which seems to be one of the main Achilles' heels of organised decentralisation in the manufacturing sectors.

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# Chapter 4. Decentralisation of Collective Bargaining in the Retail Sector

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## 4.1 Introduction

Following the increasing decentralisation of collective bargaining across all EU countries, recent research suggests that greater attention should be paid to the role of sectoral/structural conditions to understand the kind of industrial relations (IR) that may affect a company (Bechter et al. 2011, Keune and Pedaci, 2020). Hence, this chapter explores the responses of trade unions to the decentralisation of collective bargaining in the retail sector across varying countries characterised by different institutions (Visser, 2009) The focus on the retail sector is interesting for two reasons. Firstly, volatile market conditions have made retailing a particularly hostile context for trade unions to represent workers and engage in collective bargaining. Secondly, in contrast to manufacturing, there is little empirical evidence to date on the strategies of trade unions in retailing following the decentralisation of collective bargaining. Our distinctive comparative focus, in which sectors are compared within their national contexts and companies within their sectoral contexts, expands our understanding of the institutional and non-institutional factors that shape the strategies, processes and outcomes of collective bargaining. In line with Thelen's (2015) work, we argue that the process of bargaining decentralisation has affected all countries reducing differences amongst them thereby requiring new classifications. Moreover, in a context of deteriorating industrial relations institutions such as in retail, market structures are found to play the most significant role in explaining unions' positions and their capacity to participate in the regulation of

[49] A. B. Munoz Ruiz has conducted the qualitative research related to the case study on Spain. The data extracted from the interviews has been managed according to the rules and protocols applicable at the UCIII-Madrid.

working conditions at the sector level. Finally, a main finding is that the weakness of both institutional and structural conditions can sometimes revitalise unions at the company level and encourage them to capture new opportunities and resources to organise workers.

## 4.2 A multi-level comparison of decentralised bargaining across six countries

Streeck and Thelen (2005) have contributed to the field of comparative institutional analysis by formulating the notion of *geographical specificity* and suggesting that there is a link between the mechanisms that shape institutions and the specific structures of the society within which they emerge (Streeck, 1992; Crouch, 2005; Streeck and Thelen, 2005). Further, these scholars have applied the idea of *embeddedness* to the study of capitalist diversity, arguing that the different impact that similar developments have in different countries can be explained through an analysis of the alternative institutional arrangements found in the various nation-states (Locke and Thelen, 1995; Crouch and Streeck 1997; Streeck and Thelen, 2005). Finally, these authors have underscored the role of power relations and conflict and, at the same time, attempted to reconcile the structuring capacity of institutions with a space for individual agency and 'conflictual encounters' (Djelic, 2010:25). It is in their particular interpretation of institutions that this chapter finds its theoretical underpinning, as it helps to observe six countries – Sweden, Germany, Spain, Italy, Ireland and Poland– in relation to the institutional frameworks in which they are embedded. Consistent with Streeck and Thelen's approach, we contextualise the cross-national comparison at the sector and firm levels. We explore how an important trend, such as collective bargaining decentralisation, is mediated by sector-specific and companies' institutional arrangements, and then, translated into actors' strategies in a way that may account for both similarity and diversity of outcomes across cases (Thelen, 2010).

Crucially, when exploring differences and similarities, we assume that, not only do institutional rules matter but so too do the identities, interests, and resources of actors involved in them (Crouch, 2005; Streeck and Thelen, 2005; Thelen, 2010). Actors may be socialised by institutions or purposely conform to them In addition, they may also stray from or re-interpret institutions in a way that alter their foundations (Locke and Thelen, 1996; Crouch 2005, Campbell, 2009). This theoretical perspective allows a focus on

*'institutionalisation as a dynamic and actor-centred social process' (Hirsch, 1997; Jackson, 2009:67)* as well as acknowledging that actors and institutions may change over time in a recursive and dialectical fashion (Streeck, 2009; Thelen, 2009). We go beyond an ideal-typical interpretation of case studies which treats boundaries as impenetrable and systems as closed. Instead, we proceed at two levels simultaneously: the level of systems – *macro-social level* – and within the systems themselves. Specifically our cross-national comparison involves countries with different institutional systems. Moreover, while the focus is on a single sector of economic activity, the retail sector, we explore collective bargaining developments at the company level. Thus, our research design reflects the multi-level nature of this study in which sectors are compared within their national contexts and companies within their sectoral contexts.

### 4.2.1 Classification of countries and sector-focus approach.

Visser (2009) systematises the existent countries' classifications around three emerging themes: employment regimes (Gallie, 2007; Esping-Andersen, 1990, Amable, 2000); industrial relations regimes (Crouch, 2005; Schmidt, 2006, Molina and Rhodes, 2007); and production regimes (Hall and Soskice, 2001). Consistent with previous attempts his classification captures the interaction between public policies, collective bargaining, and social dialogue in relations to different state traditions, institutions and practices. However, in addition, Visser clusters', namely, *North, Centre-West, South, West and Centre-East* (see table 1), offers a more nuanced comparative lens whereby diversity can be approached from different perspectives. For example, these clusters help formulate series of expectations not only on the relationship between international trends – such as collective bargaining decentralisation – and institutions of industrial relations, but also of economic and social coordination. They lie on the assumption that dealing with policy-makers does not necessarily mean that research needs to be concerned only with either formal rules or the restraint of economic actors (2005:44). Indeed, Visser's clusters acknowledge that institutions can also be interpreted as open boundaries, and not only as constraining factors. The main advantage of this analytical approach is that it takes into account different forms of institutionalisation (Bechter *et al*, 2012; Prosser, 2015) and that it reflects important factors of labour market governance and social welfare (Esping-Andersen, 1990). These are all expected to interplay with actors' strategies, and contextual issues, producing cross national similarities (and/or within countries differences) which this chapter aims to explain. A summary of Visser's classification is provided below.

| | North | Centre-west | South | West | Centre-east |
|---|---|---|---|---|---|
| **Production regime** | Coordinated market economy | | Statist market economy | Liberal market economy | Statist or liberal? |
| **Welfare regime** | Universalistic | Segmented (status-oriented, corporatist) | | Residual | Segmented or residual? |
| **Employment regime** | Inclusive | Dualistic | | Liberal | |
| **Industrial relations regime** | Organised corporatism | Social partnership | Polarised/state-centred | Liberal pluralism | Fragmented/state-centred |
| **Power balance** | Labour-oriented | Balanced | Alternating | Employer-oriented | |
| **Principal level of bargaining** | Sector | | Variable/unstable | Company | |
| **Bargaining style** | Integrating | | Conflict oriented | | Acquiescent |
| **Role of SP in public policy** | Institutionalised | | Irregular/politicised | Rare/event-driven | Irregular/politicised |
| **Role of the state in IR** | Limited (mediator) | 'Shadow of hierarchy" | Frequent intervention | Non-intervention | Organiser of transition |
| **Employee representation** | Union based/high coverage | dual system/high coverage | Variable (*) | Union based/small coverage | Union based/small coverage |
| **Countries** | Denmark<br>Finland<br>Norway<br>Sweden | Belgium<br>Germany<br>(Ireland)<br>Luxembourg<br>Netherlands<br>Austria<br>Slovenia<br>(Finland) | Greece<br>Spain<br>France<br>Italy<br>(Hungary)<br>Portugal | Ireland<br>Malta<br>Cyprus<br>UK | Bulgaria<br>Czech Republic<br>Estonia<br>Latvia<br>Lithuania<br>Hungary<br>Poland<br>Romania<br>Slovakia |

*Source: J. Visser, extended on the basis of Ebbinghaus and Visser (1997); Crouch 1993; 1996; Esping-Andersen (1990); Schmidt (2002; 2006); and Platzer and Kohl (2007).*
*(*) In France employee representation in firms incorporates both principles, in Spain and Portugal it is dualist, in Italy and Greece it is merged with the unions but based on statutory rights.*

In order to explore collective bargaining decentralisation across countries, we apply a sector-focus approach and assume that employers and employees belonging to the same industry experience similar technology challenges and market environments, and therefore, also similar postures on collective bargaining decentralisation (Marginson and Sisson, 2006). The selected countries are Sweden, Germany, Italy, Spain, Ireland and Poland – each embodying one of the Visser's country-cluster (2009), namely, North, Centre-West, South, West, Centre-East respectively, while the selected sector is retailing which is often described as a hostile context for trade unions to engage in negotiations (Mrozowicki et al. 2013). This is a low wage and low-skill sector, which due to its tenuous workers' structural resources, has been characterised by a strong deterioration of working conditions and employment relations (Geppert et al. 2014).

A comparative analysis across these countries, and sector, makes a series of theoretical contributions. First, it sheds light on the role of national and sector level actors and institutions in shaping varying models of decentralised bargaining. Second, it elucidates whether the existence of a national framework that steers local bargaining is a pre-condition for collective bargaining to take place at the company level. Third, it reveals whether and how company level actors engage with the competences they have been assigned by higher

institutional levels, and helps in assessing the outcomes of their interactions. Finally, in contexts where multi-employer bargaining is not in place, it sheds light on the actors' capability to develop their own strategies in response to their embedded interpersonal network. Also, it provides information on the meaning that these particular issues possess for their identities.

### 4.2.1 Varieties of collective bargaining decentralisation

In her work on varieties of liberalisation, Thelen (2014) argues that political-economic institutions – collective bargaining included – have followed three trajectories of change, namely, (1) deregulatory liberalisation (2) dualizing liberalisation; and (3) embedded flexibilization.

It is through these theoretical lenses that we observe current developments in collective bargaining decentralisation across Ireland, Poland, Germany, Italy/Spain, and Sweden. We argue that despite belonging to different country clusters, these countries have all undergone one of the following liberalisation processes. By reshaping their IR landscape, such change processes have either reduced or widened the institutional variation across them.

1. *Deregulatory liberalization*: This approach to bargaining decentralisation involves the active dismantling by the State (or employers' associations) of coordinating capacities of bargaining institutions and actors, as well as the reduction of bargaining coverage. Deregulation is characterised by change through '*displacement'* because mechanisms aimed at regulating collective bargaining are set aside in favour of arrangements that re-impose the discipline of the market (Thelen, 2014 p.13). This kind of positions towards collective institutions and regulations can be found in countries such as Ireland and Poland (see section 3). In both contexts, employers do not possess stable coordinating capacities and have thus been successful in weakening unions as well.
2. *Dualizing liberalization:* This approach to bargaining decentralization involves continued institutional coordination but in a context of narrowing in the number of firms and workers covered by collective bargaining. Dualization does not involve a clear attempt at dismantling bargaining arrangements. Indeed while such arrangements display a varying degree of resiliency - depending on the country and the sector - (Paolucci and Marginson, 2020) the system allows for unregulated and unorganized sub-systems that are characterized by inferior status and protections for firms outside the national or sectoral coordinating framework. Dualization can be the

result of increasing cooperation between unions and employers' associations in certain sectors, such as the chemical and pharmaceuticals sectors in Italy (Paolucci and Galetto, 2019), or between organized workers and management in large firms, such as in Germany (Thelen and Kume, 2006). Dualization is characterized by change through *'drift'* whereby collective bargaining institutions remain in place, but they fail to take hold outside the industrial core (Thelen, 2014 p.14). These is the case of countries such as Germany, Italy and Spain where membership in unions and employers' associations is indeed concentrated in traditional industries (i.e., manufacturing see chapter xx) and collective bargaining coverage does not reach sectors such as retail (see section 4).

3. *Embedded flexibilization*: This approaches to bargaining decentralization involves the flexibilization of collective regulations but within the context of a continued strong and inclusive framework that collectivizes risks. More specifically, collective bargaining institutions are aimed at making workers more flexible and mobile, while simultaneously protecting them from external risks. This form of decentralisation is offered through the functional conversion of collective bargaining to new goals and to the reconfiguration of relationships between all the actors involved. Embedded flexibilization promotes equality but it is not premised in sheltering workers from market forces. On the contrary, it makes sure they adapt their skills and capacities to changing market conditions.

### 4.2.3 Accounting for the role of both institutions and actors in facilitating and constraining the decentralisation of collective bargaining

The features of the collective bargaining systems are important in facilitating (and constraining) company-level negotiations (Marginson and Geletto, 2016; Pulignano and Keune, 2005). So long as they are encompassing in their workforce coverage, the possibility of individual employers exiting in favour of unilateral management regulation is minimised (Traxler 2003). The resulting procedural security is of particular salience for trade unions and their propensity to accept an expansion of competences of local level negotiations. Decentralization within such arrangements offers the promise of combining the advantages of common standards on major substantive issues, such as pay scales and the duration of working time, with scope for local variation in implementation and detail (Marginson and Sisson 2006).

There are, however, some key cross-national differences between collective bargaining arrangements which may affect actors' capacity to facilitate the conclusion of company level collective agreements. We assume that the most relevant difference is the *depth of bargaining,* originally defined by Clegg (1976:8-9) as the "involvement of local union officers and shop-stewards in the administration of [sector-level] agreements". Indeed, as collective bargaining systems underwent a process of decentralisation, whereby the competences of company level actors have significantly expanded, unions have gained a greater role in administering and applying the terms and conditions set forth by higher level agreements and, within their own remit, negotiate further provisions. In this context, collective bargaining systems have been redefined as *deep* when the main social actors, and the outcomes of their interaction, are coherent "from the central level and right down to the company level" (Madsen et al. 2001:12). More specifically, depth of bargaining has begun to indicate the way in which the bargaining process, that is controlled by the articulating mechanisms provided at the sector-level, first reaches local actors and then unfolds at the workplace (Muller et al, 2019:25). Thus, while in Clegg's work (1976), the emphasis was on depth at the sector-level – with centralised bargaining being the rule rather than the exception – in this chapter we look at depth from a company's perspective. Here there are two dimensions that can capture this important institutional feature, one is the capacity of trade unions to access employees within firms; and another is their participation in the negotiation of company level agreements. The assumption is that in companies where employees are not consistently represented by trade unions, it is unlikely that shop-stewards will guarantee the negotiation of any meaningful collective agreements. The reason is that high depth of bargaining gives confidence to unions to both provide (at the sector level) and accept (at the company level) further delegation of bargaining competences, and avoids representation problems so that employers can expect shop-stewards to take the lead in negotiating agreements (Paolucci and Marginson, 2020).

The power resource theory suggests that there are two further factors that may account for the capacity of social partners to engage with their competences at the company level. In particular, these are firstly, the commitment of organised (and individual) employers to maintain and respect a shared framework for wage bargaining and, secondly, the strength and organisational capacity of the trade unions (Thelen, 2014). The contribution of this chapter is therefore to explore the interplay between institutional features and the strategies of the actors involved with them in order to explain the impact that different paths to decentralisation may have had on the role, scope and outcomes of collective bargaining

within the retail sector. In the next section we review the institutional and legal framework for collective bargaining in the selected countries, namely Poland, Ireland, Italy, Germany, Spain and Sweden.

## 4.3 The changing contours of collective bargaining

With the exception of Italy and Spain, both belonging to the *South* cluster (Visser 2009), all the selected countries feature a different legal and institutional framework for collective bargaining. We argue that as a result of collective bargaining decentralisation, differences across them have become less pronounced thereby requiring new classifications.

### *4.3.1* The case of Ireland and Poland

Ireland and Poland have ratified the ILO Convention 98, so the mentioned states are obliged to support collective bargaining. The article 4 of the ILO Convention 98 establishes that: "Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements". Moreover, the states are obliged to promote collective bargaining because of the European Social Charter which is also binding for both. However, in practice, their national legal framework does not facilitate the promotion of the right to negotiate collective agreements.

On the one hand, the institutional framework for collective bargaining in Ireland is underpinned by the principle of voluntarism. Ireland's 1937 Constitution provides that workers have a right to form and join trade unions, but the law courts have stated that this does not imply that an employer is required to bargain with them. A 1995 case in the High Court offered a clear statement of this legal principle, which had been established in earlier cases: "I do not consider that there is any obligation imposed by ordinary law or the Constitution on any employer to consult with or negotiate with any organisation representing his employees or some of them, when the conditions of employment are to be settled or reviewed" (Justice O'Hanlon in Association of General Practitioners and Others versus Minister for Health, 1995).

Regarding the Irish case, under the 1990 law, trade unions might face legal action by employers if they organised industrial action without following a strict set of rules regarding

ballots, ratification, and notice. Since unions engaged in recognition disputes were often unable to demonstrate that they had followed these rules, and since they faced growing resistance to gaining recognition, calls for a 'right to bargain' re-emerged as an industrial relations and political issue. Laws were enacted to secure such a right. The so-called 'right to bargain procedure' was of limited impact and was effectively nullified by the Supreme Court's judgement in 2007 in the Ryanair case (D'Art & Turner, 2006; Roche, 2007a). The result of this case law is that employers cannot be forced by law to bargain with trade unions if they do not wish to do so, an interpretation that means that employees have no fundamental right to bargain. Employers and trade unions voluntarily engage in collective bargaining, and their agreed terms and conditions of employment are not legally binding. Workers have the right to form and join a trade union. However, unions cannot force employers to enter collective bargaining, meaning that there is no legal right to collective bargaining in Ireland. Following the collapse of national social partnership in 2009, collective bargaining, where it exists, occurs solely at the company level.

In the case of Poland, it is not possible to identify any action of the national legislator aiming to promote collective bargaining. There are even examples of actions taken by the State which could be seen as obstructive to collective bargaining. For example, an amendment to the Act on Higher Education which explicitly excluded the state minister responsible for the educational affairs as a potential party to a multi-enterprise collective agreement covering university employees triggered a protest by the sectoral trade unions, (specifically, the National Education Section of NSZZ "Solidarność"). In its reply, the ministry claimed that furnishing the Minister of Science and Higher Education with the right to conclude collective labour agreements could be considered a restriction of the right to negotiate. Moreover, if a minister acted as a party in a multi-enterprise collective labour agreement it would be contrary to the principle of the limited role of the state in collective labour relations (Czarzasty, Surdykowska 2020).

In Poland, collective bargaining is regulated by the Chapter 11 of the Labour Code of 1974. Yet, there is no explicit definition of collective agreement in the Labour Code. For that reason, the definition of that right is based on the jurisprudence. Following the ruling by the Constitutional Court of 20 January 1988, collective agreements should not be seen as normative acts adopted by state bodies, but rather as special sources of labour law. Regarding collective agreements, the law follows two major principles. One is 'freedom of contract', with the exception of provisions jeopardizing the rights of third parties. The other is

'favourability', by virtue of which collective agreements cannot introduce provisions less favourable for employees than those envisaged by law (Czarzasty 2019).

Despite the still existing differences between these two countries (the trade union power in Ireland is centralized and in Poland is decentralized), weak positions of trade unions and hostility of employers towards collective bargaining are noticed in boh countries. In particular, in the Irish case, under the 2015 Industrial Relations Act, if an individual employer does not want to recognise a union for collective bargaining purposes, the union must demonstrate that it is substantially representative of the workers in the company to activate a bargaining process. This involves the intervention of the Labour Court and the possibility that pay will be fixed by law when groups of workers are shown to be out of line with comparable groups performing similar work. In the practice, it has been difficult to meet the representativeness requirement required to activate the intervention of the Labour Court. As a result, most employers do not recognise trade unions for collective bargaining purposes.

Under these circumstances, following the collapse of the social partnership, the Irish Congress of Trade Unions and the main employers' confederation, the Irish Business and Employers' Confederation (IBEC), agreed in 2010 a 'protocol' to guide collective bargaining in private and commercial state-owned firms that prioritised job retention, competitiveness, and orderly dispute resolution. The ICTU–IBEC 'protocol' framed the orderly decentralisation of collective bargaining to the firm level across most of the private sector and state-owned commercial firms (Roche & Gormley, 2017, 2018). Sectoral collective bargaining continued to prevail in low-paid, low-union-density industries, in construction and allied sectors, and in public services. Yet, the main level at which negotiations take place is the company-level.

In Poland the roots of decentralization within the union movement can be traced back to the pre-1989 era of authoritarian state socialism. Workplace-centred union movement, emerged in period of the 1st Solidarity (1980–81). Even after banning the Solidarity, the new 'official' trade unions would be shaped as a loosely coupled confederation. OPZZ was built in a bottom-up (yet administered from above by the government) manner. Company-level organisations were organized and sectoral unions (autonomous organisations and federations) were set up, and finally a national-level association was called into existence (Gardawski, Mrozowicki, & Czarzasty, 2012).

### 4.3.2 The case of Germany, Italy and Spain

In the selected group of countries (Germany, Italy and Spain), the policymakers promote the right to negotiate following the international duties undertaken due to the ratification of ILO Convention (no. 98). In Spain, the right to collective bargaining and the binding character of collective agreements is enshrined in the Spanish Constitution (Article 37.1). The system of collective bargaining is thoroughly regulated in Title III of the Workers' Statute (WS). In particular, the Article 82.3 establishes the legally binding character of collective agreements negotiated in conformity with the rules of the Workers' Statute.

In the same sense, in Germany the provisions of the collective agreement have the character of mandatory legal norms. In the case of *collective bargaining*, the basic legislation is the Collective Bargaining Act (*Tarifvertragsgesetz*), which was passed in 1949 at the time of the founding of the Federal Republic, the constitution of which (the Basic Law) also provides for freedom of association. According to the Collective Bargaining Act, the negotiating parties – trade unions and employers' associations or individual employers – set employment conditions that have legally binding effect without external influence by the state. This is why in Germany the collective bargaining system is also referred to as 'collective bargaining autonomy' or alternatively 'free collective bargaining'.

The legal systems examined are characterised by the complexity due to the alternative channels for workplace representation. Whilst disparities in the distribution of functions is quite different among the various systems. In Spain, trade unions as well as works councils have the capacity to negotiate collective agreements at enterprise level. At sectoral level the right to negotiate is attributed only for trade unions. However, in Germany trade unions relieve works councils of the burden of having to negotiate on contentious issues, such as pay increases or the length of working hours, for which they are ill-equipped given that they lack the right to strike.

The promotion of the collective bargaining decentralisation is observed in times of crisis and the setting of some restrictions to sector level collective bargaining during economic recovery processes have been noticed. For example, in Italy, there were attempts to boost second-level collective bargaining through governmental economic incentives (especially after the onset of the 2009 economic crisis). In line with the overall concept of responsive regulation, since the onset of the 2009 economic crisis, cross-industry collective agreements opened-up to a process of organised decentralisation: opening clauses entitle decentralised bargaining to deviate from standards set by the national agreements, provided that

the derogatory agreement is approved by sectoral trade unions. Usually drawn up at sectoral level or based on statutory provisions, opening clauses provide the space for company-level bargaining to derogate from standards set under sectoral agreements, in order to adapt them to the circumstances of individual companies, while preserving multi-employer bargaining (Keune, 2011).

In Spain, the strong impact of the 2009 economic crisis, the problems affecting the labour market (in particular the high unemployment level, with youth unemployment in maximum rates), and the lack of effective mechanisms of wage bargaining and internal flexibility operated as grounds to transform the system of collective bargaining and impose a trend to decentralisation. The 2012 reform attempted to decentralize collective bargaining and to grant more power to employers at the bargaining process. The goal of decentralizing collective bargaining is clear in the 2012 labour reform. However, its practical results are mixed and the number of employees covered by firm level agreements has not visibly risen. The decline in collective bargaining coverage due to companies leaving or staying away from employers' associations is the main driving force of wild or uncontrolled decentralization (Bispinck, 2004) in the German retail sector. As a result, some sectors, the most organized from the side of the employers (i.e. manufacturing) still remain covered by collective bargaining, while others, have been left outside of its remit. A similar development can be seen in Spain. Relevant to this chapter, the weakness of the bussiness associations at state level is pointed out as a main concern in the retail sector. The consequence is that there are sector level collective agreements which regulate the working conditions of only 50 employees. One of the main problems is that the structure of the retail sector is focused on the provincial level. In fact, collective agreements at provincial level have been negotiated without clear guidelines.

### 4.3.3 The case of Sweden

The Swedish labour law and industrial relations system is based on self-regulation through autonomous collective bargaining, social partnership, and the strong legal rights and industrial relations practices of employee representation and information, consultation, and co-determination.

Collective bargaining is regulated by the Co-determination Act (MBL) (Government Bill prop. 1975/76:105, Bil. 1). The Codetermination Act (Medbestämmandelagen, MBL, 1976:580) which regulates employee consultation and participation in working life. The MBL is the main law for the system of collective regulations. It is a framework law that must be

implemented through collective agreements A collective agreement is statutorily defined as ‘an agreement in writing between an organisation of employers or an employer and an organisation of employees about conditions of employment or otherwise about the relationship between employers and employees’ (Section 23 MBL). Within its area of application, a collective agreement is legally binding, not only for the contracting parties to the agreement but also for their members (Section 26 MBL). In addition, an employer bound by a collective agreement is obliged to apply this agreement to all employees, irrespective of trade union membership.

Employee participation is carried out within a single-channel trade-union system, where trade unions both negotiate and conclude collective agreements, and take part in information, consultation, and co-determination at workplace level. Sweden has a tradition of high trade union density rates, but the share of Swedish workers who are members of a trade union has dropped in the last decade from 80% to 70%. This rate seems high in comparative terms, but Sweden is also one of the countries where unionisation is declining most rapidly (Eurofound, 2015). Trade union density was 65.2% in 2019 (OECD, 2021). Nevertheless, a strong position of trade unions in the retail sector has been noticed (60% union density). Also, the trade-union organisation rate in the retail sector is around 60 % in average (the trade-union organisation rate is 52 % for blue-collar employees, and 67 % for white-collar employees) (Medlingsinstitutet, 2022).

Several practical factors impact on the promotion, negotiation, and conclusion of local collective agreements in Sweden. The representatives of employers and trade unions at cross-sectoral, sectoral, and local level highlight the importance of good and cooperative relations between local employers and trade-union representatives. The mentioned guide has positive effects in the decentralisation of collective bargaining. Thanks to those guideline, decentralisation occurred within a steady and coordinated system for collective bargaining. A series of articulation mechanisms are in place to provide clear competences to different bargaining levels - sectoral, company and workplace levels.

## 4.4 Characteristics of the retail sector

Comparative research suggests that employment relations are sector-specific (Bechter et al. 2012). Thus, in order to understand the responses of unions to the decentralisation of collective bargaining this chapter solely focuses on the retail sector. Several studies points to

retailing as an interesting context in which to explore developments in collective bargaining as it is characterised by a series of market conditions that have made it possible for employers to sidestep employment relations institutions – and explore so called 'exit options' (Doellgast et al. 2018). As opposed to manufacturing, retailing is a low-wage and low-skilled industry where unsociable working hours and part-time are the norm, employment contracts are notoriously precarious, and the share of female employment is significant (Geppert at al, 2014; Mrozowicki et al. 2013). Moreover, the sector is dominated by small businesses on the one hand, and few large, often internationalised, companies on the other. Here cost-cutting strategies prevail and the level of employee turnover is high (Carre, 2010). Against this backdrop of workers' vulnerability, our expectation is that unions struggle to resist collective bargaining decentralisation and, at the same time, to negotiate company-level agreements. Table 2 summarises the most relevant labour market indicators across all the countries investigated.

**Table 2 Labour Market Indicators in the Retail Sector**

| | All employed | Part-time | Temporary workers | Young workers | Female | Wage Female | Wage Man |
|---|---|---|---|---|---|---|---|
| Germany | 5,195.7 | 1,489.4 | 504.1 | 224.4 | 2,685.4 | 14.24 | 18.3 |
| Ireland | 295.4 | 66.4 | 29.3 | 32.2 | 141.8 | 15.75 | 18.73 |
| Spain | 2,951.6 | 348.7 | 450.2 | 88.2 | 1,469.9 | 8.77 | 10.64 |
| Italy | 3,087.4 | 532.0 | 343.3 | 109.7 | 1,340.4 | | |
| Poland | 2,209.6 | 94.2 | 372.7 | 31.9 | 1,253.9 | 4.67 | 6.23 |
| Sweden | 519.6 | 89.5 | 68.1 | 51.6 | 218.4 | | |

Source Eurostat (https://ec.europa.eu/eurostat/web/labour-market/overview).

Carre' (2010:5) defines the retail sector as a 'laboratory for changes in labour market institutions'. The generally precarious conditions of workers, coupled with the increasing need of employers for flexible work arrangements to meet changing customers' demands, have exerted pressure on bargaining arrangements and facilitated the relaxation of collective regulation. Except for Sweden, where the industrial relations landscape has remained relatively stable over time (Rönnmar and Iossa, 2022), the picture we have in all the other countries, in which sector level institutions are still the main locus of negotiation, (Germany, Italy and Spain) is far more complex. In Italy, retailing features a strong fragmentation both in workers' and employers' representation which resulted in the proliferation of industry-wide agreements. Over 75 of such agreements were mapped by Cnel only in 2020 (Armaroli, Tomassetti 2022). However, the majority of workers is still covered by the collective

agreements signed by the most representative trade unions. While the scope of company level bargaining has progressively increased to encompass items such as working time, work organisation, job classification, temporary contracts, work-life balance, equal opportunities, training, health and safety, and welfare benefits, the capacity of management and shop-stewards to engage with these competences remains limited. Given the huge presence of small companies with less than 50 employees (99% of all the enterprises in retail) unions have struggled to enter the workplace. Union density is in fact one of the lowest compared to other industries and it stands at around 17 % (Carrieri and Feltrin, 2016 in Armaroli, Tomassetti 2022). It follows that decentralised bargaining in retailing is confined primarily to few large retailers.

The situation is similar in Spain, where most companies lack the necessary employee, or union, representation to initiate the formal process of decentralised bargaining. In addition, here, the sector is characterised by an strong fragmentation of bargaining units both at provincial and national level and, unlike in Italy, the sectoral business association is weak. All these conditions have made it particularly difficult for Spanish unions to sign industry-wide collective agreements. Currently there is one sector level agreement in force in retail, covering about 50 employees. Most bargaining activity takes place at provincial level and in large retailers (Muñoz Ruiz and Ramos Martín, 2022).).

In Germany less than half of all retail workers are covered by a collective agreement and between 80 and 90 per cent of workplaces are outside the scope of collective bargaining (Haipeter and Rosenbohm, 2022). This significant reduction in workers' protections in retail resulting from an extreme deterioration of bargaining institutions, was due to large retailers withdrawing from collective bargaining in recent years. In particular, the discontinuation of extension provisions in the sector and the possibility for employers to join the business association, while opting out from collective bargaining, have produced a sharp decline in bargaining coverage and triggered a process of *wild* and *uncontrolled* decentralisation (Bispinck 2004 in Haipeter and Rosenbohm, 2022). The weakness of unions at the workplace level has further impinged on the stability of the system and limited bargaining activity.

In Ireland and Poland, the retail sector does not have multi-employer bargaining arrangements in place and negotiations only occur at the company and workplace level.

Hence the first questions that this chapter answers is whether and if so how, trade unions have responded to the decentralisation of collective bargaining in the retail sector.

**Table 3. Institutional context for collective bargaining**

| | Collective Bargaining system | Dominant bargaining level | Collective bargaining coverage | Establishment covered by company level bargaining | Union density |
|---|---|---|---|---|---|
| Germany | Multi-employer | Sector | 25% | 4% | Not Available |
| Ireland | Single-employer | Company | Not Available | Not available | Not Available |
| Spain | Multi-employer | Provincial | | | |
| Italy | Multi-employer | Sector | 80% | Not Available | 17%[50] |
| Poland | Single-employer | Company | | | |
| Sweden | Multi-employer | Sector | 85%[51] | | 60% |

Source: Haipeter & Rosenbohm, 2022; Armaroli &Tomassetti, 2022; Paolucci et al, 2022; Muñoz Ruiz and Ramos Martín, 2022; Rönnmar & Iossa, 2022; Czarzasty, 2022.

The companies selected for this study are all large retailers where trade unions are present and where there is some degree of collective bargaining activity. While these may not be necessarily representative of the retail sector, that is heavily dominated by small and medium enterprises lacking employee representation, they are still interesting contexts in which to explore union responses to the decentralisation of collective bargaining for two reasons. Firstly, we have limited empirical evidence to date on the strategies that unions have devised, in these contexts, to take advantage of the opportunities offered by bargaining decentralisation and negotiate company level agreements. Secondly, the evidence we have is not conclusive.

Some scholars highlight that in large retailers, unions can only play a marginal role (Armaroli, Tomassetti 2022). Thin margins for profits, the high incidence of labour costs, and constant changes in customers' demands push employers to squeeze labour costs which, in turn, reduce the opportunity for unions to make gains through collective negotiations (Nespoli, 2021). For example, in Italy, dynamics of outsourcing in the retail value chain have exacerbated social dumping and led to fraudulent practices, such as undeclared work and the application of so called 'pirates contracts'[52] (Armaroli, Tomassetti 2022). Under these conditions, the most representative unions find it difficult to sign meaningful collective agreements. By contrast, other comparative studies indicate that unions in large retailers across Ireland, Spain, and Poland, benefit from some benevolent conditions (i.e. market

[50] Trade Sector, data not available for retail only Carrieri, M. & Feltrin, P. (2016)
[51] Aggregate figure for private sector Rönnmar and Iossa, 2022)
[52] Collective agreements that are not signed by the most representative trade unions.

share, size of establishments, number of employees, integrated human resource practices) which facilitate cooperation with management and strengthen their capacity to enter into negotiation with them (Geppert et al, 2013). In order to clarify this inconsistency, this chapter explores the role and strategies of trade unions in large retail companies across Sweden, Italy, Germany, Spain, Ireland and Poland. Hence the second question that this chapter addresses is whether and if so how, trade unions have responded to the decentralisation of collective bargaining at the company level.

## 4.5 Union strategies in coordinating collective bargaining across countries and companies

In this section, we will first seek to answer to the question how trade unions have responded to the decentralisation of collective bargaining at the sector level. Secondly, we will ponder the issue unions have responded to the decentralization of collective bargaining at the company level. Finally, we discuss the institutional and non-institutional factors affecting linked to the institutional and structural context in which they operate?

In line with the Visser's proposal, the countries in our sample represent all clusters union strategies towards bargaining decentralization. In other words: how are unions' strategies distinguished, in particular, North (Sweden), South (Italy and Spain), West (Ireland), Centre-West (Germany) and Centre-East (Poland). As a consequence, there is a spectrum of all types of collective bargaining in terms of principal level covered. In North and Centre West, sectoral level prevails, contrasting with West and Centre-East, where company level dominates. In the South, the leading pattern is branded as "variable" (Visser, 2009). There are also different trends towards decentralisation in each of them – as theorised by Thelen (see Section 2). In particular, we argue, that in our country sample we are witnessing *dualising liberalisation* (Italy and Germany, to some degree also Spain), *embedded flexibilisation* (Sweden) and *deregulatory liberalisation* (Ireland and Poland).

As for the first question, it is important to stress out that in the countries belonging to the clusters where collective bargaining relies on company level (Ireland and Poland) there is no such challenge. Decentralization is a state, not a process, hence label of *deregulatory liberalization*. More specifically, in Poland unions could not respond to decentralisation at the sector level due to the fact that structure of collective bargaining has been decentralised for many years. Furthermore, the main challenge the unions face is not type of bargaining in

terms of levels but collapse of bargaining in general. In the retail sector, there is no multi-employer agreement and no tripartite body responsible for the sector exists either. By contrast in Ireland, despite the lack of a sectoral level framework, the collective bargaining system, while being confined to company level, has remained relatively viable. The collapse of the social partnership system in the aftermath of 2008 crisis left mark on the entire system of industrial relations in the country but the Irish Congress of Trade Unions and the Irish Business and Employers' Confederation reached a bipartite agreement on a '"protocol" to guide collective bargaining in private and commercial state-owned firms that prioritised job retention, competitiveness, and orderly dispute resolution' (Paolucci et al., 2022). In other words, despite sharing a pluralist IR tradition and a similar institutional setting (based on single employer bargaining), social actors in Ireland and Poland have made different strategic choices. In particular, in Ireland as opposed to Poland, some employers have showed a greater willingness to continue engaging in collective bargaining.

In the remaining countries that we focus on in this chapter, decentralization of collective bargaining at the sector level is indeed a problem for trade unions, albeit its weight varies, depending on the national context. Italy, Germany and Spain all fit into the type of process that is called *dualizing liberalization*. In fact, tenuous market characteristics have made it possible for individual employers to sidestep the national collective bargaining system which, despite formally remaining in place, is no longer able to secure high level of inclusion.

In Italy, there is a serious challenge of a spontaneous/disorganized decentralisation advancing through so called 'pirate contracts'. This phenomenon can be described as follows: 'smaller unions (without real representation) and compliant business associations sign alternative sectoral collective agreements in order to cut labour standards and costs' (Armaroli, Tomassetti 2022:9). While such agreements can be considered nothing more but legal window-dressing, they apparently obstruct collective bargaining. Retail is one of the sectors especially prone to contamination with such regulations as due to low added value and margin profits, employers seeking to reduce labour costs are tempted to resort to such practices. Trade unions (legitimate ones) recognise pirate contracts to be a serious problem, because it 'has reached such dimensions in many sectors that appears to be more threatening for the functioning of the whole industrial relations system in Italy and the subsequent maintenance of sustainable labour standards, than the possibility for decentralised bargaining to derogate from certain national terms and conditions of employment' (Leonardi, 2017). Nevertheless, they are struggling to address it effectively. Moreover, while the sectoral

framework as remained largely unaltered and continues to establish clear mechanisms of delegation of bargainig competences across levels, a reduced depth of bargaining in Italy and a limited presence of shop-stewards at company level have made it quite difficult for companies in retail to be covered by collective agreements. Due to the hostility of employers, unions are able to engage with decentralised bargaining and secure the enforcement of sectoral agreements only in companies where they can effectively represent workers. It follows that there are substantial within country differences in the capacity of unions to protect workers. Dualization is evident in the fact that the barganing system remains well-articulated in the most strongly organised sectors (both on the side of unions and employers), such as manufacturing; whereas in others, where representation is more fragmented, such as in retail, the opportunities for actors to negotiate in company level agreements are limited.

In Germany, retail sector has been a scene to 'wild', that is, disorganised, decentralisation. "The decline in collective bargaining coverage due to companies leaving or staying away from employers' associations is the main driving force of wild or uncontrolled decentralisation" . (Bispinck, 2004, in Haipeter and Rosenbohm, 2022: 27). This has had important implications from an institutional perspective. While some workers are still covered by the sectoral framework (that has remained relatively stable over time), others such as in retail cannot avail of the same level of protection. Thus, similarly to Italy, albeit for different reasons, the IR system in Germany is increasingly dualised. However, derogations are not a significant factor for decentralisation in the retail sector. Unions recognise the need for modernisation of collective bargaining, as they notice it is outdated in many respects (for example, pay structure), yet they are aware of the risks any future changes might bring with regard to their main constituency (specific job groups). There is a gap between strategic approaches of unions in service sector (Ver.di) and metalworking (IG Metall). While in the metal sector unions are quite open to derogations, service sector is more reserved. "Overall, ver.di has been quite reluctant to accept derogations or deviations from the standards stipulated in regional industry-level agreements (Haipeter and Rosenbohm, 2022)".

In Spain, there is still predominance of the sector (mainly provincial level) agreements, reinforced by the recent change of law (2021). "In the retail sector it is observed a strong fragmentation of the bargaining units at state as well as provincial level. The factor of the fragmentation is explained by the difficulties to negotiate a sectoral collective agreement at state level. The weakness of the business association at state level was pointed out the main concern in the retail sector." (M. Ruiz and Ramos, 2022). As the root of the

problem is on the employers' side, the unions are in a difficult position to produce a consistent strategy on how to address it.

In Sweden, there is no trend towards increased 'disorganised' or disruptive decentralisation, so the phenomenon is not seen as a threat (Rönnmar and Iossa, 2022). The system has adapted to the need for increasing flexibility by providing clear articulation mechanisms coordinating the relationship between bargaining levels. Company level agreements – like in the case of the chain being subject to the national case study – cannot deviate from upper-level agreements (favourability principle), thus the two levels of bargaining are regarded as complementary. Moreover, union density remains relatively high in the sector, meaning that unions can retain control of the bargaining prcess at the local level. No major tensions are reported regarding the link between upper and lower levels of bargaining. Within this context, trade unions are not overwhelmingly concerned about decentralisation.

As for the second question, that is, dealings by trade unions with decentralisation at company level, the issue is more complex, especially due to the nature of the companies selected (large retailers), where unions, despite to a varying degree accross cases, tend to retain a relevant role.

In Poland, lack of any formal regulation (no collective agreement), as exemplified by company Megastore (a subsidiary to a Dutch-domiciled multinational chain) seems to be a main challenge. The company's adversarial stance towards trade unions suggests that chances for striking any formal bipartite agreement are slim. This is to some degree compensated by micro-bargaining whose subject are, for instance, pay rises or occupational welfare. The union (there is only one in the company) has no bargaining power strong enough to push their agenda more effectively. Considering pluralist and highly fragmented shape of unionism in the country, no intervention from upper levels of union structures, either sectoral or central, is likely to happen. It is hard to discuss outcomes of bargaining in the environment without a formal agreement, however, the abovementioned micro-bargaining has produced some tangible effects, including establishment of company social benefits fund[53] (Czarzasty, 2022).

In Germany, there is an innovative practice of successful union organising via works council. The retail network in focus, Fashion, had initially not been covered by a collective agreement, no works council had existed there either. Nevertheless, in a bottom-up move the works council was established, with the support of ver.di, what would be followed by

[53] Major, company-level type of scheme of occupational welfare in Poland.

increase in union density. Finally, the company agreed to sign a "'recognition agreement' under which the company will adhere to the standards stipulated in the branch-level agreement after a transition period" (Haipeter and Rosenbohm, 2022: 68).

In Spain, there is an interesting finding pertaining to decentralization. Precisely speaking, decentralization of collective bargaining in which independent trade unions were involved brought improvements to working conditions and pay in the retail networks (Lidl and Mercadona), while in the chains where so-called "instrumental" (presumably, yellow) unions are present (such as Decathlon) there are problems with pay, so that "higher wage of employees in Decathlon is lower than the employees hired by Lidl and Mercadona" (Belén and Ramos 2022: 27).

In Ireland, in the case RetailCo, the prerequisite is that "unlike other major retailers in Ireland, RetailCo recognises unions" (Paolucci et al 2022: 47). This creates a ground for negotiations, resulting in what is described as "a de facto closed-shop agreement in place in the company that secures 100 per cent union representation" (Paolucci et al 2022: 47). Despite those better-than-average circumstances, the unions still had to make an enormous effort to mobilise workers in a sector that due to its structural conditions (low pay, high labour turnover or competition between employers) is an extremely difficult field to operate on. What they did (not only in the retail sector) was utilising their own organisational resources to empower shop stewards and revitalise their company-level structures. There is one accomplishment that seems to be of particular value for the ultimate success of collective bargaining in the company. In the institutional context where central coordination mechanism is virtually absent unions have developed mechanisms of vertical coordination through the establishment of formal workplace representation structures, elected by the members and linked to the sector level via highly trained full-time sectoral union officials (that is, shop stewards) (Paolucci et al 2022).

In Italy, in the company under scrutiny, what appears to be the main challenge is as follows: "since no comprehensive collective agreement has been signed after the foundation of Coop Alleanza 3.0 in 2016, the different terms and conditions of employment for all workers of the former three cooperatives are not harmonised" (Armaroli, Tomassetti 2022: 42). In other words, the three collective agreements concluded in the companies that would eventually form the Coop Alleanza 3.0 prior to the merger are still referred to in day-to-day practise of labour relations, and unions have been making efforts to maintain those agreements alive, also by means of collaboration. At the same time, no new collective

agreement embracing all employees in the newly-founded company has been signed. This is seemingly a 'caught in the middle' type of situation and trade unions are yet to devise a strategy on how to deal with that.

In Sweden, with no observed tensions between various levels of bargaining, strategy on part of trade unions at company level is not defensive. The case of the chain covered clearly shows that such agreements are regarded as complimentary to the upper-level agreements. This perception is likely to be enhanced following the signing of cross-sectoral, social-partner agreement on security, transition, and employment protection of 2020 and 2021 (Rönnmar and Iossa, 2022).

Another example worthwhile attention are Lidl and Mercadona in Spain (with a negative frame of reference provided by Decathlon), where dedication of trade unions to negotiating the collective agreement resulted in better pay conditions than in the company where the unions reportedly did not commit themselves to the process overly. In Germany a deliberate choice of the IG Metall to "jump on the wagon" (of decentralisation) created an institutional grounds for effective overseeing and enforcement of collective agreement by the works council (in close collaboration with the unions), following the employer's pledge to observe the branch-level agreement. Even in Poland, in the context of adversarial industrial relations and absence of collective agreement (with little chances to conclude one in a foreseeable future) informal micro-bargaining have produced some tangible benefits to employees. So that the lesson learnt is the resilience of trade unions pays off, even though it may not be enough to stop or reverse decentralisation, wherever trade unions see it as undesirable phenomenon.

## 4.6 Conclusion

This chapter explored the responses of trade unions to the decentralisation of collective bargaining in the retail sector across countries characterised by different industrial relations systems. Its multi-level focus makes a series of contributions to extant research.

Firstly, we find that in the face of recent decentralisation pressures, traditional classifications (Visser, 2009) are no longer able to capture variation in the institutions framing collective bargaining across countries. We showed that two different countries, such as Ireland and Poland, prominent examples of the West and the Centre-East clusters

respectively, have both experienced a sudden collapse of multi-employer bargaining, thereby becoming an increasingly similar context where trade unions and individual employers negotiate. By the same token, Germany on the one hand and Italy and Spain on the other, have been treated, from an institutional perspective, as instances of different industrial relation regimes (Visser, 2009). Nevertheless, a greater delegation of bargaining competences, from the sectoral to the company level, has progressively reduced the degree of institutional variation between them. In particular, decentralisation in these countries has meant that while formally, bargaining institutions have remained in place, a reduced presence of unions at the workplace level (*depth of bargaining)* in Italy and Spain, and the unwillingness of employers to uphold the multi-employer bargaining system in Germany, have de facto limited the enactment of these institutions to traditionally unionised sectors, such as manufacturing, and left outside many others, most notably retail. As a result, these countries are no longer able to secure an even coverage of collective bargaining across sectors and companies. Finally, consistent with the Nordic model, Sweden remains a case of stable industrial relations, where collective bargaining continues to play an important role in the regulation of the labour market. Here, the procedural security offered by clear articulation mechanisms and a widespread presence of unions across companies, have given to local negotiators the flexibility they require to engage (or not) with their bargaining competence.

Secondly, a close up of the retail sector demonstrates that decentralisation has taken different shapes across the selected countries. Ireland and Poland are cases of "deregulatory liberalisation" where trade unions can avail of very limited institutional resources, collective bargaining takes place only at the company level and increasing hostility of employers has dramatically reduced collective bargaining coverage. Germany, Italy and Spain have experienced "dualizing liberalisation", meaning that while multi-employer arrangements continue to remain in place, in sectors where market conditions are unfavourable to workers, such as in retailing, employers have been able to circumvent them. It follows that there are significant within country variations in the capacity of trade unions to protect workers as well as to secure the enforcement of sector and company level agreements. Depending on sectoral characteristics, trade unions may be able or not to control decentralisation. The Swedish case depicts a different scenario. Coordination between bargaining level is strong despite increasing decentralisation. The link between sector and company level social partners have created an incentive for enacting their bargaining competences and, by making institutions relevant and functional, they also legitimate their role in the labour market. Institutional change in Sweden has followed the trajectory of 'embedded flexibilisation'. This is evident in

the fact that decentralisation has been assimilated by existent institutional arrangements rather than resisted. Through this process of interaction, industrial relations actors and institutions in Sweden have remained active and representative at all levels.

Thirdly, the analysis of our company cases suggests that wherever trade unions can retain/gain any degree of control over the process of decentralisation, regardless of the country and the path the process takes (i.e. deregulatory liberalisation, dualising liberalisation and embedded flexibilisation), the outcomes of collective bargaining are more or less positive for employees. This is not to say that institutions are not relevant. On the contrary, in a stable institutional context such as the Swedish one, unions are found to be in a stronger bargaining position and able to protect even workers in retailing, where market conditions are not favourable to them. In a shaky institutional environment (as in the case of Italy or Spain), the outcomes may vary, and their quality is not only determined by the structure of the bargaining system but also by the interplay of other factors including attitudes of stake-holders, market pressures, technological advances and inherent characteristics of the retail sector such as low profit margin, translating to low pay. The wide spectrum of possible outcomes of bargaining as illustrated by our cases studies contains such success stories as the Irish Retail.Co, where the leading union (Mandate) is reportedly satisfied with the outcomes of decentralised bargaining, and in spite of the financial difficulties the company, and the hostile institutional context it operates in, the union maintains collaborative relations with management. Equally fascinating is the German case, demonstrating that, sometimes, it is the the deterioration of institutions itself that can trigger unions' responses to liberalising pressures and provide them with an opportunity to (re)organise vulnerable workers.

In sum our company cases show that independent of the country, in a context such as retailing, which is characterised by generally poor working conditions, market structures and company characteristics tend to condition unions' capacity to engage in collective bargaining. Only in Sweden, where the institutional framework continues to provide a significant degree of procedural security through coordinating mechanisms, unions have been able to retain control over the decentralisation process and to play an important role at the company level. Nevertheless, in large, often internationalised companies, such as those investigated, unions that are proactive and willing to moblise their own organisational resources, as demonstated by the Irish and the German cases, are still able to make a positive difference for workers.

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# Chapter 5.
# Interplay between state and collective bargaining, comparing France and Spain

Ana Muñoz Ruiz, Nuria Ramos Martín, Catherine Vincent

## 5.1 Introduction

It is now commonplace to assert that, during the last decades, industrial relations systems have been reshaped in most of European countries in order to enhance economic efficiency and that decentralisation of collective bargaining has been the preferred instrument to achieve this objective (among others: Marginson, 2015; Leonardi, Pedersini, 2018; Müller, Vandaele, Waddington, 2019). This finding resonates throughout our comparative research on collective bargaining decentralisation which show that collective bargaining systems are under pressure.[54] With the stated intention of achieving greater labour flexibility and improving competitiveness, policy makers have attempted to limit the scope of collective bargaining, viewed as sources of rigidity, particularly industry-level bargaining. The outcomes are a dominant pattern of bargaining decentralisation.

Nonetheless, the eight countries under review reveals the impressive diversity of institutional forms and paths of evolution. Beyond different national traditions and history, these different trajectories of change came primarily from the manners the parties to collective bargaining - employers, trade union and the State - have adjusted their strategies to meet new circumstances. In some countries, the social partners have themselves taken charge of the reshaping of the bargaining system, while in others the changes have taken place through more or less concerted government intervention. This observation is not new either. The national industrial relations institutions and collective labour law emerged through the interplay or negotiation between social partners and the State. The Fordist compromise of the glorious thirty lied in the fact that governments, employers' organisations and peak trade unions reached an accommodation which was the establishment of sectoral collective bargaining (Crouch, 1993) The motivation of the parties to sector-level collective bargaining was similar despite differences among countries. In addition of taking wages out of competition and ensuring social peace, employers benefited of sectoral bargaining insofar as it restricted the power of unions at the workplace. Thus, protecting the exercise of managerial prerogative (Sisson, 1987) For trade unions, sectoral collective bargaining had implications for their power relations and a protective function for workers, enabling them to develop solidaristic wage policies. Last but not least, for the State, the institutionalisation of a sector-

[54] See information at the CODEBAR research project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

level bargaining systems, in the absence of industrial conflict, achieved the stability and provided a platform for economic growth.

In the last decades, the assumptions underpinning the utility of sectoral collective bargaining were being called into question. The financialization of corporate governance, the globalisation of exchange, and the shift towards more labour markets flexibilization have made the mode of growth of advanced capitalisms unstable (Streeck, Thelen, 2005) To face this permanent uncertainty, and in a context of weakening of organised labour, employers' organisations have become less likely to support long standing collective bargaining institutions. In this new balance of power, employer-led decentralisation has been supported by governments, directly or in a more concerted way. The transformation of collective bargaining systems has become a political issue, moving in the direction of a greater employer discretion within company.

In western European countries, the decentralisation of bargaining resulted primarily from the actions of employers who have striven for decentralised bargaining arrangements or from the State who has supported employer-led decentralisation. It resulted also from the limited capacity of trade unions to sustain sectoral bargaining. This tendency could lead to some breakdown in collective bargaining structures or to "incremental corrosion" (Marginson, 2015) Depending on the country, different mechanisms have been used to achieve this decentralisation: deregulation, derogation, circumvention of institutions by the actors (see Tros, 2022), but in most countries, it took the form of "organised decentralisation." (Traxler, 1995). National trajectories have been adapted to the identities and strategies of the actors. Baccaro and Howell assume that "the *trajectory* of institutional performance across countries is convergent, but not the *form* of institution" (Baccaro and Howell, 2017: 16). We can add that neither, the role of the different actors. In some countries, the social partners influence the shaping of collective bargaining system. In Sweden, for instance, in line with the tradition of autonomous collective bargaining, an organized decentralisation was set up through cross-sectoral agreements. In Germany too, an organized decentralisation has been implemented by trade unions and employers' organisations through the possibility of opting out of sectoral agreements. However, a form of disorganised decentralisation is developing at the initiative of employers' organisations, giving companies the possibility of joining without being obliged to apply sectoral agreements. The result is an erosion of bargaining coverage, without the government intervening in the extension procedures.

Italy is a good example of a joint intervention by the state and the social partners The decentralisation of collective bargaining was promoted since the 1990s and moved decisively after the 2008 economic and financial crisis. The Italian government has legislated, introducing in 2010 a fiscal incentive linked to local or company level bargaining on performance-related pay or new opportunities for derogate from sectoral agreements (in 2011). In parallel, the social partners opened up a process of organised decentralisation based on derogations approved by sectoral trade unions.

In other countries, the state showed a more active role, intervening directly in the legal regulation of collective bargaining. That was the case in France and Spain. This chapter focus on a comparison of legislative shaping of collective bargaining in these two countries and on the influence of trade unions and employers' organisation.

## 5.2 Main reforms: an overhaul of collective bargaining imposed by the state/consulted or negotiated with social partners

### 5.2.1. Institutional framework of collective bargaining in France[55]

In France, collective bargaining has been built on a statutory basis since 1936 but did not become the normal mode of social relations until late[56]. During the 'Glorious Thirty', industry level bargaining has emerged as the pillar of French industrial relations. Despite one of the lowest rates of union density, the French bargaining coverage rate is among the highest in OECD countries: 96 per cent in the private sector. The high coverage level results from two factors. First, collective agreements apply to all employees of a company covered by them regardless whether or not they are trade union members. Second, and above all, bargaining coverage has been broadened by the general use of administrative extension of industrial agreements. The state has compensated for employers' hostility to bargain using two other tools. First, in order to level social inequalities and to compensate for a deficient bargaining process, a statutory national minimum wage was implemented, by a 1950 Law revised in 1970. The government set annually its rate according to strictly established rules. Linkages between the SMIC and wage bargaining are rather complex, but the minimum wage increase more or less set the pace for wage industry agreements (Delahaie and Vincent 2021). Second, until the late 1990s, representative unions had a monopoly in collective bargaining at all levels. More recently, new rules for union representativeness and the validity of agreements have also sought to support the security of bargaining.

Nevertheless, since the mid-1980s in the French case, the driving force of sectoral collective bargaining has been eroded by an early development towards the decentralisation of collective bargaining to the company level. For the successive government, the goal was to favour, or even to prioritize company bargaining. The rise for this level was made possible through three devices. First and foremost, In 1982 the so-called Auroux laws made it mandatory for any establishment counting one or more union representative to negotiate annually on wages, working time and work organisation (without obligation to reach an agreement). Since then, the catalogue of compulsory bargaining items at firm level has continuously evolved. The Auroux laws also strengthened the prerogatives of union delegates and the elected workplace representation bodies. Compulsory firm level bargaining marked a departure from the State's and the unions' longstanding preference for (national) sectoral and (national) multi-sectoral bargaining.

Secondly, in the 1990s, successive legislative reform which were enacted by conservative governments introduced derogations from the Labour Code – on statutory working time – through sectoral or company agreements. A step forward was taken in 2004 when the Fillon law allowed for company level derogation from sectoral agreements, except for minimum wages, job classifications, supplementary social protection, and vocational training; However, sector level negotiators could 'lock up' other topics and exclude them from company level derogations.

Even if the changing pattern of collective bargaining has gradually delineated the coupling between the central and company levels, the system remained coordinated by law and the favourability principle (Vincent 2019).

[55] The following text about the French case is an excerpt from Kahmann, M. and Vincent, C., Decentralised bargaining in France, (2022) pages 5-20. Available at the project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

[56] The first law establishing a collective bargaining system dated back to 1919. Because of the outbreak of the Second World War, but also of the hostility of employers toward unionism, the 1936 law was not implemented. The 1950 law consolidated the 1936 terms.

All the above-mentioned reforms were preceded by concertation with social partners. Whereas employers' associations were generally satisfied with them, national union confederations were divided over them. However, that tradition of concertation was broken in the labour market/collective bargaining system reforms by the socialist Hollande government for the labour law reform in 2016 which conferred more autonomy to company bargaining (Rehfeldt and Vincent 2017).

A year later, the 2017 Macron Ordinances replaced it with a compulsory division of topics among levels.

**Table 1. Summary pf the principal characteristics of collective bargaining, France, before and after 2016/2017 reforms**

| **Key features** | **Before 2016** | **2016/2017** |
|---|---|---|
| **Actors entitled to collective bargaining** | At national level:<br>- representativeness based on workplace election criteria (8% at industry and national levels). 5 representative unions<br>- 3 employers' organizations fulfil representativeness criteria based on membership.<br><br>In enterprises:<br>- for unions, representativeness based on workplace election criteria (10% at least) level<br>- without a union, possibilities to bargain with elected representatives or mandated employees (10% at enterprise level; | At national level:<br>- No change<br><br>In enterprises without a union, drastic extension of the possibilities to bargain with elected representatives or mandated employees |
| **Importance of bargaining levels** | – erosion of industry level but still the reference, particularly in SMEs | – increase of company agreements, less coordination between bargaining levels |
| **Favourability principle / possibilities to derogate from sectoral agreements** | – strict favourability principle among levels<br>– possibilities to derogate from labour code or sectoral level mainly on working time | – compulsory division of certain topics among levels<br>– for other topics, priority to workplace level |
| **Collective bargaining coverage (%)** | 96% | 96<br>% |

Source: for data, OECD/AIAS ICTWSS database, 2021.

In the last two decades, the abovementioned legal reforms have significantly modified industrial relations and the labour market. In their wake, the 2017 ordinances have profoundly disrupted the previous system by weakening the individual and collective protections provided by the Labour Code: increased decentralisation of collective bargaining; overhaul of workplace representation; a further step forward in deregulating the labour market, notably by easing economic dismissal procedures and introducing a compensation cap in the event of legal action. The employers' organizations have clearly supported the ordinances, which meet many of their demands, while all the unions are strongly opposed.

### 5.2.2 Institutional framework of collective bargaining in Spain[57]

In the last decade, there have been several legal reforms aimed to flexibilise and decentralise the system of collective bargaining in Spain. They were a response to the severe economic crisis which affected Spain since 2009 to 2016 and to the trends in some economics circles (advising the subsequents governments in Spain) which supported the higher economic efficiency of the decentralisation of collective bargaining, specially regarding wage negotiation and swift adjusment of salaries to the economic cycle. Most of those legal reforms have been heavely critised both by trade unions and legal scholars due to the fact that they clearly weaken collective labour rights.

A major reform of the Labour market legislation took place in 2010 by Law 35/2010 of 17 September. Although this law was not directly aimed at reforming collective bargaining, several of the modifications introduced had an impact on the system of collective bargaining and his traditional postulates (mainly the possibilities for opt-out by a company agreement from the sectoral level collective agreement provisions over wages). In relation to collective bargaining, the law expanded the possibilities of internal flexibility of companies, as well as salary flexibility and made it easier to use wage opt-out clauses since substantial modifications were introduced in the clauses agreed in the agreements of higher scope.

In 2010, Article 82.3 of the Workers' Statute was amended establishing that, following a consultation procedure, a company agreement between the employer and the employee representatives might depart from the wages fixed by a collective agreement negotiated at a higher level. This could happen when, as a result of the application of those wages, the economic situation and prospects of the company could be damaged and the level of employment affected.

This system of wage opt-out was later reformed in 2011 and 2012 because it did not reach the aimed goal of making decentralised bargaining on wages easier for companies. The strict regulation of the opt-out clause made it complex and difficult to be applied in practice. Thus, some legal scholars argued that the stringent requirements of the wage opt-out clauses played against the whole aim of more flexibility at company level in case of economic difficulties (Pose Vidal, 2009)

In 2011, the system of collective bargaining was reformed again by Law 7/2011 of 10 June, on urgent measures for the reform of collective bargaining. This reform was adopted without prior consensus with the social partners, due to the impossibility of reaching a tripartite agreement addressing the problems affecting the system collective bargaining. The main objective of this reform was to restructure collective bargaining by eliminating excessive extensions in relation to collective agreements and by facilitating internal flexibility at company level and swift negotiation of wages. The reform adapted the rules of

[57] The following text about the Spanish case is an excerpt from Ramos Martín, N. and Muñoz Ruiz, A. B, Decentralised bargaining in Spain, (2022) pages 2-17. Available at the project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

legitimation of collective bargaining to the new business realities and the role of unions in companies. Also, with the aim of strengthening the competent public institutions in collective bargaining, a Labour Relations and Collective Bargaining Council was set up.

The main rule affecting collective bargaining priority rules was a provision in this Law 7/2011 establishing that the content of company agreements prevailed over what was agreed in collective agreements at higher level, giving rise to an increase in the possibilities of decentralizing collective bargaining.

A major reform of the labour market in Spain, and the most criticized by the trade unions, was adopted in 2012 through Royal Decree-Law 3/2012 of 10 February for urgent measures for labour market reform. It built upon the labour market reform of 2010, as the Spanish economic and labour market (unemployment rate) situation worsened. This reform introduced new rules on dismissal, more flexibility for the employers to adjust working time, work shifts, employees' functions and salaries. The reform also established new incentives for permanent hiring and changed the rules applicable to collective dismissals in public administrations and companies, among other measures.

The new legislation also reformed the rules regarding collective bargaining (see summary of the main changes in table 2 below), the reform introduced the possibility of employers to opt-out from the provisions of the statutory collective agreement if they could allege economic, technological, organizational or productivity causes, to adapt the company to the financial situation of the undertaking. The law modified the rules applied to prevalence of collective bargaining at a higher level, favouring the decentralization and the priority on applicability of the company level agreements (Del Rey, 2012)

The 2012 labour market reform clearly lowered the employment protection of workers in Spain. Some of the main changed introduced by the reform aimed at promoting internal flexibility in companies (powers of enterprises to modify working conditions such as wage or working time), both in relation to working conditions agreed in collective agreements and collective dismissal procedures. Also, the level of compensation in case of unfair dismissal was lowered and the administrative authorization requirements in the case of collective redundancies (ERE) was eliminated.

**Table 2: Summary of main issues/aims of the Labour Law Reform 2012**

| Issues | Aim of the Reform | New regulation |
|---|---|---|
| Duration of collective agreements | To update collective agreements | Limit the period of duration |
| Collectives agreements at company level | Decentralization | Priority of collective agreement at company level over the sectoral agreement |
| Opt-out | To increase the internal flexibility | More flexible causes of opt-out and a simple procedure |

Source: Prepared by the authors of the report: *Decentralised bargaining in Spain*, (2022).

In an attempt to counteract some of the effects of the 2012 reform, the Spanish left-wing coalition government has approved Royal Decree-law 32/2021, on 28th December 2021. This new legislation is based on an agreement reached between the government, trade unions and employers' organisations in order to structurally reform the Spanish labour market.

One of the most relevant changes introduced by the 2021 labour law reform is the reinstalment of the so-called "ultra-activity" of collective bargaining agreements (the automatic continuation of collective agreements beyond their expiry date until there is a new collective agreement signed). This is an important legal development, which counteract the attempt of the 2012 labour law reform to provide more power to employers at the bargaining table. Already in 2014, a controversial decision by the Supreme Court had established that employees should continue to enjoy the same employment conditions while a new collective agreement was being negotiated.

Another important amendment is that the prevalence of the sectoral collective bargaining agreements over the company collective agreements concerning wages is restored by the reform.

There are two main reasons explaining why this reform has been passed. Firstly, some artificial bargaining units were created in order to apply the priority of company collective agreements. For example, cases where a collective agreement was signed by the company and a single representative of the workers (often not joined to any trade unions). Secondly, some company agreements were negotiated with the sole purpose of avoiding the applicability of the sectoral collective agreement, in particular the higher wages set at the sectoral level (Mercader Uguina, 2021).

### 5.2.3 Drivers of the reforms – increasing labour market flexibility and facilitating decentralized collective bargaining

Common drivers of the 2010-2012 reforms in Spain and the 2016 and 2017 reforms in France are that they were to a great extend national responses to the recommendations from the European Commission to adopt ambitious "structural labour market reforms" and follow the flexibilization trends predominant in the EU's agenda at the time. The ideological neoliberal background of the reforms was the need to reform inflexible and strongly regulated labour markets (both countries labour legislations were pointed as such at the time). The main policy approach informing the structural reforms in both countries was the lifting of regulations which have been argued to produce rigidities on the labour market (Knegt and Ramos Martín, 2016) This narrative was grounded on the economic arguments supporting the enhanced efficiency of decentralised collective bargaining, and the need to quickly counteract the negative effects of the economic recession which started in 2008, by facilitating the bargaining of actors at company level.

Decentralisation of the negotiation of working conditions, (in particular, concerning wages), was seen as the ultimate solution to slow or in-flexible bargaining systems. It was considered as a suitable mean to adjust to adverse economic circumstances and react efficiently to the economic downturn. Both countries were facing explicit EC-recommendations to adopt structural measures at the beginning of the 2010 decade. The pressure in the Spanish case was stronger, in the sense that even when the country has not been officially bail-out, it did receive substantial financial aid from the EU (specially for restructuring the banking sector). In the case of France also recommendations by the EU institutions to introduce more comprehensive structural reforms could be noticed. The stagnation of the rates of economic growth and the persisting relatively high unemployment rates were seen as growing concerns. Therefore, we could talk about 'monitored structural reforms' in these cases (Knegt and Ramos Martin, 2016)

The impact of EU recommendations in the French case is much more ambiguous (Pernot, 2017). Most of the recommendations relate to fiscal measures, in order to reduce the public debt, and to an easing of mobility on the labour market. Recommendations on wages mainly concern the legal minimum wage policy, as the latter is considered too high and too dynamic: "The minimum wage in France is such that it allows beneficiaries to enjoy a purchasing power among the highest in the European Union. It is therefore appropriate the

minimum wage should continue to evolve in a manner conducive to competitiveness and job creation."[58] There was no recommendation concerning the form and content of collective bargaining. Clearly, the latter's level of decentralization in France with a significant corporate collective bargaining empowerment and a wide area for waivers, fall within the scope of forms of industrial relations generally promoted by the Council and the Commission. Moreover, from the start of the crisis, the French government anticipated European demands by creating in 2008 new type of agreements, called "competitiveness-employment agreements", which are a French version of concession bargaining. In these agreements, unions exchange guarantees on employment against the lowering of social standards laid down in past company agreements. The conclusion of this type of agreement by companies in economic difficulty has been facilitated by an interprofessional national agreement signed by the social partners in 2013.[59]

The main argument behind the reforms of labour and social regulation in both countries was that employment protection legislation has been identified by policy makers as a major cause of the high unemployment rates. Even when no direct commands from the EU institutions were imposed on these two countries, governments closely followed the recommendations issued by the EU institutions - aiming to develop a flexicurity approach when dealing with amendments of legislation in the social field (Knegt and Ramos Martin, 2016)

The process of labour law reforms which have pursued further decentralisation of collective bargaining systems in Spain and France bears several similarities in terms of the crucial role of the state in that decentralization process and in the ideological argumentations supporting those reforms. The main differences are that the process in France started much earlier and it has been more progressive and long-standing, which could explain the later opposition to those reforms (from 2016) of the trade unions than in the Spanish case. In that last case, the strategy of the unions was clearly to resist to the changes in the collective bargaining system, to lobby for a counter-reform, and to bargain with employers against the spirit of that law. The derogation by the 2021 labour market reform of the most controversial provisions of the previous 2012 reform could be seen as a victory on their camp concerning this issue.

Other main difference between the Spanish and French cases is the diverse legal techniques used in the reform processes in both countries. In France traditionally, decentralisation was pursued by establishing a list of bargaining topics on which derogations were possible, but it was a coordinated decentralisation and the favourability principle applied. However, as explained above, the 2016 and 2017 reforms introduced a reversal of the hierarchy of norms and conferred more autonomy to company bargaining. The same trend could be observed in the 2010-2012 reforms in Spain, which the new 2021 reform has just repealed in some areas.

[58] European Commission, COM (2014) 411 final, p 6.

[59]The already 11 January 2013 agreement introduced a new type of derogatory agreements, namely the *Accords de maintien dans l'emploi*, AME (job retention agreements), allowing employers to stand for a time outside higher-level agreements, on the model of the company-level agreements signed in Germany during the 2008-2010 crisis.

## 5.3 Role of the various actors in the reforms[60]

### 5.3.1 State intervention and different reform paths

*French case*

The broader industrial relations context in France is heavily shaped by the strong and interventionist role of the state, which at different points in time has served different purposes: by the turn of the twentieth century, offset the organizational weaknesses of both unions and employers; then, after the Second World War, incorporate trade unions and employers' organizations in the formulation of social and welfare issues by treating them as partners, albeit often only in an advisory capacity. As a result, a very detailed and broad Labour Code was set up. Granting individual rights and benefits directly to employees but undermining the unions' role in collective bargaining development.

This 'Fordist compromise' collapsed in the late 1980s as a result of the shift away from industry to the service sector and the rise of unemployment and precarious forms of employment. Meanwhile, as a third kind of state intervention, neoliberal policies have gradually been implemented, although a number of welfare safety nets have been retained. These changes have gone hand in hand with a decline of trade union structural power (Pernot 2017). Since then, decentralisation of collective bargaining has been a central theme of industrial relations reforms. As we have seen, in the last two decades, several laws have significantly modified industrial relations and the labour market.

All these reforms were preceded by consultation with social partners. Continuing this tradition, President François Hollande and his government have sought to involve unions and employers' organisations in major decisions on public policy in the social field, or to consult them, at least. These tripartite summits, however, were placed under threat of legislative action and framed by government 'roadmaps' whose features were often very close to the employers' demands. Last but not least, these negotiations frequently revealed deep disagreements among the trade unions. The 2013 national interprofessional agreement, called "For a new economic and social model in the service of business competitiveness, job security and career paths", is derived from these agenda and roadmaps that the government had submitted to the social partners at the start of the 2012 social Conference. It was signed by three of the five unions authorized to bargain (CFDT, CFTC, CFE-CGC); it was strongly rejected by the other two (CGT, FO). Transformed into a bill, the government asked Parliament to enact, without substantive changes, the project it had been submitted and that pledged to abide by the spirit -- and often the letter -- of the agreement.

Since 2015, Hollande geared his government towards a clear supply-side policy to promote growth, imposing lower labour costs and firms friendly public support on investment. Dissatisfied with the pace of structural reforms, the Socialist government ended up imposing an overhaul of collective bargaining without concertation (Rehfeldt and Vincent 2017). Prime Minister Manuel Valls commissioned a commission of experts in April 2015, to make 'bold' proposals to 'go further' than the previous reforms. The commission was supposed to draw on the experience of other countries and also take into account recent reports by think tanks on the same subject, most of them in favour of the prioritisation of company agreements by introducing a general derogation principle. The commission's report

[60] The following text about the Spanish and French cases is an excerpt from Ramos Martín, N. and Muñoz Ruiz, A. B, Decentralised bargaining in Spain, (2022) pages 2-16 and from Kahmann, M. and Vincent, C., Decentralised bargaining in France, (2022) pages 5-20. Available at the project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

(Combrexelle 2015), presented in September 2015, advocates reversal of the hierarchy of norms, giving priority to company agreements in order to ensure 'proximity regulation'. The 2016 bill on the reform collective bargaining was based on a report that had recommended to further strengthen firm level bargaining. It was unanimously ejected by all representative trade union organisations, prompting the Minister to negotiate some changes with the CFDT union. Despite this, it triggered numerous strikes and mass demonstrations over a period of four months, which were organised by student unions and a trade union coalition between CGT and FO. The core of the 2016 Labour law regarding collective bargaining was to make the company the decisive bargaining level, limited in a first step to working time and overtime pay, paid holidays and weekly rest.

During the presidential elections of 2017, candidate Emmanuel Macron announced that he would speed up labour law reform. Once elected, in order to avoid long debates in the parliament and possible demonstrations, a *loi d'habilitation* (framework law) was passed in Parliament by a majority of the new presidential party, authorizing the government to execute its reform project through *ordonnances* (government decrees). These were issued in September 2017, after one-to-one formal consultations with unions and employers 'organisations. Finally, the role of the state remains one of the most peculiar features of the French collective bargaining system, whose strength and spread have never relied on the existence of strong and encompassing bargaining parties, but on support from the state, particularly in the form of extension procedures and the statutory minimum wage. Political intervention both reflects and maintains the loose links between the social partners.

### *Spanish case*

In the last decade, Spain has seen several legislative attempts to transform the system of collective bargaining and impose a trend to decentralisation. The unilateral reform of the collective bargaining system in June 2011 by the then socialist government was substantially a compromise between the position of social partners and the 'Troika' demands on labour market structural reforms. A changed political constellation in November 2011 urged social partners to reach a social pact, that was however ignored by the new conservative government that unilaterally adopted a Decree in 2012 with further changes in labour law. This caused a general strike in March 2012 and a collapse of tripartite social dialogue for a few years (Knegt and Ramos, 2016 and Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016a).

Until the last collectively negotiated reform in December 2021, most labour market reforms in Spain had been passed without the support of the trade unions, due to the reduction of labour rights introduced by them. While the Socialist government in the 2010 reform attached more importance to social dialogue, the conservative government in office from 2012 until 2018 in Spain paid little attention to it. While the 2010 and 2011 labour market reforms were preceded by negotiations between the social partners and the government, no form of social dialogue took place for the 2012 reform passed by the then conservative government. Furthermore, the conservative government in office completely ignored the agreement reached by the social partners some weeks before the adoption of the 2012 major labour law reform. A very "aggressive reform", including profound changes in labour law, was approved instead, with the clear opposition of the main trade union confederations (Knegt and Ramos, 2016 and Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016a).

### 5.3.2 Role of the social partners and reactions to the various reforms

#### 5.3.2.1 Role of the social partners and reactions to the reforms in France

*Employers recently converted to corporate negotiation*

Within the employers' camp, the political line towards decentralisation initially fluctuated in the 1970s (Amable 2016). Employers have long preferred to negotiate at sectoral level, where they felt stronger, or cross-industry where they can rely on governments that were often sensitive to their concerns. Therefore, the main employer association MEDEF (former CNPF) met the Auroux laws with hostility, fearing the strengthening of radical unions at workplace level. Yet, slow growth and mass unemployment stifled labour radicalism and employers soon came to realise the advantages of company bargaining. Finally, the MEDEF reconsidered its position on collective bargaining by the late 1990s and had chosen to privilege company-level bargaining to weaken the constraints imposed by legislation or by sectoral bargaining.

MEDEF aspired to safeguard industrial democracy from such state interventionism and to foster the emergence of "credible, representative and modern trade unions". Underlining the decidedly political ambitions of its project, it also called for the recognition of the right to bargain collectively in the Constitution and an affirmation of the normative authority of social partners.

As mentioned above, employers' associations were generally satisfied with the series of legislative measures to reform the system of industrial relations which were passed by conservative governments in the 2000s. Later labour law reforms adopted unilaterally by the Hollande and Macron governments in 2016 and 2017 have been welcomed by the employers' organisations.

The French trade union movement has traditionally been marked by pluralism, rivalry between union confederations and a lack of financial and organizational resources. Trade union membership statistics have always exhibited lower rates in France than in other European countries, barely reaching 20 per cent even in the late 1960s. The oil shocks and recession of the 1970s further narrowed the base and trade union membership has been constantly low since then, at a mere 10 per cent: roughly 8 per cent in the private sector and 20 per cent in the public sector in 2019 (Dares, Données, La syndicalisation, 2021). Despite these weaknesses, unions have achieved a high level of employee participation in elections for company representatives and are able to mobilize workers with great success.

Until the 1970s, collective bargaining hardly existed without conflicts and collective agreements were often signed after strikes. The promotion of contractual policy, traditionally worn by the CFTC, CGC and CGT-FO, also became the spearhead of the CFDT in the 1980s. The conversion of the CGT to bargaining was more gradual but was achieved at the dawn of the 1990s. All the confederations favoured reaching agreement at industry level.

When the Auroux laws were adopted, unions welcomed them. They viewed them as a way of invigorating worker participation and enabling union delegates to better defend and represent worker concerns. This seemed all the more desirable as the coordination among different levels was legally governed by the favourability principle. Contrary to prior expectations, during the following three decades, the role of industry level bargaining changed as it faced competition from the company level as a venue for establishing norms. trade union organizations have always been opposed to company bargaining being *in pejus*, except when the company's economic survival is at stake.

The priority given to company bargaining by the 2016-2017 laws meant that they have been rejected by all the representative trade unions. However, not all of them called for mobilization. The Labour Law bill of 2016 led to numerous strikes and mass demonstrations organised by a coalition of *Confédération Générale du Travail* (CGT, General Confederation

of Labour), *Confédération Générale du Travail-Force Ouvrière* (CGT-FO, General Confederation of Labour-FO, commonly called FO) and some autonomous and student unions over a period of four months. These mobilisations, often violently repressed, did not prevent the adoption of the law. the rejection of the 2017 ordinances was also strong but as they came just after the presidential elections, the unions gave up mobilising.

#### 5.3.2.2 Role of the social partners and reactions to the reforms in Spain

##### *Collective actions, judicial litigation, and bargaining against the reforms*

During the decades of the eighties and the nineties, the actors leading the design of the institutional setting governing the collective bargaining process were the unions. This situation is explained by the national political context in which the constitutional right to collective bargaining was established. An incipient context of democratization, in which collective rights and freedoms were new and where trade unions could play a major role. Besides, in the so called "transition" period to democracy, trade union organizations had an important social and political influence. However, over the years the unions' power/influence in the political decision making has been declining in Spain.

From the mid-1990s, the labour market demanded flexibilization and reforms of the collective bargaining system to adapt to it to the economic context and the demands of the EU for more ambitious labour market reforms. All these factors influenced the changes of collective bargaining regulation in Spain, which have been implemented by successive reforms throughout the 2000s and culminating in the 2012 reform.

In the Spanish case, one of the strategic responses of the trade unions to the failure of tripartite social dialogue before the State driven 2012 major labour law reform was to strengthen and develop bipartite social dialogue at sector level. Unions tended to consider the 2012 reform as rather ideologically than economically motivated and opposed it by keeping the traditional trend to sign sector collective agreements. However, at company level, agreements on reduction of working hours and pay in exchange for restrictions on layoffs were not uncommon during the years following the 2012 reform. However, the unilaterally imposed reforms of the collective bargaining system have had only few effects on the dynamics of collective bargaining, as unions started a judicial battle against them and continued bargaining on working conditions and wages in collective agreements preferably at the sector/provincial level (Knegt and Ramos Martín, 2016 and Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016a).

In contrast, bipartite dialogue has been reinforced between unions and business associations since the adoption of the 2012 labour market reform. In fact, a main strategic response of the social partners to the failure of tripartite social dialogue has been to stimulate bipartite social dialogue at all levels: sectoral and enterprise. Social partners have signed relevant agreements regarding the maximum period of collective agreements and wage moderation, among other issues. The 2012, 2014, 2016 and 2018 Inter-confederal Agreement on Employment and Collective Bargaining (AENC) clearly represented these trends. In particular, these agreements seem to have produced some positive effects on collective bargaining coverage since it have encouraged social partners to renegotiate collective agreements. At company level, though, serious doubts have risen as to the freedom of unions or work councils to negotiate the working conditions, as agreements (for example, on a reduction of wages) have sometimes been signed merely to avoid more dramatic consequences such as layoffs (Knegt and Ramos Martín, 2016)

The opposition of the unions to the imposed labour law reforms, especially to the legislation adopted in 2012, was to increased the judicialization of the labour conflict, (with growing litigation and collective disputes) and the organisation of general strikes. Despite the

increase in the number of strikes during the period which followed the adoption of the 2012 reform, the economic impact was not particularly high in comparison with previous years. In 2012 the number of participants in collective actions increased (33.8%; the highest number since 2009). However, the economic impact of the actions decreased to 14.8% and strikes had shorter duration (Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016b).

The 2012 reform made a clear commitment to the reduction of judiciary control over redundancies, and unlawful dismissal and redundancy costs were reduced. Two general strikes followed the 2012 labour market reform. These measures not only heightened tensions and hindered collective bargaining, but also led to an imbalance in labour relations and bargaining power. By making redundancies easier to be carried out, worker representatives were frequently compelled to accept the internal flexibility measures proposed by the employer to avoid them (Knegt and Ramos Martín, 2016).

The 2012 reform attempted to decentralize collective bargaining and to grant more power to employers at the bargaining process. From the perspective of unions this reform has undermined their position. The reform enhanced the role of the company agreements, while the unions' strength has traditionally lied at the sectoral level of collective bargaining (Knegt and Ramos Martín, 2016).

The purpose of decentralization of the 2012 reform has been achieved only to a certain extent. Decentralization has proven to be difficult in a country with a extremelly high density of small and medium size undertakings, most of which lack the necessary employee or union representatives to initiate a formal process of collective bargaining. Indeed, strongly increasing flexibility in company-level wage bargaining is seen as undesirable in the Spanish context where 82,8% of companies have 2 employees or less. Due to the large number of small and medium enterprises operating in Spain, this could undermine the stability of the industrial relations and collective bargaining system (Ramos Martín, 2016).

Apart from the reluctancy of trade unions to negotiate wages and working conditions at company level, according to Casas Baamonde, other reasons explaining why companies and employees' representatives do not often negotiate a specific company agreement are: the lack of knowledge/experience on negotiating; the absence of employees' representatives in the company; and the refusal of the employers to bargain at lower levels, mainly due to the fact that the collective agreements at sector level suit businesses/companies' needs (Casas Baamonde, 2018).

Some strategies of the employers and employees' representatives when bargaining agreements at company level have been to include all the company establishments with workers representatives and without workers representatives into their scopes.[61] (Muñoz Ruiz, 2014 and Fernández Villazón, 2018).

Regarding those companies where there are no employees' representatives (trade unions or works council), the employees may directly bargain with the employer and be bound collectively, but being able to do so, when they do, the agreement can only be qualified as non-statutory collective agreement lacking binding force *erga omnes* (not negotiated in conformity with the Workers' Statutes rules and non-legally binding for all falling under its scope.)[62] That sort of agreement has limited effectiveness, since it only affects those who sign it or those who are formally represented by those who sign it (Muñoz Ruiz, 2014).

[61] See case law: SAN de 16 de septiembre de 2013, Procedimiento núm. 314/2013 and SAN de 11 de septiembre de 2013, Procedimiento núm. 0000219/2013.

[62] See case law: SSTSJ de Andalucía, Sevilla, de 7 de diciembre de 1999 (Rº 3719/1999) y 23 de mayo de 2000 (R. 2999/1999).

Finally, the labour reform of 2021 has been praised by legal experts as sensible, reasonable, and balanced. Especially relevant is the fact it has been the result of a long and complex tripartite negotiation process in which the social partners have had the merit of reaching the necessary agreements with the government in the sinuous field of labour market reforms (Mercader Uguina and de la Puebla Pinilla, 2021) The Government, and the most representative trade unions (UGT, CC.OO.) and the main employers' associations (CEOE and CEPYME) have achieved a concerted balance when addressing controversial issues regarding the system of collective bargaining where they had traditionally opposing points of view.

#### 5.3.2.3 Role of the social partners and reactions to the reforms: comparative perspectives

When looking at the employers' agenda in both countries under consideration, there is a clear similarity on the goals of the employers' organisations to support a trend to deregulation of the labour market and to ease bargaining at the company level. On the employers' camp the 2016 and 2017 reforms in France and the 2012 reform in Spain (which facilitated flexibility in wages, working hours, skills, mobility in companies, etc. and reduced dismissal costs) were most welcome.

However, in the Spanish case, the employers' representatives recognize that sectoral level collective bargaining suits employers' interest, especially for setting minimum wage levels, due to the business industrial structure (with many small and medium side undertakings) but they have strongly opposed the ultra-activity (automatic continuation) of collective agreements after their period of termination originally signed. However, they finally accepted the legal reestablishment of that continuation rule in the compromised tripartite reform adopted in December 2021. On the contrary, the employers in France have not accepted a new compromise to revise the 2017 Macron reforms.

The trade unions responses to the latest reforms in both countries under consideration have been quite similar. Unions have been defending central structures, organising strikes, and lobbying for a derogation of the most aggressive parts of the reforms, including controversial issues facilitating negotiations of company agreements when the representativeness of the employees was not optimal. That has also been accompanied in both countries with using the available opportunities to reach agreements in multi-level involvements and engage in company bargaining when the conditions were suitable and, also, when it was necessary to accept adjustments in the working conditions to avoid redundancies.

## 5.4 Organised decentralisation: incrementally 'layering'

### 5.4.1 Spanish case: Derogations from sector level agreements and priority rules for collective agreements[63]

The Spanish model of collective agreements is complex due to the doble channel system. It means that trade unions as well as works councils have the capacity to negotiate collective agreements at enterprise level. At sectoral level the right to negotiate is given only to trade unions.

[63] The following text about the Spanish case is an excerpt from Ramos Martín, N. and Muñoz Ruiz, A. B, CODEBAR Country Report Spain, (2022) pages 2-17. All country reports and policy papers of the CODEBAR project can be downloaded at the project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

The right to collective bargaining and the binding character of collective agreements is enshrined in the Spanish Constitution (Article 37.1). The system of collective bargaining is thoroughly regulated in Title III of the Workers' Statute (WS). In particular, Article 82.3 establishes the legally binding character of collective agreements negotiated in conformity with the rules of the Workers' Statute. The main provision dealing with descentralisation of collective bargaining in Spain is current Article 84.3 WS which stipulates that company agreements may deviate from several working conditions set by a statutory collective agreement negotiated at a higher level, providing certain requirements are fulfilled.

Although at the sectoral and company level the most representative unions have the legitimacy to negotiate, at the undertaking level there is a duplication of actors. This is so because both unions and work councils could negotiate. In the case that both parties want to start the negotiation, the union party has preference. The Workers' Statute establishes that the intervention in the negotiation will correspond to the union sections when they so agree, provided that they add the majority of the members of the works council or among the personnel delegates.[64]

The Workers' Statute establishes a theoritical priority/prevalence of the company agreement (except for wage setting *in peius* according to the last labour law reform in 2021). Nevertheless, collective bargaining traditionally takes place mainly at sectoral level. Sectoral agreements are signed at the national level (for example, in the construction, banking and chemical sectors) or at the provincial level (for example, in the commerce, transport of goods and passengers, and bakery sectors). Company agreements are much less common and concern mainly large undertakings (in sectors like gas, oil, car manufacturing, air transport, research and development) and the public sector (Pérez Infante, 2003).

### 5.4.2 From derogation and compulsory bargaining to a division of competences among bargaining topics (France)

In France, until 2017, the movement of decentralisation of collective bargaining negotiation initiated by the State was done according to two modalities. The first one was the introduction of derogations from statutory working time. Initially only possible at the level of sectoral agreements, these derogations have spread to the level of the company and have been extended to all aspects of the organisation of working time. The other modality consisted in the introduction of mandatory negotiations; Since the Auroux Law of 1982, annual bargaining on wages and working time has been compulsory in any company hosting one or more unions; even so, no settlement is required. In the last two decades, State interventionism in collective bargaining goes so far as to define a part of its agenda, both at sectoral and company level. Successive legislations have introduced the obligation to negotiate at sector level on various topics. At the present time, in each bargaining sector, every four years the employer and union negotiators are obliged to open discussions on a certain number of topics: pay, work-life balance, working conditions and strategic workforce planning, exposure to occupational risks. Every five years, the sectoral social partners must examine whether the job classification scheme of the collective agreement is still up to date. They may also conclude an agreement that changes the rhythm and redefines the topics of sectoral bargaining. Importantly, there is no obligation to reach an agreement between the social partners, only to open discussion. However, in practice, almost all bargaining sectors regularly conclude agreements on these topics.

[64] See Article 87 of Workers' Statute.

In 1982, the law introduced compulsory bargaining in the company also, which is specific to France. In companies with at least one trade union delegate, the employer must enter into negotiations on a number of topics. Whereas at sectoral level, there is no obligation to conclude an agreement. Negotiations can take place at corporate group or company level, or if no union objects, at establishment level. The topics for compulsory negotiation have increased over time. Since 2015 they have been grouped into three areas:

(i) Remuneration, working time and the sharing of added value in the company (profit-sharing, incentive schemes and employee savings); these topics must be negotiated annually.

(ii) Professional equality between women and men and quality of working life (employment of disabled workers, right to disconnect, reconciliation of work and family life, home-work mobility, etc.); this topic must also be negotiated every year.

(iii) Strategic workforce planning (GPEC, *Gestion prévisionnelle des emplois et des compétences*) training, subcontracting, temporary employment, career of trade union delegates, etc. GPEC is a potentially innovative collective bargaining item. It is a genuinely French HR concept (Gilbert 2006). Originally developed in the 1990s, its aim is to anticipate organisational restructuring and to cushion its potential effects on employment by collectively putting into place measures that promote training as well as the internal and external mobility of workers. Since 2005, companies with at least 300 workers are legally obliged to negotiate a GPEC agreement every three years.[65]

The assessment of the impact of these obligations on company bargaining is not unequivocal and has been the subject of much research.

Regarding collective bargaining at company level, it is the trade union delegates from the representative unions who negotiate with the employer. Workplace agreements take effect once the signing unions represent 50 per cent or more of the votes in the works council elections. Since the early 2000s, to offset the fact that non-unionized firms, mainly SMEs, could not bargain because of a lack of union delegates, the social partners advocated non-union negotiators. For trade unions, this could have been an opportunity for new settlements. In 1995, however, a national interprofessional agreement signed by the employers' organizations and CFDT, CGC and CFTC (but not CGT and FO) allowed company agreements to be signed in the absence of union delegates by employees specifically mandated by unions, or by elected employee representatives, such as works council members or employee delegates. Since the early 2000s, successive legislation has extended the possibilities for non-union representatives to negotiate in non-unionized workplaces. The Macron ordinances have drastically extended the scope of the device. Three different regimes have been introduced, depending on the size of the non-unionized workplace

As far as collective bargaining is concerned, in line with the 2016 Labour Law, the 2017 *Ordonnance relative au renforcement de la négociation collective* (Ordinance on the strengthening of collective bargaining) replaced the articulation between sectoral and company level with a compulsory division of topics among levels. In the new collective bargaining architecture, coordination between levels is no longer based on the "favourability principle", but rather on the complementarities of bargained topics. Regarding competencies in standard setting, the division is as follows:

(i) Formally, the role of sectoral level agreements is reinforced since there are now 13 topics on which derogation is forbidden. This reinforcement has taken place at the expense of the law, however, and not at the expense of company agreements.

[65] The legislation on strategic workforce planning is symptomatic of both the tendency of public policy to manage employment *via* company bargaining as well as the difficulties of the sectoral level to find its place on employment matters (Tallard and Vincent 2014).

(ii) The sectoral level 'lock up' faculty, unlimited under the 2004 Law, has now been reduced to four areas, which mainly concern issues of occupational safety and disabled workers. The weakening of sectoral level bargaining is evident here.

(iii) The primacy of company agreements concerns everything that does not fall into the two previous blocks, a considerable quantity. Returning to the example of wages, all remuneration rules are now solely governed by the company agreement, with the exception of agreed minimum wages, classifications, and overtime premium.

### 5.4.3 Comparing legal techniques to achieve the same goal – Complex dualization of bargaining levels

In both countries, the right to collective bargaining and the binding character of collective agreements is established in the labour law legislation. In the Spanish case, the system of collective bargaining is thoroughly regulated in the Workers' Statute and in France, in the Labour Code. So, there has been a clear interventionist role of the State in the regulation of the collective bargaining system. Both case studies are similar in the sense that, with low trade union density, they show high levels of employees covered by collective agreements.[66] In both cases, in the last decade, it can be observed a series of legal amendments leading to an overhaul of collective bargaining imposed by the State. All those reforms (with the exception of the Spanish labour market reform in 2021) were adopted without prior negotiation with the social partners.

Also, both legal systems are characterized by the complexity of bargaining levels and outcomes due to the alternative channels for workplace representation. Whilst differences in the distribution of functions and competences are noticed when comparing the two systems. In Spain, trade unions as well as works councils have the capacity to negotiate collective agreements at company level. On behalf of the workers, the works council, the staff delegates, or the union sections, (if any), which make up the majority of committee members, could negotiate at company level. As mentioned above, in France, the intervention of the State in the regulation of collective bargaining has gone as far as to define part of its agenda, both at sectoral and company level. The latest legal reforms have introduced the obligation to negotiate at sector level on various topics and have established a compulsory articulated division of topics among the different bargaining levels. That set of rules is top up with a primacy of company agreements as regards every bargaining topic that does not fall into the legally predetermined blocks of competences per level. So, the French system is clearly pre-structured by a complex division of bargaining competences between the various levels.

A clear similarity in the examined cases is the persistent trend towards decentralisation to the company level by widening the scope for derogations from the sector level agreements and by expanding the possibilities for non-union company bargaining. However, this State-led decentralisation processes are not uni-directional and, in both countries, multi-sectoral bargaining has regained importance in the last years.

## 5.5 Effects of the reforms: real impact versus intended impact

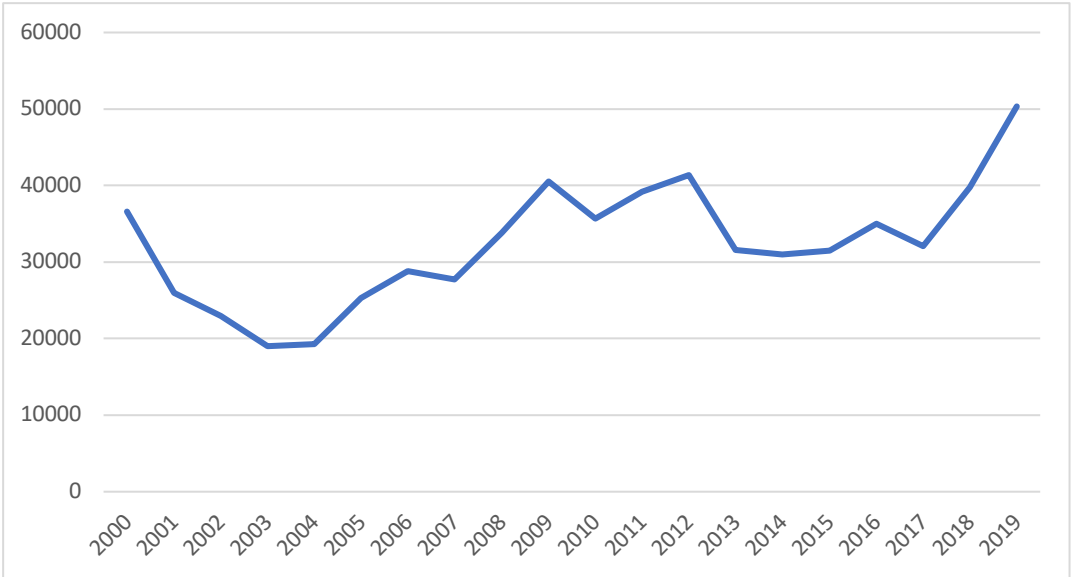
### 5.5.1 Real impact of the reform in France

From a quantitative point of view, company bargaining has developed considerably in the last decade. The number of agreements signed at workplace level increased substantially between

[66] That is partly due to the quasi-automatic "extension procedure" applicable in both countries.

the 1980s and the 2010s, from 3,900 in 1984 to 34,000 in 2011. Since then, the number of agreements concluded each year continued to increase, despite a slight decline in 2013-2014.

**Figure 1. Number of workplace agreements signed annually, 2000-2019, France.**




Note: * Including agreements signed by union delegates and employees mandated by trade unions.
Source: *Bilan annuel de la négociation collective* from 2000 to 2019, Ministère du travail.

It is worth noting that in 2019 almost half of these agreements are concluded in enterprises with less than 50 employees, up by 10 points compared to 2018. This change is due, on the one hand to the establishment of new employee representation bodies, but also on the other to the widening opportunities to negotiate without union presence.

Regarding all the workplace agreements, including those signed by employee representatives and those adopted by referendum, 41 per cent relate to profit sharing and participation, 22 per cent to wages, 17 per cent to working time and 13 per cent to trade union rights and the functioning of works councils (+1 point compared to 2018). This last theme weighed 9 per cent in 2017, before the implementation of the Macron Ordinances.

In 2018, collective bargaining took place in only 16.7 per cent of workplaces with more than 10 employees; yet, they were employing 63 per cent of the workforce. More than 82 per cent of these negotiations resulted in an agreement. Agreements were signed in 11.7 per cent of all workplaces and in 68.6 per cent of those with union representation.

Bargaining at company level has considerably developed in the last two decades, but decentralisation does not necessarily mean derogation (agreement *in pejus*). In practice, the use of derogations remained limited (SECAFI 2020). Three reasons may explain the lack of success of derogations at company level. First, because otherwise unions would have refused to sign them. Second, the standards imposed at sectoral level are already the result of minimal compromises and leave little room for less favourable agreements. Finally, derogation agreements are not relevant tools for management. In large companies, if economic survival is not at stake, opening negotiations on derogation clauses sends a very negative message both for unions and employees. SMEs are less likely to sign their own agreements, whether they include derogations, because maintaining the reference to sectoral level agreements seems less time-consuming and risky.

Despite this quantitative success, French scholars have emphasised the inconsistencies and ambiguities of the State-led decentralisation process in terms of bargaining results. The quality of company agreements has generally fallen short off public policymakers' expectations. Formalism and the tendency to stick to minimal agreements are widely recognised as a problematic feature in France, even if this tends to vary regarding the issues that are negotiated (Mias *et al*. 2016). For example, agreements on compulsory agreements on strategic workforce planning tend to be richer in content than those on senior workers.

In their study on company social dialogue, Béthoux and Mias (2019: 13) point to the restrictiveness of the legal framework as a potential source for the impoverishment of company bargaining whereby legal compliance takes precedence over other goals and benefits. There is also evidence that the devolution of an increasing number of bargaining topics challenges the capacities of firm level actors. As a rule, management has been better equipped to cope with this challenge. In larger companies, France has seen the emergence of a distinct human resource management function that is almost exclusively dedicated to the pursuit of collective bargaining. Trade union delegates on the other hand can struggle with the consequences of decentralisation, due to a lack of time, skills, or activist resources. To meet deadlines, they may content themselves with pasting and copying legal requirements into agreements or in embracing "good practices" defined by the law itself. Such behaviour entails a strong standardising effect on company bargaining.

Nevertheless, Béthoux and Mias (2019) observe some variation in bargaining content and outcome between company cases.[67] Other than factors such as company size, workforce composition, or industry, they attribute this variation to differences in the "place given to law and the way it is used" by company actors. Differences in the actors' "legal consciousness" explain the type of industrial relations actors develop in the company, "even more so in a context that has long involved State involvement with extensive regulation playing a structuring role" (Béthoux & Mias, 2019: 11). In their sample, they identify four types of such a relationship (termed "proactive", "a-legalistic", "formalistic", "locally focussed"). Accordingly, bargaining may either be an "empty shell" and "lose any substance" or break free of "traditional forms of negotiation, bringing a deliberative component" and potentially innovative issues into the picture. Béthoux and Mias underline that the latter ("best case") scenario typically coincides with certain — rather rare — conditions: the existence of networks of long-established institutions in the workplace, or the strong commitment from worker representatives who manage to effectively "orchestrate" the representative structures in the company.

The shift in the level of bargaining has changed the link between sectoral and company levels, but only in very large firms. In large firms, trade unions are encouraged by company management to participate in anticipating economic changes and their impact on employment as expected. Even though managing employment, an intrinsic element of human resource management within companies, has been admitted to bargaining, it remains a managerial initiative, in the form of 'managerial social dialogue' (Groux 2010). In accordance with the same logic, large companies, major automakers in particular, have signed so-called 'competitiveness-employment agreements', which are a French version of concession bargaining. In these agreements, unions exchange guarantees on employment against the lowering of social standards laid down in past company agreements.

In many small companies, the rare agreements signed offer little benefit to employees and sectoral agreements remain the reference. However, regarding recent and upcoming legal

67 Other recent studies combining quantitative and qualitative approaches confirm the variety of French workplace industrial relations (e.g Giraud and Signoretto 2021).

changes, in particular the introduction of ballots, the balance of power risks to become less favourable to trade unions in enterprises.

### 5.5.2 Effects in the case of Spain

According to the OECD, the 2012 reform had the potential to boost the productivity growth and competitiveness of the labour market in the long term,[68] but to the costs of the worsening of labour conditions and reduction of wages for the employees.

The goal of the 2012 Labour Law reform was clearly the decentralisation of collective bargaining. However, due to several factors, such as the prevalence of cultural patterns, path dependency trends, lack of resources of the social partners and/or willingness to bargaining at lower levels, it has not led to a high increase in the number of employees covered by firm level agreements. In 2011, while 929,000 employees were covered by firm level collective agreements, 9,733,800 were covered by sectoral collective agreements. In 2014, the number of employees covered by firm level agreements was 932,700, while the number of those covered by sectoral agreements was 9,332,700 (Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016a).

**Figure 2. Collective agreements at enterprise and sectoral level in Spain**


Source: CCOO, Balance de la Negociación Colectiva, September 2021

[68] OCDE (2013): "Estudio de la OCDE sobre la reforma laboral 2012 en España: una evaluación preliminar", December 2013, pp. 1-5. See http://www.oecd.org/fr/els/emp/OCDE-EstudioSobreLaReformaLaboral-ResumenEjecutivo.pdf

Average salaries have decreased in the last decade. They began to decrease in 2008. However, the so-called "internal devaluation" is not solely the result of the 2012 Labour Reform. A better explanation has likely to do with the appalling condition of the Spanish labour market over the last decade, especially for the less skilled and in the worse paid occupations (Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016a)

When it comes to opt-out agreements at firm level, the statistics also show that they have not caused a big impact on the structure of collective bargaining. In 2013, which is the year with the highest number of opt-out agreements, there were 2,512 firm level agreements opting out of some kind of working conditions (wages, for the most part) established by sectoral agreements. These firm level agreements covered only 159,550 employees (Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016a)

The labour market liberal reform of 2012 responded to decentralisation trends and discourses raised due to the global financial crisis. The justification was that the dramatic situation of the Spanish economy required a modernisation of the collective bargaining institutional framework in favour of decentralisation to the company level. This reform clearly benefited employers' interests and the main criticism is that the shift in collective bargaining power resulting from this latest reform has a detrimental effect on working conditions and has increased employment precariousness. For many, this reform has been an involution in the rights of workers, specially at the collective level, (Valero Otero, 2019), as it has limited the prerogative of the social partners to deviate from that priority rule of the company agreement by collective agreements at a higher level (by an interprofessional agreement) (Fernández Villazón, 2018).

### *Real impact of the reforms - Spain*

In sum, the effects of the 2012 labour market reform have been mixed and not very positive in terms of renewal and flexibilization of collective bargaining.

Firstly, in the first years of applicability of the reform, it was observed a growth in the number of collective agreements at enterprise level. However, the number of employees covered by company level agreements has not increased much. The possibility of an opt-out has been used in several firm level agreements but these covered only 1,5 percent of workers. However, the percentage of workers not covered by a collective agreement has risen by 3 points to 12 percent (Lahera Forteza, 2022).

Secondly, there are cases where some bargaining units were explicitly created to apply the priority of company agreements and avoid the compliance with the higher wages set by sectoral collective agreements (Mercader Uguina, 2021) These cases, where the bargaining power of the employees' representative is lacking and there was an unilateral imposition of the working conditions by the employer, suggest the existence of dubious collective agreements. Some of them have been declared invalid by the Labour Courts (Muñoz Ruiz, 2015).

Finally, the 2012 reform did not change the cultural pattern of the social partners of negotiating mainly at provincial sector level. The Spanish system is characterized by a solid power of the trade unions at sector level (state, regions, and provinces) and the proliferation of this type of agreements is the main sample of that. In some sectors, for example, the retail

sector, the number of provincial collective agreements is still predominant.[69] In that sector, some large companies (for example, Mercadona, Lidl and Decathlon) have negotiated their own company agreements at national level but there are only a small minority of cases.

Summing up, decentralisation of collective bargaining has proved difficult because in Spain there are many small companies without a shop level representation of workers. The reform was imposed from above and lacked any social support, which clearly explains the opposition it has met from the trade unions (Mercader Uguina, Gómez Abelleira, Gimeno Díaz de Atauri, Muñoz Ruiz, and Pérez del Prado, 2016).

## 5.6 Comparative conclusions

The goal of promoting collective bargaining decentralisation is observed in both countries, especially in times of economic crisis affecting the labour market. In both countries, new regulatory frameworks inspired by employers' demands have been put in place. They were aimed to transform and flexibilise the system of collective bargaining and to grant more bargaining power to employers. However, the effects in practice are dubious and the number of employees covered by firm level agreements has not risen dramatically.

The Spanish case is characterized by a strong fragmentation of the bargaining units. This fragmentation is explained by the difficulties of the bargaining parties to negotiate sectoral collective agreements at state level. In the French case, a "coordinated decentralization" can be observed, with a clear division of competences between the different bargaining levels.

In short, the 2012 Spanish reform of the collective bargaining system, imposing a clear decentralisation, has managed to increase productivity and competitiveness but it has also visibly undermined collective social rights. That reform, unilaterally adopted by the government, has had very few practical effects. As a primarily externally imposed reform, it lacked any support from the employees' representatives (Moll Noguera, 2018) Some of the controversial provisions of that reform have been corrected by the new legislation adopted in December 2021.

When assessing the impact of the reforms, there are divergent evaluations of those impacts by trade unions and employers. The changes and mixed impacts of the 2012 labour market reform in Spain have been welcomed by the employers' representatives while the trade unions considered that the quality of employment has deteriorated and labour precariousness increased, accompanied by a growing imbalance in income distribution (EUROFOUND, 2015).

In general terms, the reaction of the trade unions has been to oppose those reforms and continue following the traditional patterns of collective bargain. That strategy of the trade unions to express their disagreement with the labour market reforms is more explicit in the Spanish case, where the main trade union confederations have been actively bargaining against the spirit of the 2012 labour market reform.

Looking at the possible future scenarios, there are new challenges for the implementation of the latest reforms in a difficult economic context (expected recession, current energy crisis, growing inflation rates in the EU) where the social partners have

[69] See the analysis of collective agreements of retail sector at provincial level in Ramos Martín, N. and Muñoz Ruiz, A. B, Decentralised bargaining in Spain, (2022) pages 25-38. Available at the project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

opposing interests and views. For trade unions, the key priority is recovering the purchasing power of wages lost during 2021/22. In contrast, employers aim at maintaining wage moderation to avoid a negative impact on economic recovery (EUROFOUND, 2022).

Refering to the theories on bargaining power by Bachalach and Lawler arguing that "power in collective bargaining stems from multiple legal, economic, social and structural sources" (Leap and Grigsby, 1986), it is interesting to establish a comparison about how some of these factors have determined the bargaining power dynamics in both countries. Legal and economic factors were similar in both the French and Spanish context (with a higher prevalence of the economic drivers in the later case due to the severity of the crisis in Spain). From the legal point of view, both countries share similar legislative traditions of wide-ranging State intervention in the regulation of employment law and in the adoption of guidelines on the functioning of the industrial relations institutional setting. While some social factors might be also similar (ie. growing unemployment rates in the period examined), also differences in the social structures can be noticed in both countries. Also, in both countries, the alleged rigidity of their labour markets/collective bargaining systems was used as justification for the reforms. The same argument that "no other feasible orientation of labour market regulation was possible due to the competition pressures in a globalized flexible market economy" was used by policy makers in Spain and France, which shows a comparable pattern.

Finally, it can be concluded that the idea of decentralisation as a unidirectional and comprehensive process can be challenged when examining the French and Spanish cases (See Hege *et al.*, 2015 for research on company level bargaining) In France, sociologists have been critical of the idea of centralisation/decentralisation, thus questioning the impact of the "hierarchy of norms" that prevailed in labour law until the Macron Ordinances. Against the idea of a centralized and unified system with legal norms that rule over everything and from which derogation is possible only if it is more favourable to the worker, and with national agreements stronger than sectoral agreements, themselves superior to company agreements, scholars emphasized the relative autonomy of bargaining levels (Jobert, Reynaud, and Saglio, 1993) A central feature, common to both countries under study, is that each level of bargaining has its specific actors and a "certain degree of autonomy and therefore evolves according to its own rhythm and internal dynamics. The coordination of the system is guaranteed, also because each actor has its own institutions of coordination" (Jobert, Reynaud, and Saglio, 1993) More specifically, scholars insisted on the relative autonomy of the firm from the sectoral level, building on the observation that the actors at this level adapt, define, transgress or indeed impulse the typically very general rules contained in the sectoral agreements in line with their own priorities and rules (Sellier 1993) Against this background, French researchers have preferred the concept of articulation over that of determination.[70]

[70] This text is an excerpt from Kahmann, M. and Vincent, C., Decentralised bargaining in France, (2022) pages 5-20. Available at the project website: Codebar - AIAS-HSI - University of Amsterdam (uva.nl)

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# Chapter 6.
# Does Decentralisation Lead to New Relationships between Trade unions and Works councils? Germany and the Netherlands Compared

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## 6.1 Introduction: decentralisation in dual channel systems

One of the main trends in collective bargaining across Europe since the 1980s is decentralisation, involving a shift from multi-employer to single-employer bargaining. However, nuanced variations in national developments regarding the initiating actors and the intensity and patterns of decentralisation processes exist. As a consequence of decentralisation of collective bargaining towards the company level, trade unions might meet other workers' representatives at that level, such as works councils.

In this chapter, we address the question how patterns of decentralisation affect the relationships between trade unions and works councils in dual channel systems of interest representation. Dual channel systems with trade unions and elected works councils alongside are typically marked by a specific divide in rights and responsibilities between trade unions and works councils. Moreover, both arenas – collective bargaining on the one hand and workplace employee representation on the other – are usually separated by different spheres of conflict. But does this relationship, however, fundamentally change during the process of decentralisation when competences are transferred from the industry level to the company or establishment level?

In the literature it has been discussed whether patterns of decentralisation are dependent on the type of institutional channels of employee representation at the company and workplace level. In single-channel systems, where workplace representatives are elected and/or delegated by trade unions, unions can keep substantial control over decentralisation processes (Ibsen & Keune, 2018). Empirical evidence points to higher effectiveness of single-channel systems by better ensuring a process of organised decentralisation of collective bargaining (Traxler, 2008). In dual-channel systems, where employees are not only represented by trade unions but also by works councils, the relationships between sector and local negotiators might be weaker and more fragile, reducing the control of unions over decentralisation (Nergaard et al., 2009). This control depends on the extent to which works council members in these dual-channel systems are members of the trade unions and on the extent in which works councils and trade unions are cooperating at the workplace and

company level. But, at least in theory, trade unions in dual channel systems might use works councils as a power resource in collective bargaining at the company level. Trade unions can use the institution of works councils in their strategy for better engagement with workers and their needs within companies, to recruit more members and to unionize the councils (Haipeter, 2021). Works councils can use trade unions' competences in negotiating terms and conditions of employment within the company.

While some evidence and assumptions about the differences between single-channel and dual-channel systems with regard to decentralisation exist, we would like to adopt a slightly different perspective and focus on developments within dual channel systems. It is still an empirical question how relationships between trade unions and works councils are affected by decentralisation within systems where the dualization of employee representation is anchored in elaborate legislation. Against this backdrop, this paper seeks to investigate the following questions: Do works councils become substitutes or partners of unions in decentralised bargaining? Do partnerships or conflicts arise between both actors? How does coordination between trade unions and works councils look like and how is it organized?

To give answers on the above mentioned questions, we focus on Germany and the Netherlands, two countries with legally established dual-channel system of employee representation where trade unions and works councils play both a role in social dialogue and negotiating employment and working conditions at the company level. We decided to concentrate on those countries where works councils have similar roles for workplace interest representation and where collective agreements with trade unions have legal primacy above workplace regulations with works councils. Fundamentally, collective bargaining and codetermination at the workplace level are separate legal fields. Only when collective bargaining parties do give jurisdictions to works councils or if works councils are supported by trade unions (or vice versa) both fields will partly overlap. These more pure dual channel systems in Germany and the Netherlands can be separated from the more 'mixed channel systems', somewhere between pure single and pure dual channel systems in workers representation (in f.e. France, Italy and Spain), where trade unions can have formally delegated members in bodies of employee representation within the companies.

Thus, from a legal perspective both countries share similar institutional features with regard to employee representation and formal relationships between the two representative bodies. This similar institutional context makes it interesting to analyse whether we can observe different actors' strategies to cope with decentralisation processes and how this affects the relationship between works councils and trade unions. Against this backdrop and based on company case studies in these countries in manufacturing and retail, we will analyse which role trade unions and works councils play when it comes to decentralisation. Moreover, we will investigate whether trade unions do see works councils as a power resource through (re)connecting to workers and for co-operation. Finally, we will explore how relationships between trade unions and works councils are shaped and if conflicts or cooperation emerge.

The chapter has been organised in the following way. The first section describes some stylized facts about the institutional features of the dual-channel systems in Germany and The Netherlands. After a brief discussion of the main decentralisation trends in both countries and their commonalities as well as differences (Section 3), we present our empirical findings of

our company case studies focussing on the impact of decentralisation towards works councils and their relationships with trade unions (Section 4). The chapter concludes with a discussion of the relationships between trade unions and works councils in both countries, how (dis-)similarities between the two countries on this relationship might be explained, and gives a brief outlook for further studies.

## 6.2 The dual channel system of employee representation in Germany and the Netherlands

In both countries employee interests are represented through two institutional actors, trade unions, which are in charge of collective bargaining, and works councils at the company and/or establishment level. Moreover, works councils in Germany and the Netherlands have a statutory basis. The first Works Councils Act ('Wet op de Ondernemingsraden') in the Netherlands dates back to 1950 and regulates structures, rights and elections of works councils withing companies. In the legal reforms of 1971 and 1979, the formal independence from the company (or public sector) director, and the rights to information, consultation and co-determination were strengthened. The functioning of works councils in the Netherlands further expanded in the 1980s and 1990s (Van het Kaar & Looise, 1999), but stabilized in the last decades (Tros, 2020). Currently, 95 percent of companies with more than 200 workers have established a works council in the Netherlands (Wajon, Vlug & Enneking, 2017). Small and medium-sized companies have lower establishment rates: around 60 percent of the companies between 50 and 100 employees (id). Establishing a works council is obligatory for companies with more than 50 employees, but if the employees do not ask the employer to do so, the employer will not be sanctioned for nor having installed a works council.

In Germany the Works Constitution Act – the first version of which dates from 1952 and has been amended several times since then (1976; 1989; 2001; 2021) – regulates the structures and participation rights of works councils, which are elected by all employees at a workplace. Works councils can be elected in all establishments with more than five employees. The establishment of a works council is voluntary and at the initiative of the employees. Currently, in around 8 percent of all establishments a works council exists (Ellguth & Kohaut, 2021). However, coverage varies widely between smaller and bigger establishments. Prevalence of works councils remained at a consistently high level of 90 per cent (of employees) and 85 per cent (of establishments) in large establishments with more than 500 employees.

In addition, works councils are formally independent of the trade unions and are elected by all employees at a workplace in both countries. In Germany the Works Constitution Act sets out that works councils have a duty to maintain 'industrial peace' and are obliged to act in both best interests of the workforce and the establishment. Meaning that

works councils in Germany may not call for industrial action such as strikes. In a similar manner, works councils in the Netherlands have a double aim according to the law: to act in the interest of the workforce in the context of the interests of the company. Trade unions in the Netherlands have been always ambivalent towards works councils as a consequence of this double aim and also because of the quite employers' friendly attitudes and behaviors of Dutch works councils in the Netherlands. Especially in the view of FNV (the largest trade unions confederation in the Netherlands), works councils cannot organize countervailing powers because works councils are expected to also represent the interests of the company and its management.

### 6.2.1 Demarcation of powers

The dual-channel systems in both countries are marked by a specific demarcation of powers between works councils and trade unions (Haipeter & Rosenbohm, 2022). In Germany, and in contrast to trade unions, works councils are not allowed to negotiate collective agreements. Works councils and management can, however, negotiate so-called workplace agreements ('Betriebsvereinbarungen') on a range of issues. The relationship between workplace agreements and collective agreements is regulated by statute law. In addition to the stipulations of the Collective Bargaining Act, the WCA specifies (in Section 77.3) that collective agreements have primacy. That is, pay or other working conditions that are actually or customarily regulated by collective agreements may not be determined by a workplace agreement unless the collective agreement expressly permits the conclusion of supplementary workplace agreements. In contrast, trade unions in Germany have only a limited legal anchoring in the workplace, which is one reason why they have often moved to set up workplace trade union representatives' bodies in large companies ('shop stewards'), elected only by trade union members and designed to function as counter-organisations or supplements to works councils. Unlike works councils, however, these have no legal independent codetermination rights. However, shop stewards serve as links between the trade union organization, the workforce and the works council in larger companies in Germany.

The demarcation of powers between works councils and trade unions in the Netherlands is similar to Germany. In the Netherlands the powers of trade unions on the one hand and works councils on the other hand are delimited in the Works Councils Act (WCA) in relation to terms of employment (Jansen & Tros, 2022). The statutory allocation of powers means that the works council does not in principle have any powers in relation to primary terms of employment, such as fixing remuneration, the number of holidays or working hours. It is also a consequence of the law that if the collective agreement provides an exhaustive set of rules, the works council loses its power in relation to secondary and tertiary terms of employment. This is called the primacy of the collective agreement. Rules are regarded as exhaustive if a collective agreement offers no further scope for elaboration at the company level. The literature mentions that because an agreement between a company and a works council can make arrangements on (primary) terms of employment, while collective bargaining parties are not obliged to confine themselves in CLAs to the regulation of primary terms of employment, collective bargaining parties and works councils can often cross over

into each other's domains (Jansen, 2019: 204). In contrast to collective agreements, the principle in Dutch law is that arrangements with the works council on terms of employment do not automatically permeate to individual employment contracts., although there are ways to do so in practice. If collective bargaining parties provide in that collective agreement that they grant authority to the works council and the employer to make arrangements for the further detailing of a particular topic, then those more detailed arrangements may permeate to the employment contracts of all employees. We see such 'decentralisation provisions' in several collective agreements in the Netherlands across different sectors.

Important in our analysis is that 'shop stewards' in the Netherlands are almost non-existent, what can be understood in historical perspective. Already in the first decades of the 20th century – when industrial relations were further shaped, trade unions focused their activities on the sector and national levels; the economic crisis learned them that unemployment and problems of distributions and industrial production could be better solved at the sector levels, instead of the company levels (Windmuller et al., 1987: 73). The pragmatic reformistic ideology among trade unions was strong. Furthermore, employers in the Netherlands were relatively more resistant to trade union activities at the workplace level (id: 81). This centralistic focus of the social partners in the Netherlands have been institutionalised and further developed after WII, when two national social dialogue institutions have been established: the bi-partite Labour Foundation (1945) and the tripartite Social-Economic Council (1950). These both institutions became highly influential and part of an implicit trade-off with respecting the employers' 'management prerogative' to organise their organisations in a capitalist social-economic system without direct co-determination rights for the trade unions in the organisation of work. In the 1960s and 1970s, some trade unions networks within large companies ('bedrijfsledengroepen') were installed, but without much success. They exprecienced complicated relationship with trade unions at more central levels as well as with works councils in the companies that were considered as too much focused on harmony with the management (Kösters & Eshuis, 2020). Since the 1980s, unions networks within companies have declined substantially. Shop stewards and union networks in companies seems to have been a temporarily phenomenon in the Dutch industrial relations system in the special decades of the 1960s/1970s, although there might be good reasons nowadays for trade unions to organise actions at the workplace level (Bouwmans & Eshuis, 2018; Kösters & Eshuis, 2020).

### 6.2.2 Relationships between trade unions and works councils

As being the main dual-channel system characteristic, there is no direct influence of trade unions in works councils in both countries. Indirect there is, in the extent to which union candidates are works council members and in the extent works councils ask advise from trade unions. In Germany important links between both actors exist. Analysis of the German works council election results in 2018 show that just over two-thirds of the members elected were

members of trade unions71 affiliated to the German Trade Union Federation (DGB) (Demir et al., 2019). In addition, an intensive division of labour has developed between trade unions and works councils in Germany. Trade unions have taken on the tasks of providing training for works council members and supplying expert advice as well as organising support when needed. They also provide organisational power to works councils as a strongly-unionised workforce will bolster the works councils' hand in negotiations with management. Finally, by concluding collective agreements, they relieve works councils of the burden of having to negotiate on contentious issues, such as pay increases or the length of working hours, for which they are ill-equipped given that they lack the right to strike.

Conversely, works councils in Germany have a legal duty to monitor compliance with the provisions of labour law and the implementation of collective agreements at workplace level. Their focus is on specific problems concerning employment conditions at the workplace that cannot be dealt with in the broader provisions of industry-level collective agreements. They can also support the mobilisation of workers for strike action during collective bargaining, provided they do not directly call a strike themselves. Finally, they undertake union recruitment at the workplace, an especially important task in workplaces where unions have not established their own representation in the form of shop stewards. So, it can be concluded that both actors appear to depend on each other in a reciprocal way.

Also in the Netherlands there is some indirect influence of trade unions in works councils, although to a lesser extent than in Germany. A comparative study from WSI/Hans-Boeckler-Stiftung about works councils in Germany and The Netherlands estimates that almost 60% of the works councils in the Netherlands never/hardly receives advice from trade unions, compared with 28% of the works councils in Germany (Van den Berg et al, 2019). Compared to Germany, Dutch works councillors are more advised by (commercial) consultants, have poorer relationships with unions and have relatively better relationships with management (Van den Berg et al., 2019). According to the earlier mentioned survey-study, more than in Germany, the interactions of works councils in the Netherlands seems to be based on co-operation with management, social partnerships and constructive dialogue with management (Sapulete, Behrens, Brehmer, Van Witteloostuijn, 2016; Van den Berg, Grift, Sapulete, Behrens, Brehmer & Van Witteloostuijn, 2019). Compared to the German Betriebsräte, works councils in the Netherlands seem to act in a less formal way (Sapulete et al. 2016; Van den Berg et al., 2019). These strong ties with management and weak ties with trade unions may also explain why trade unions in the Netherlands are hesitant about delegating negotiating powers towards works councils.

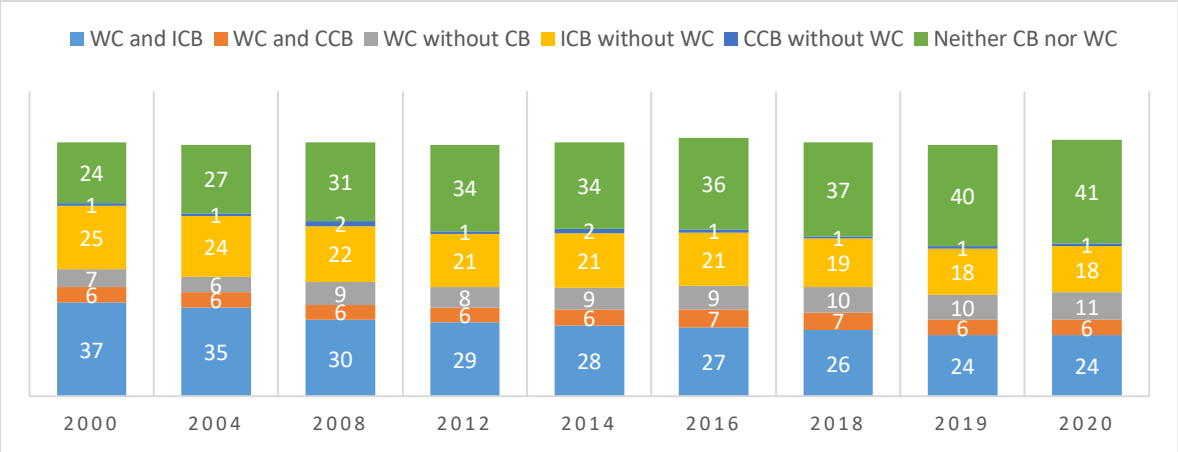
The same as in Germany is that the works council has a legal duty to enhance compliance of the stipulations in collective agreements at the workplace and that it can ask for trade unions involvements in case of refusal of the employer in compliance of collective agreements.

[71] Due to missing data or different data structures, these figures refer only IG Metall, ver.di, IG BCE, NGG.

### 6.2.3 Perforated systems

It is important to note that not all employees in Germany are encompassed by this 'dual system' of industrial relations. Only 30 per cent of employees are currently covered by both a works council and a collective agreement. Compared to the early 2000s this represents a decline of 13 percentage points. Accordingly, the proportion of employees outside the scope of collective bargaining and not represented by a works council has risen sharply (Figure 1). In this respect it can be argued that different 'wolds of industrial relations' or 'parallel universes of collective bargaining' exist within the German system (Schröder, 2016; Müller & Schulten, 2019).

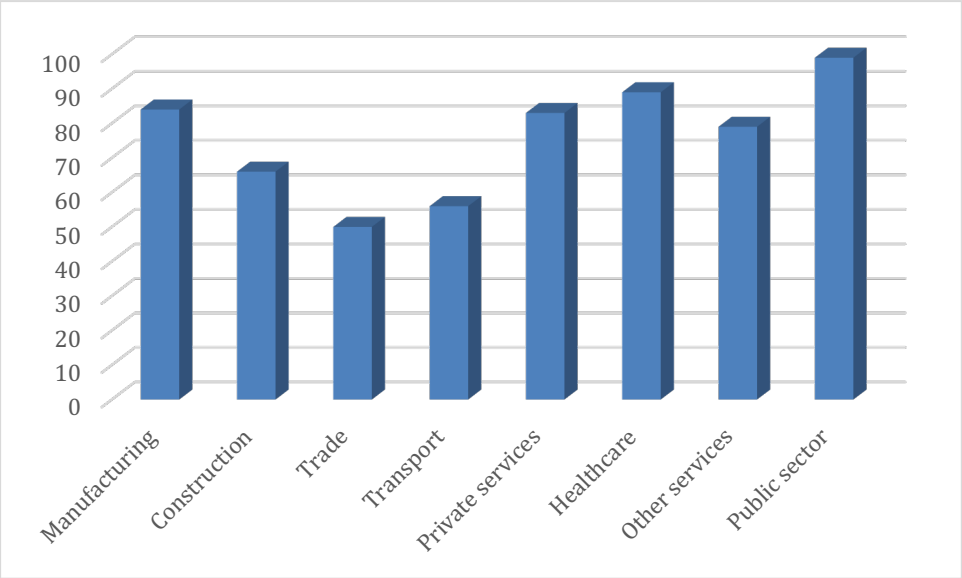
**Figure 1: Share of employees with works councils (WC), industry collective bargaining (IC), company collective bargaining (CCB) and collective bargaining (CC) in the private sector 2000-2020**




Source: IAB-Establishment Panel; authors' illustration

In the Netherlands, the coverage rate of collective bargaining is higher and stable, but also here not all companies, especially SME's, have established such councils in their organisations, despite being legally obliged to do so. Table 2 shows considerable sectoral variation in this: from just 50% in the trade sector to 99% in the public sector. Trade is also the sector with the lowest trade unions' memberships (9.5% in 2021) and public sector with the highest (30.4% in 2021). This suggested positive relationship between trade union memberships and establishment levels of works councils, is not evident for all sector: private service companies have relatively often a works council, but their workers are relatively organised at low levels. There is also large variety in the establishment of works councils between firm size categories. From 54% in companies with 50-75 employees to 95% in 200+ companies. This is another reason for trade unions in being hesitant in decentralising powers to works councils.

**Figure 2. Share of establishments with works councils by sector, only companies with more than 50 employees (2017, The Netherlands)**



Source: Wajon et al., 2017

In sum, in both countries national legislation strictly demarcates the rights and powers between trade unions and works councils. In Germany, trade unions have more interactions with works councils than in the Netherlands, that might be explained by the Dutch trade unions' focus on establishing influences in national dialogue instead of organizing workplace representation in the 20th century. Works councils' establishment-rates in the Netherlands are higher. The works councils' coverage rate in Germany has just fallen slightly, but the proportion of employees who are neither covered by a works councils nor a collective agreement has risen sharply.

## 6.3 Decentralisation within dual channel systems of employee representation

Before going to case studies where the role of trade unions and works councils are described more in detail, it is important to give first a short, more encompassing picture of decentralisation processes in Germany and The Netherlands.

While the legal basis and the main features of the German dual-system of industrial relations remains largely unchanged, considerable changes within the system have been taken place in recent years with decentralisation being the most relevant development. Decentralisation has taken different forms ranging from wild decentralisation to controlled decentralisation (Haipeter & Rosenbohm, 2022). In general, the erosion of the collective bargaining coverage constitutes the main threat to the German model. Over the last 20 years, collective bargaining coverage has decreased considerably. Currently, only 51 per cent of the employees are working at a workplace that is covered by a collective agreement. Moreover, collective bargaining coverage varies widely as between establishment size and among sectors. In 2020, 84 per cent of West German (and 72 per cent of East German) establishments with more than 500 employees were covered by collective agreement; by

contrast, for workplaces with 10-49 employees, the coverage rate was just 36 per cent in West Germany and 26 per cent in the East. Coverage rate (by employees) also varies between sectors, ranging from 98 per cent in the public sector to 13 per cent in the information and communication sector (Ellguth & Kohaut, 2021). The decline in collective bargaining coverage is an expression of uncontrolled decentralisation as is mainly driven by two processes: that of firms leaving employers' associations (or opt for an 'agreement free' status within them); and that of firms that never join associations in the first place.

At the same time, however, more organised forms of decentralisation have become apparent within the German system of industrial relations. One form of coordinated decentralisation includes the shift of regulatory competences from the actors at industry level to the actors at company level. This development constitutes a process of layering, in which new elements and new competencies are added to existing institutions. It is coordinated in the sense that the collective bargaining actors themselves define the norms and have all possibilities – at least in principle – to redefine them anytime. Thus, it does not (automatically) lead to lower importance of institutions at the sectoral level. In Germany, this process originates in the late-1980s with the delegation of authority over the organisation of working time. Thus, this process includes a transfer of responsibilities from the field of collective bargaining to that of codetermination and the regulatory zone of the Works Constitution Act. This shift in the locus of regulation to the workplace requires works councils to address new topics and take on new responsibilities (Haipeter & Rosenbohm, 2022).

Another type of decentralisation, and in terms of its repercussions on industry collective bargaining the more important form of coordinated decentralisation, concerns the use of derogations clauses. Trade unions and employers' associations may agree to such clauses within collective agreements which then allow deviations at company level, even if they suspend, delay or undercut collectively agreed standards at sectoral level. In Germany, the demands for such decentralisation arose during the early 1990s, when a public debate – mainly triggered by an economic crisis, the transformation of the economy in East Germany, and challenges posed by globalization – about the system of collective bargaining and whether and how it should be reformed arose. From the employers' side collective agreements were increasingly depicted as a rigid 'corset' clamping down on companies' freedom of manoeuvre in this debate. Moreover, this was complemented by companies leaving the employers' associations – and thus withdrawing from collective agreements – or circumventing collectively-agreed provisions informally. In the early 2000s, the whole debate about decentralisation gained importance due to political pressure from the federal government and the threat to amend the law to allow company pacts, in which the undercutting of collective agreements by the workplace parties was to be permitted. The response of the collective bargaining parties, especially in manufacturing,[72] was then to develop controlled forms of decentralisation by introducing 'opening clauses', starting with the introduction of hardship and restructuring clauses (see also Haipeter, 2021; Haipeter &

[72] Up until now, there are hardly any general opening clauses allowing for derogations from collective agreements in retail.

Rosenbohm, 20222; Müller & Schulten 2019). In the metalworking industry, the conclusion of the so-called 'Pforzheim Accord' in 2004, significantly widened the scope for such derogations since it contained for the first time a general opening clause. Derogations are now permitted for a wide variety of reasons where this can be shown to improve competitiveness, innovation, and the safeguarding of employment.

It is important to note that the existing agreement regulating derogations in the metalworking and electrical industry stipulates that derogations can only be negotiated by the recognized parties to collective bargaining – the trade union and either the individual employer or the employers' association. This means that works councils in the metal working industry are not in charge of negotiating those derogations. This underlines that this type of decentralisation does not include a shift from the field of collective bargaining to the regulatory zone of the Works Constitution Act. However, shortly after the Pforzheim Accord was signed, some instances occurred in which works councils nevertheless agreed to management's demands before the trade union even had been involved (e.g. Bahnmüller, 2017; Haipeter, 2021). As a consequence, in 2005 IG Metall drew up a set of coordination guidelines in order to ensure effective control centred on the following points. Firstly, applications to negotiate agreements on standards below the industry norms had to be submitted to the union's area headquarters (Bezirke), the organisational equivalent of the regional employers' associations, and required approval by officials at that level after considering extensive information about the company in question. Secondly, area officials could give local union branches authority to conduct negotiations. Thirdly, negotiations were to be supported by firm-level collective bargaining committees, whose role was to ensure that union members took part in the negotiations, were informed, and could participate in decision making. In these instances, it is the union that checks company applications for derogation, establishes and leads the collective bargaining committees, negotiates with management and organises membership participation and membership recruitment.

Overall, the practice of decentralisation varies considerably across sectors in Germany. Especially the use of derogation clauses, allowing for company-level derogations varies substantially across industries (see also Müller & Schulten, 2019). While the decentralisation of collective bargaining in the German metalworking industry has been characterised by a complex interplay of 'wild' and controlled decentralisation – with the latter entailing both a shift to the establishment as well as derogations from industry agreements – decentralisation in retailing has mainly been of the wild variety. Ending the extension of collective agreements and introducing scope for association membership without collective bargaining coverage – triggering a sharp decline in organisational density at the employers' associations that applied collective bargaining – has led to an enormous shrinkage of collective bargaining coverage in the German retail sector.

In contrast, in the Netherlands, collective bargaining coverage is still high at a level of 80 percent of the employees in the private sector. Sector agreements are still very dominant and still cover almost ninety percent of the workers under collective bargaining. The numbers of collective agreements at the company level are stable in the last decades: around 500 agreements, covering 11% of the total employees under collective bargaining. The Dutch collective bargaining regime is not really multi-layered: a company is covered by a sector agreement or has its own company agreement. It is in the authority of sector bargaining

parties to give dispensation to a company from the coverage under the sector agreement by agreeing its own collective agreement. In response to the 'threat' that a big company might exit the sector institutions, in 2021 the social partners in the metal- and electrotechnical industry clarified three dispensation conditions. Firstly, the involvement of the same trade unions, Secondly, the terms and conditions of employment in the company agreement has to be of equal value, and finally, the company keeps its obligations in contributing to sector funds for pensions and labour market policies. Collective bargaining parties can give some scope for deviations at the company level but only above the minimum standards, so there are no negative derogations options as we see in Germany. Some sector agreements, such as in the metal and electro-technical industry, contains some 'decentralisation provisions', where works councils have power to agree on tailor-made regulations on working hours and holidays and unions on pay systems at the company level (but not on collective wage increases). This trend of regulated decentralisation is limited in all sectors because of the resistance of trade unions to give power to works councils and because a large proportion of the employers (especially SMEs) no not want to bargain twice about terms and conditions of employment with trade unions. Therefore, we conclude that, generally speaking, we see a trend of cautious organized decentralisation and limited wild organisation in the Netherlands. Together with the legal extension mechanisms - wage moderation and flexibility in sector agreements might be also reasons why bargaining coverage is still very robust in the Netherlands (Ibsen & Keune, 2018). The collective bargaining system is strong, but in several sectors, trade unions struggle to negotiate good agreements for workers.

Since mid-2010s more involvements of works councils in company regulations on terms and conditions are debate. The employers' association AWVN[73] sees collective agreements with trade unions as the most obvious and efficient method to regulate terms and conditions of employment. In their view, collective bargaining with trade unions at sector as well as at company level is serving better industrial peace, prevention of competition in terms and conditions of employment, and sustainable relationships in social dialogue and employment relations. Nevertheless, the AWVN sees regulations in co-determination with works councils (and without trade unions) also aws a good method. Most important criterion, in the AWVN's view, should be the level of support among the workers in the companies for trade unions or works councils as the representative body for the workers. FNV is strongly against this 'alternative' pathway agreeing company regulations about primary terms and conditions of employment with the works council. They point to the council's and councillors' dependency on their employers, the missing of a strike weapon, and lower expertise and negotiation skills in collective bargaining.

There is no empirical research about the numbers of collective regulations with works councils in the Netherlands. It can be assumed that the proportion of workers under such regime is at least lower than the share of employment not covered by collective agreements because of the legal primacy of collective bargaining by unions (so less than 20%).

[73] AWVN was founded in 1919. Today, more than 750 companies are affiliated to AWVN. It is involved in the making of over 450 collective agreements and over 300 fringe benefit arrangements.

In sum, when we compare both countries, we see a far stronger erosion of collective bargaining coverage in the last decades in Germany than in The Netherlands. This has also led to high varieties in organised and wild forms of decentralisation between sectors in Germany. In the Netherlands however, we see a less sharp trend of decentralisation, as results of more cautious actions of sectoral collective bargaining parties and their supportive legal framework of making sector agreements general binding for all companies in the sectors (also unorganized employers).

## 6.4 Case studies on relationships between trade unions and works councils in decentralisation processes

### 6.4.1 Germany: insights from case studies in the metalworking and electrical industry

In the following, we will shed light on the question which role the relationships between trade unions and works councils play during decentralisation processes. Both case studies from the metalworking and electrical industry relate to controlled decentralisation and the use of derogation. Focusing on the metalworking and electrical industry is particularly interesting since the trade union IG Metall has developed specific procedures for safeguarding coordination and to prevent unauthorised derogations as well as to regulate concessions (see section 3).

*Case study: Metal Forming*[74]

Metal Forming is a medium-sized company with around 400 employees at its headquarters. The company makes parts for applications in the automotive industry, such as components for car bodies and powertrains. The case study investigates a derogation agreement that the company concluded with IG Metall in 2019, following a similar agreement negotiated the previous year. The company had been experiencing liquidity problems and had undergone a change in ownership.

There were several key points in the negotiations of the derogation agreement that both parties insisted on. Management's main focus was, according to the expert of the works council, on the savings to be made and on the scope for reducing employee numbers. Job security was a 'red line' issue for the employee representatives, and they were not prepared to agree to both concessions and headcount reductions. In addition, there were a number of other important concerns, such as whether monetary concessions would be repaid if the business situation improved and the number of apprenticeships. In the end, both parties agreed on an agreement that is made up of a mixture of material concessions by employees and quid pro quos from the company on job security, investment commitments, repayments of foregone income, and information and monitoring rights. A conflict arose over the question of a bonus payment for union members only; these bonus payments were intended here – as generally in the metalworking industry – to offset union dues, strengthen member loyalty and create incentives to join the union. For these reasons, employers' associations in the metal industry have decisively rejected any such arrangements, as was also the case at Metal Forming. IG Metall therefore then concluded an agreement on this only with the company and without the consent of the employers' association as an addendum to the derogation agreement.

[74] See for the whole case study: Haipeter & Rosenbohm, 2022: 47-53.

*Case study: Lights*[75]

Lights is a medium-sized company with about 5,500 employees worldwide, of which around 1,500 employees at the German headquarters. The company produces luminaires and offers system solutions for lighting. In 2021, the company concluded a derogation agreement with IG Metall.

In late-2019, however, management approached the works council and IG Metall with a request to negotiate a derogation agreement. The works council and union then undertook a quick check of the company's situation and realised that management's wish was not without foundation.

The employers' side entered the negotiations with two main demands: firstly, to extend weekly working time without pay compensation; and secondly, to postpone the industry-level collectively agreed pay increases and not implement a new element in the industry collective agreement, an annual one-off payment that can also be converted into additional time off. Of these, employee representatives were more willing to agree to longer working hours than to a reduction in pay. However, this was only on the condition that this would also promote the harmonisation of working time standards between the company's various parts. Negotiations were not limited to these points, however, and were widened, not least due to the demands raised by the employee side. Apart from the central issue of job security, the employee side demanded for investment commitments and wanted to enforce extension of the scope for codetermination by the works council. In this regard it was demanded that the works council gets involved in outsourcing decisions ('make-or-buy') earlier than before in order to be able to influence product development at the gestation stage. In addition, employee representatives requested the establishment of a joint task force with management to solve operational problems. This was supplemented by demands for an increase in the apprenticeship quota, an extension of part-time work for older workers, the conversion of temporary workers' contracts into unlimited contracts, a guarantee that the company would become full members of the employers' association and the payment of a bonus for union members. As in the case of 'Metal Forming', this latter payment became a bone of contention between the negotiating parties, especially given the resistance of the representative from the employers' association. Although employee representatives realised that their chances of winning this were slim, it offered helpful leverage to push through other demands.

In the end, a derogation agreement was concluded that is made up of a mixture of material concessions by employees and quid pro quos from the employer. It includes, for instance, the postponement of agreed industry-level pay increases, a convergence of working times but also a commitment to investments and rules regarding the monitoring of those investments by the trade union and the works council, with the possibility of a sanction for any shortfall. Among other things, it excludes compulsory redundancies and ensures that the works council participates in make-or-buy decisions at an early stage and foresees the establishment of a task force consisting of management and the works council to jointly work out solutions for any operational problems.

[75] See for the whole case study: Heipeter & Rosenbohm, 2022: 53-60.

### 6.4.2 Case studies in the Netherlands

To illustrate the relationships between trade unions and works councils and their positions and strategies in decentralised collective bargaining in the Netherlands we go more in-depth in two case studies. The first case relates traditional roles of trade unions and works councils in decentralised bargaining (DSM, manufacturing). The second case relates to uncoordinated (or 'wild') decentralisation by breaking traditions in collective bargaining and co-determination (supermarket).

*Case study: DSM*[76]

From century-old roots as the Dutch State Mines, DSM has evolved into a purpose-led science company numbering 23,000 people worldwide and around 3,800 people in the Netherlands, specialising in food and chemics. DSM has its own company agreement, negotiated with four trade unions – FNV, CNV, De Unie and VHP. There is no sector agreement in DSM related sectors in the Netherlands. DSM's advantage of having a company agreement is to be able to control its labour cost developments and to follow its own policies in e.g. sustainable employability and variable pay. At plant and business unit level, DSM has 6 works councils, all under the umbrella of one works council at the central level (centrale ondernemingsraad, Central Works Council).

The main conclusion of the case study is that the roles and activities of trade unions and works councils are clearly divided. Some years ago, there was a discussion among DSM's Supervisory board, DSM's Company board and DSM's Central Works Council, questioning a larger role for works councils in the traditional trade unions' fields regarding terms and conditions of employment. This discussion led to the conclusion that works councils have less knowledge about wages, other payments and collective bargaining processes than trade unions. Secondly, works council members are more dependent on DSM as their employer than professional negotiators paid by trade union organisations. Although having demarcated powers, trade unions and works councils profit from reciprocal communications. To begin with, DSM's works councils see a role in keeping close control over the fulfilment of the DSM's collective agreement and for example the detailed implementation of working hours schedules within the standards given in the collective agreement. Many works councillors are member of one of the trade unions, including the chair of DSM's Central Works Council (FNV). Also the recent 'triangle' project group in making a teleworking arrangement during the Covid 19 pandemic is an example of communicated trade unions' and works councils' activities (unions agreed on payments, works councils on organisational conditions).

Sometimes there are frictions between the three stakeholders when they want to enter the other's field. FNV wants to be involved earlier in reorganisation and transfer plans to have more influence in earlier stages of the plans themselves and their effects on DSM's personnel and loss of employment in the region. According to DSM and its Central Works Council, information and consultation about reorganisation are tasks for the works councils, as they are regulated in the national Works Councils Act. As regulated by national law, announcements of collective dismissals have to be made to the trade unions, but they only can negotiate about the terms and conditions of those involved in collective dismissals or those threatened by job losses and not about the justification of the reorganisation itself or other organisation impacts. DSM prefers to have a long-term Social Plan with the unions about these terms and condition to prevent social unrest in very new reorganisation (there is now a 5-year Social Plan). The chair of the Central Works Council points to the negative side effects when trade unions want to be involved too early in consultation rounds: 'fighting' can lead to less willingness by DSM's management to give information about

[76] See for the whole case study: Jansen & Tros, 2022: 29-33.

reorganisations.
Another example of tension and lack of cooperation between the two bodies refer to a recent case in selling a small company. The works council gave its approval on condition of agreeing a good ‘transfer collective agreement’ with the trade unions (transfer-cao). When DSM could not come to an agreement with trade unions, the works councils still did not withdraw their approval of the transfer.

*Case study: Supermarket77*

This case is an example of uncoordinated or disorganised decentralisation, where the workers' representation changed from trade unions to the works council in the distribution centres ('supply chain') of a large supermarket in the Netherlands. In response to strikes and conflicts with the trade unions in 2017, the employer stopped bargaining with the trade unions – which were asking for a wage increase of 2.5% and fewer temporary jobs and more standard employment contracts. The employer initiated to go to the Central works council of the supermarket and the works council of the distribution centres for consultation about a company regulation about the same topics that were traditionally regulated in the collective agreement ('arbeidsvoorwaardenregeling', AVR). The works councils of the supermarket did not ask the employer to restart the collective bargaining with the trade unions, despite the fact that around 700-800 workers in distribution are trade union members. The representativeness of the council members is disputed by the unions and the interviewed works councillor. In early 2018 the works council gave its consent to the AVR proposed by the management, for a period of 5 years. Management gave every individual worker in the logistics departments a choice, although pressing to sign the AVR in a context of social unrest with resistance from trade union members in the workplaces. The FNV negotiator in this case is not only highly critical of the way the employer bypassed and overruled the trade unions in collective bargaining, but is also fundamentally against AVR as a way of regulating terms and conditions of employment. According to him, workers' interests in primary conditions such as wages and bonuses for inconvenient working hours etc. should not be represented by works council members who have no expertise in bargaining, who are too dependent on their employer and who cannot use the strike weapon. 'In fact, an AVR is a one-sided regulation by the employer', in his view. This case has three main effects. Firstly, the lower labour standards that are regulated in the AVR, compared to the former collective agreement, are bringing about actually lower earnings for new logistic workers in standard employment, as well as on flexible labour contracts – including many temp agency workers. It has led to a divide between the older 'expensive' workers and the new 'cheaper' workers with a financial incentive to replace older employees by younger (often migrant) workers. The second effect is a further polarisation between the employer and the trade unions. Trade unions felt overruled by their replacement by workers councils and met a closed door. FNV's trust in the employer is also damaged by what they saw as 'aggressive behaviour from the company in pressing the employees to sign the new AVR in 2018 and excluding workers who did not want to sign from a collective wage increase'. A third effect is related to the functioning of the works councils in the supermarket with more trade union members but also with lower trust with the management (see section 6.2).

[77] See for the whole case study: Jansen & Tros, 2022: 36-39

## 6.5 Discussion based on the case studies

### 6.5.1 Cooperation among works councils and trade unions in decentralisation

Overall, evidence from the German metalworking and electrical industry highlights that in the case of the decentralisation via derogation clauses, trade unions are still the most important actor in bargaining at establishment or company level since they check any applications by companies that wish to derogate from industry standards, set up and lead bargaining committees and negotiate with management, and organize membership participation and recruitment. Although derogations in the metalworking and electrical industry clearly fall within the scope of action of the collective bargaining parties, the cooperation between the union and works councils is highly relevant for negotiating and implementing such provisions. Works councils usually play a central role on negotiating committees, they are the experts in their own companies and their approval is vital, as no viable agreement can be reached without their involvement and consent. In the case of Metal Forming the bargaining committee not only consisted of an experienced collective bargaining official from IG Metall but also of unionized works councillors and shop stewards from different departments in the company, enabling information and concerns to flow in both directions between the committee and individual departments. Similar to the case of Metal Forming, the union and the works council in the case of Lights were anxious to make the bargaining committee as broad in composition as possible and to represent as many company affiliates, departments and employee groups as they could. This body then appointed a smaller negotiating committee, led by IG Metall but also including six works councillors from different areas of the company who were at the same time trade union members.

In the case of Metal Forming, the link between the works council and the trade union was also highly relevant when the derogation process started. The whole process started with the announcement of the management to shut down an essential part of the establishment. In line with the Works Constitution Act, the works council was informed about this alteration in the operation of the establishment. The works council immediately informed the IG Metall's local administrative office and used its network to locate and engage legal advice. Talks then began with the company that revealed that there was a major liquidity problem that could not be dealt with by closing the tool shop alone and that further measures would be necessary that would include seeking a derogation from the industry agreement.

This underlines that a close cooperation between the trade union and works councils is crucial for successful coordination of collective bargaining at company level. In our case studies this is mainly ensured by a high organization rate of the works council members. Several aspects are important in this regard. Firstly, the union needs to ensure that works councils are not too willing to concede when faced with employer pressure. Secondly, having the union take the lead in contested negotiations can be a great help for works councils, relieving them of the challenge of facing management, who will have to sit down with the union's typically highly experienced negotiators, and allowing them to benefit from the power resources that the union can mobilise during the negotiation process. Moreover, negotiations on these issues can also enhance works councils' capabilities, as they will be provided with comprehensive business information by the employer that they would not

otherwise have received in such a detailed form, despite their statutory right to such information in the normal course of codetermination (Haipeter, 2010).

Moreover, works councils need trade unions, both to provide professional support when engaging in the new tasks devolved to them and back them up with organizational and bargaining power to enable them to negotiate fair derogation deals with management. The Lights works council has benefited greatly from the close cooperation it has enjoyed with IG Metall in implementing the agreement. One important factor in this is the importance of the company to the local union administration; Lights is the second largest company in the area and the chairman of the works council sits on the executive board of the local union office. This form of networking between the union and the works councils at large companies has existed for a long time. However, it has been recently complemented by the involvement of works councils in union projects to support and activate works councils that go beyond the well-rehearsed patterns of union support on specific enquiries and problems. For instance, an important building block in the context of the derogation agreement at Lights was the participation of the works council and the company in a trade union project aimed at strengthening the competences of both employee representatives and employers in dealing with digitalisation. Within the framework of this project, entitled 'Work 2020', a so-called 'Agreement for the Future' was concluded between IG Metall and the company. This was not a collective agreement in its formal sense but rather a form of workplace agreement, concluded at company level, that focused on improvements in training opportunities for employees and included provisions on obligatory discussions on training between employees and supervisors and 'digital skills' surveys to be conducted, if desired, by the works council.
In both German cases, established relationships between the works council and the union were crucial during the negotiation phase and formed an important resource for the employee representatives. Not only are all the members of the Metal Forming's works council in the union, but there are also close ties between the works council and the local union administration. Works councillors regularly attend union training sessions and seek union advice if problems arise.

In the case of derogations from industry agreements, trade unions need works councils as these represent the link both to workforces and management and are indispensable for monitoring how derogations are implemented at workplace level.. Moreover, derogations in the metalworking and electrical industry have another core element: participation by union members. This was included by the trade union as a requirement in its 2005 coordination rules and is intended to foster a closer relationship between the union and its members, as well as employees more generally, when it is engaged in negotiations over derogations, given that, in contrast to bargaining over pay increases, these can entail a lowering of terms and conditions, at least temporarily. In the case of Metal Forming the works council and trade union also played an important role in informing the workforce. Works councillors and shop stewards frequently went to departments to talk to workers in person and explain the risks posed to the whole workforce from closing the toolroom, helping strengthen employee unity. This approach also helped to increase union membership within the workforce. Both the works council and the union attribute this to intensive communication, the negotiation of the union membership bonus and, importantly, the legal protection offered by membership – an important argument for joining the union in view of the threat of job cuts. In the case of

Lights, the union and the works council also made great efforts to create incentives for employees to join the union. First of all, they provided comprehensive information and secondly only union members had a right to vote on the outcome of the negotiations. Both of these are typical incentives used by IG Metall in negotiations on derogations. However, at Lights a further instrument was added. In the questionnaire sent out at the beginning of negotiations to ask employees about their priorities, employee representatives also asked about union membership and enclosed a piece of paper asking if employees would like to have a say in the negotiations. As a result, the union was able to recruit up to 80 new members.

In the case of Lights, the IG Metall and trade union members of the works council invited the IG Metall members among the employees to a membership meeting to vote on whether or not negotiations should be initiated. Negotiations for a derogation agreement had been held twice before – the last time only a year previously – and on both occasions without a result. In the previous year, negotiations had been broken off by the decision of union members at a membership meeting of IG Metall. In any event, the breakdown of negotiations in the preceding dispute proved helpful in obtaining a mandate to start negotiations in the general meeting held to discuss fresh negotiations. IG Metall and the works council were able to argue that they would adopt a tough stance and would not hesitate to break off negotiations if necessary.

Where we see in the German cases trade unions being the 'most important' bargaining actors, we see far less overlapping roles in both Dutch cases. Or it is 'only trade unions' (as in DSM), or 'only works councils' (as in the supermarket). For the Dutch manufacturing we can conclude that is only trade unions that bargain on wages and other material compensations. Remarkably also here: trade unions leave that fully to be implemented by management and the works councils without their involvements anymore. The DSM cases clearly reflects the aims and functioning of the Dutch legal system: collective bargaining on terms and conditions of employment is for trade unions and codetermination on organisational and non-wage HR-issues is for works councils (section 4.2). This case study also reflects the regulation and practises in the metal – and electrotechnical industry and other sectors in manufacturing where trade unions have decentralised the issue of flexible working hours (by day, month and year) towards works councils, without formal involvement of trade unions anymore. The cooperative practises as we see in the German cases, we do not see in the Netherlands. Even not in the DSM case, where we would expect such strategic partnerships because of the combination of DSM's collective bargaining on the company level (instead of the dominant sectoral level in the Dutch regime) and relatively strong developed codetermination practises by works councils. The company has continued this demarcated practises in recent issues, such as teleworking /covid-19 and restructuring. In their own way, both case studies in the Netherlands confirm and perfectly illustrate the dual channel system in the Netherlands of separated juridical competences and demarcated positions of trade unions and works councils. In the supermarket case this separation is absolute by replacing trade unions fully by works councils. At DSM, both bodies of workers representation communicate what they are doing in their own field although the unions prefer to be more involved in organisational development issues than the employer and the works council allow for. At the Supermarket, the employer replaced strategically trade unions' collective

bargaining by involvements of the works council, without coordination between the two bodies of workers representation and still undermining the position of trade unions in that case. In different ways, both cases show, however, that trade unions might win from more cooperation with works councils in their negotiations with individual employers to prevent further decentralisation in negotiating terms and conditions of employment and consulting workers representatives.

### 6.5.2 Trade union presence at the workplace

With regard to the trade union presence at the workplace crucial differences seem to exist between the German cases and the case studies from The Netherlands. While the IG Metall uses different means to be present at the workplace when it comes to derogations, ranging from being present and leading the bargaining committee and organized works council members to shop stewards, similar activities cannot be observed for the Dutch cases. In both German cases, the majority of works council members are organized within the trade union and thus form one of the hinges between the workplace level and the trade union activities. This is supplemented by separate workplace trade union representatives' bodies ('shop stewards'), which are elected by trade union members. Although, those shop stewards have no legal codetermination rights, they, nevertheless, open up a direct link between the workforce and the trade union. For the union, such bodies are indispensable for monitoring how derogations are implemented and are crucial for staying in control of such derogation processes.

As described in section 2, trade unions in the Netherlands are traditionally not present at workplace level (with some exceptions). Also works councillors are to a lower extent trade union members as in Germany. Nevertheless, the DSM case show that works councils in business units with higher union memberships are more oriented towards the unions' agendas and policies than works councils in less organised business units (overall estimates of trade union memberships vary from 25 to 40 percent). Also in the communication between unions and councils it helps when (chairs of) works councils are members of trade unions. But the difference is that in the Dutch manufacturing both bodies do no co-operate other than giving each other information and maybe to discuss with each other. The respect for each separated roles is seen as crucial for the functioning of both collective bargaining as well as consultation and co-determination. The DSM case also shows that the well-functioning of this dual channel model in this company is challenged by several factors. The continuity of collective bargaining by trade unions is dependent on the union memberships among new generations of workers. The actual good communications and relations between the two bodies are party based on the unions' having members on the works councils but this is no guarantee for the future. Frictions and tensions will stay and will require the right responses from all stakeholders in terms of their respect for the different roles and positions of the two bodies of workers' representation. Trade unions' presence at the workplace and involvements in works councils functioning is quite different than in the German cases where they operate together when it comes to derogations of collective agreements. The Supermarket case in the Netherlands is even more clear about the isolation of both workers representation bodies. It is difficult to imagine that trade unions would have been replaced by works councils if there would have been more trade union members in the works councils and trade unions would

have had more communications with the works councils. Furthermore, the whole experience around the replacement of the collective agreement by AVR has led to the election of new, more unionised works council members in the company. The new works council seems to adopt a more proactive approach, but more unionisation of the councils seems to lead also to lower trust relationships between the management and the works councils. The FNV is after this experience aiming for closer cooperative relations with the supermarket's works councils and nowadays maintains contacts, communications and visits with these works councils to support them in providing information, consultations and expertise.

## 6.6 Conclusion

In both countries, we see similar statuary allocations and demarcations of powers between works councils and unions. There is no formal difference between the two countries in the opportunity for works councils to be involved in negotiations at the company level if the collective bargaining parties do give them a role. We also see in both countries debates to give works councils more involvements in negotiating collective terms and conditions of employment at the company or even workplace level. However, we see some main differences between the two countries that have impact on the role of works councils in shaping decentralisation and in new relationships between trade unions and works councils. Firstly, there is more 'effective' pressure from Germany employers to decentralise because of low use of the public extension mechanism. Secondly, trade unions in the Netherlands are traditionally weaker and less present at the workplace than in Germany. Thirdly, in Germany work councils are more influenced by trade unions through consultation and unionized councillors.

In Germany, there is more experiences and evidence in factual decentralisation practises towards works councils. Contrary to the Netherlands, in some industries in Germany general derogation clauses exist within collective agreements which allow deviations at company level, even if they suspend, delay or undercut collectively agreed standards at sectoral level. In addition, we can also observe a shift of regulatory competences from the actors at industry level to the actors at company level; especially with regard to flexible working time arrangements. However, both forms can be regarded as controlled forms of decentralisation as they are defined through norms set by the bargaining actors at sectoral level. Controlled decentralisation through agreed derogations from industry-level collective agreements or in the form of shifting competencies to the workplace level does not, however, lead to a general erosion of the dual system of interest representation in Germany. Our empirical evidence underlines that when effective coordination is in place, works councils do not become substitutes for trade unions. However, the opposite might be true as well: when there is no coordination, employers might be able to bypass trade unions. Nevertheless, in Germany, the relationship among those actors changes considerably and the previously clear division of labour within the dual system becomes much more blurred. Works councils in

Germany are, alongside with the trade union, getting involved in collective bargaining and trade unions are much actively involved in company affairs (see also Haipeter, 2021).

It is worthwhile to mention that the organised decentralisation within the German metal and electrical industry rests upon a close articulation between works councils and the trade union and a strong union presence at the workplace (see also Müller & Schulten, 2019). In the growing segment where the institutions and actors of the dual system are absent (see Figure 1), meaning that neither collective agreements nor works councils are in place, no such coordinated process of decentralisation is feasible in Germany. For instance, in industries like retail where the trade union is much weaker and works councils are less widespread such a mutual reinforcement is much rarer.

Much more than in Germany, trade unions in the Netherlands are very prudent and hesitant to give works councils a role in bargaining on primary working conditions like wages and working hours. Negative derogations are not possible and positive derogations can be done unilaterally by employers without any involvement of any workers representatives. Unless it is explicitly agreed in the collective agreements such as in the area of working time (but definitely not in wages). The case study in the Dutch supermarket illustrates that in practice, the employer can bypass the trade union by making agreements with the works council, even in a context of rather high trade union memberships. This is a possibility withing the Dutch law. Although hard evidence cannot be given that such uncoordinated, wild decentralisation practices are growing in the Netherlands, but debates and awareness about this issue has grown in recent years. More than in the past, some employers and their associations consider more seriously the pathway of making workplace agreements with works councils instead of collective agreements with trade unions. One of the unintended effects might be that works councils become more unionionized and less cooperative as we have seen in the supermarket case. In general, social partners in the Netherlands do not see a combination of cooperating trade unions and works councils as a real option (what is again a difference with Germany).

Our case studies suggest that trade unions and works councils are more collaborative in Germany. This might be explained by the strategic trade union response in the employers' push towards decentralisation. In Germany this push from the employers' side has more power and impact, while in the Netherlands sector bargaining is more supported by legislation on extension of sector agreements what gives companies very low escape options in the direction of works councils (with exceptions of sectors like IT). To put it in other words, many German employers can directly profit from 'opting-out' the employers' associations, while unorganised employers in most of the sectors in the Netherlands stay are factual not decentralising their labour relations. During derogation negotiations in Germany, works councils, workplace union representatives and the union itself as negotiation leader have to coordinate their interests and develop common negotiating aims and strategies much more closely than usual in the normal operation of the dual system. With respect to derogations, the success of such a process very much depends on the presence of union officials that are skilled in collective bargaining and on works councils that are able and willing to collaborate with the union. The clearer separation of activities of trade unions and works councils in the Netherlands is not only shaped by Dutch labour law, but also by less needs of trade unions to connect to works councils in a stable collective bargaining regime,

consisting of sector agreements without derogation opportunities. Therefore, trade unions in the Netherlands have less experience in collaborating with works councils, do not see them as a power resource in decentralisation and continue their strategy of 'no decentralisation to works councils' other than some minor detailing of some working hours regulation in collective agreements. At the same time, in this stable context works councils in the Netherlands do not build up negotiation skills and capacities, as the German councils in manufacturing do. Then we come to a 'chicken-and-egg' discussion in explaining the councils' passivity in collective bargaining in the Netherlands or to a self-fulfilling prophecy in incapable works councils. No derogation leads to low experience among councils, and low experience leads to unwilling collective bargaining parties to delegate to these unexperienced councils. Given the more strict functioning dual-channel structure in the Netherlands, which assigns a very limited role to works councils in co-negotiating and in the implementation of collective agreements, one might also say that Dutch trade unions miss the opportunity to (re-) connect with workplaces and their rank-and files.

Finally, we would like to make the comment that work councils in Germany and the Netherlands do face big challenges nowadays and in the near future. They might be more and more involved in consultations and codetermination about organisational developments and its effects on jobs, skills and quality of work, as a result of digital and 'green' transitions that companies are expected to make. When done right, this might lead to further growth of the functioning of the institution of works councils in many companies in both countries. The possible trend of broadening and deepening the agenda for codetermination and works councils in organisational transitions, while in the same time internal issues in companies can just be limited influenced by collective bargaining parties, might lead to a further decentralised focus in labour relations. On their turn, this will also ask for new trade unions strategies to set the rules in collective agreements and to consider more involvements in works councils' functioning.

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# Chapter 7.
# Trade Union Participation and Influence in Decentralised Collective Bargaining

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## 7.1 Introduction

There is a general trend in many EU Member States towards decentralisation in collective bargaining. The aim of this chapter is to analyse the role of trade unions in decentralised collective bargaining. More specifically, we take an interest in trade union and works council participation in and influence on the processes and outcomes of collective bargaining at company level.

A comparative approach is adopted, and the chapter contributes to the discussion on trade unions and decentralised collective bargaining through an analysis of similarities and differences across countries, sectors, and companies.

To identify and explain differences and similarities in trade union and works council practice regarding company-level collective bargaining, we use an analytical framework based on the power resources-approach (Lèvesque and Murray, 2010; Schmalz, Ludwig and Webster, 2018). This approach is used as a filter for understanding whether and to what extent trade unions have been able, or willing, to mobilise certain power resources to impact the process and outcomes of company-level collective bargaining (see also Müller and Platzer, 2018). The power resources-approach has been frequently used in industrial relations research over the last decade, but its operationalisation for the comparative analysis of decentralised bargaining has been limited.

Labour power is unevenly structured and distributed in different national and sectoral contexts. However, from the extensive literature on power resources it is possible to identify four commonly recognised forms through which it proceeds: structural, associational, institutional, and societal power resources. We consider that all of them have a potentially prominent role in shaping and influencing the dynamics and modalities of decentralised collective bargaining. The relationship between these forms is complex, sometimes conflicting, and not simply an add-on (Schmalz, Ludwig and Webster, 2018). However, in our analysis of company cases we found no significant mobilisation of societal

power resources by trade unions and works councils. Therefore, this dimension is excluded from the analytical framework applied in this chapter, which includes:

(1) *structural power* refers to the bargaining power of the workforce derived from its location in the labour market as well as in the production process (Wright 2000). Marketplace bargaining power derives from scarce skill or competences that make them valuable to their employer and difficult to replace. Workplace bargaining power is based on workers occupying strategic positions in production, such that disruptive action will impose highs costs on the employer. In industries with high productivity and highly integrated production, workers' bargaining power is particularly elevated as the impact of work stoppages goes far beyond the workplace.

(2) *associational power* relies, unlike structural power, on the formation of collective actors (political parties, works councils, trade unions). It can partly compensate for the lack of other types of power resources (Hyman and McCormick, 2013). Union membership and voter approval in works council elections are common indicators for associational power. However, they are insufficient as a base. To become effective, numerical strength must be combined with other factors such as membership activism and participation, adequate infrastructural resources, and internal cohesion (Lévesque and Murray, 2010).

(3) *institutional power* refers to the institutional and legal supports that bolster – and restrict – union action. It may provide a substitute for dwindling associational and structural power (Hyman and McCormick, 2013). Institutional power is distinctive in that it is relatively independent of the business cycle and short-term political change (Schmalz and Dörre, 2014). It includes institutions of economic and welfare governance that impact the unions' capacity to represent workers, but also their position in tripartite arrangements, collective bargaining, and workplace representation. Labour law and industrial relations systems are crucial sources of institutional power.

The content and outline of the chapter is as follows. In a first step, sections 2 to 4 discuss a selection of key aspects related to trade union participation in and influence on the processes and outcomes of decentralised collective bargaining at company level from a cross-country and cross-sectoral comparative perspective. Section 2 presents an analysis of the institutional and legal framework of trade unions and decentralised collective bargaining, which is of great importance for institutional power. Section 3 provides an analysis of trade union coordination and social partnership, which are of great significance for generating and maintaining associational and institutional power. Section 4 discusses and analyses trade union membership, organising, and participation as a crucial resource of associational power.

In a second step, and in light of the discussion in the previous sections, Section 5 provides a comparative company case studies analysis, utilising the power resources-approach, and presents an analysis of company-level trade union practices, processes and outcomes of decentralised collective bargaining. Section 6, finally, contains some concluding remarks.

This chapter discusses developments in eight EU Member States, i.e. France, Germany, Ireland, Italy, the Netherlands, Poland, Spain, and Sweden. These countries represent an interesting institutional diversity, which can be discussed in terms of comparative typologies, such as varieties of capitalism and liberal market economies (LMEs) and coordinated market economies (CMEs) (Hall and Soskice, 2001), varieties of unionism (Kelly and Frege, 2004), and varieties of labour law and industrial relations systems (Hepple and Veneziani, 2009; Finkin and Mundlak, 2015; Barnard, 2012; Marginson and Sisson, 2004; and Bamber et al., 2021). Although these comparative typologies contain elements of simplification, they still fulfil valuable pedagogical and analytical functions. The comparative case studies analysis in Section 5 focuses on company case studies in France, Germany, and Ireland. The chapter builds on materials, analysis, and conclusions produced within the framework of a joint European-comparative research project.78

## 7.2 Institutional and legal framework of trade unions and decentralised collective bargaining

This section analyses the institutional and legal framework of trade union rights and activities and decentralised collective bargaining, which constitutes a primary source for trade unions' institutional power. The discussion focusses on the national level and cross-country comparison.

### 7.2.1 Industrial relations and institutional framework

The countries subjected to study represent the Anglo-Irish, Continental-European, Eastern-European, Nordic, and Southern-European labour law and industrial relations systems, as well as the common and civil law distinction. The variety of labour law and industrial relations systems manifests itself in differences as regards, for example, the importance of constitutional principles, the balance between legislation and collective bargaining, the degree of state influence or voluntarism, the role of the courts and case law, the degree of trade union organisation and collective bargaining coverage, and forms of employee representation and influence.

Labour law and industrial relations in Ireland, Italy, and Sweden reflect a particularly strong emphasis on voluntarism, collective autonomy, and contractual regulation of terms and conditions of employment through collective agreements and employment contracts (Paolucci et al., 2022; Armaroli and Tomassetti, 2022; Rönnmar and Iossa, 2022). For example, in Sweden, most of an employee's terms and conditions of

[78] *CODEBAR: Comparisons in decentralised bargaining: towards new relations between trade unions and works councils?*, research project funded by the European Commission, DG Employment, Social Affairs and Inclusion, and coordinated by Dr Frank Tros at AIAS-HSI, University of Amsterdam, see further https://aias-hsi.uva.nl/en/projects-a-z/codebar/codebar.html.

employment, including wages, are set by collective agreements, and there is no minimum wage legislation or system for extension of collective agreements. Autonomous collective bargaining is complemented, and strengthened, by statutory regulation on trade unions, collective bargaining, and employee influence, including information, consultation, and co-determination. In addition, most statutory regulation is 'semi-compelling', and provides room for deviations by way of collective agreements.

In France, in similarity with Spain (see further Chapter X in this book on state intervention in French and Spanish industrial relations), labour law and industrial relations are characterised by a legalistic tradition, extensive statutory regulation in working life and on trade unions, collective bargaining, and employee influence, and state intervention in industrial relations. In France, there is minimum wage legislation, and a statutory system for extending collective agreements, resulting in an almost complete collective bargaining coverage. In recent years, state intervention and statutory reform, for example, the 'Macron Ordinances' have reframed the system of employee representation and influence and introduced a compulsory division of collective bargaining topics among levels (Kahmann and Vincent, 2022).

In Germany, labour law is influenced by a legalistic tradition and characterised by an elaborate constitutional and statutory framework for collective bargaining and employee influence and workplace co-determination. At the same time, there is strong emphasis on collective autonomy and collective bargaining. There is a system in place for extending collective agreements, but in recent years fewer collective agreements have been declared generally binding. Minimum wage legislation was introduced in 2015, in response to an 'erosion of collective bargaining' (Haipeter and Rosenbohm, 2022).

In Poland, finally, labour law and industrial relations have been influenced by the processes of democratic transformation, EU enlargement, and marketisation, resulting inter alia in fragmented collective bargaining (Czarzasty, 2022).

The interplay between legislation, collective bargaining, extension of collective agreements, and minimum wage regulation is at the core of the labour law and industrial relations system, and of importance for the processes and outcomes of company-level collective bargaining. Furthermore, the adversarial or cooperative character of social partner relations, the organisation of the labour market, trade union structures, such as trade union pluralism and trade union demarcations (e.g. industrial or craft trade unions, blue-collar, white-collar or general trade unions, and political or religious affiliations of trade unions), and the degree of trade union organisation impact on the role and influence of trade unions.

The national systems for employee representation and influence differ. In single-channel systems employee influence is channeled only through trade unions. In Sweden, for instance, trade unions both negotiate and conclude collective agreements on wages and other terms and conditions of employment at cross-sectoral, sectoral, and local level, and take part in information, consultation, and co-determination at workplace level. In dual-channel systems, e.g. in France, Germany, the Netherlands, and Poland, employee

influence is channeled both through trade unions and works councils. France has witnessed a recent statutory reform of employee representation and works councils (Kahmann and Vincent, 2022), and in Poland, the impact and activities of works councils are limited (Czarzasty, 2022). In countries with well-established dual-channel systems of employee influence, like Germany and the Netherlands, the relation between trade unions and works councils at company-level can differ and be characterised either by collaboration or by competition and conflict. This in turn may impact on trade union activity and strength, and company-level collective bargaining (see further Chapter X in this book on the relation between trade unions and works councils).

### 7.2.2 Multi-level legal framework of trade unions and decentralised collective bargaining

The countries subjected to study in this chapter are, as EU Member States, covered by a common international and EU/European legal framework, which interplay with national regulation on trade unions and collective bargaining.

At international and European level, a number of legal sources, including ILO Conventions No 87, 98, and 154 and the revised European Social Charter, entail a legal recognition of fundamental trade union rights, such as the freedom of association, right to collective bargaining, and right to collective action. According to the European Court of Human Rights, the freedom of association as protected by Article 11 of the European Convention of Human Rights also comprises the right to bargain collectively and the right to industrial action.79 Furthermore, fundamental rights protection is provided by Article 28 of the EU Charter of Fundamental Rights on the right of collective bargaining and collective action.

In the EU, the European social dialogue, a collective route to legislation at EU level involving the European social partners, takes place at both cross-sectoral and sectoral level (cf. Articles 152 and 154–155 TFEU) (Welz, 2008; Marginson and Sisson, 2004). EU labour law clearly emphasises employee influence and aims for a partial harmonisation of regulation on information, consultation, and employee participation. The fundamental right to information and consultation is afforded protection by Article 27 of the EU Charter of Fundamental Rights, and extensive regulation on this topic is found inter alia in the Directives on transfers of undertakings, collective redundancies, European Works Councils, and a general framework of information and consultation.80

The EU proposal for a Directive on adequate minimum wages in the EU have implications for national labour law and industrial relations, and trade unions and company-level collective bargaining (COM(2020) 682 final). The aim of the Directive is to establish a framework for setting adequate levels of minimum wages, and access of workers to

[79] See, for example, the cases of *Demir and Baykara v Turkey*, judgment of 12 November 2008, and the case of *Enerji Yapi-Yol Sen v Turkey*, judgment of April 2009.

[80] Directives 2001/23/EC, 98/59/EC, 2009/38/EC, and 2002/14/EC.

minimum-wage protection, in the form of wages set out by collective agreements or, where it exists, in the form of a statutory minimum wage. The Directive also includes provisions on measures to promote collective bargaining.81

In the EU law context, fundamental trade union rights and freedom of association, collective bargaining, and collective action have also been challenged. In the much-debated Viking and Laval cases82 the Court of Justice of the EU held that the exercise of the right to collective action constituted a restriction on the freedom of establishment and freedom to provide services, respectively, and needed to be justified.

Fundamental trade union rights and collective bargaining can also be challenged by 'states of emergency', such as economic crises and pandemics. During the global financial crisis, many EU Member States put crisis-related measures in place, and subsequently the 'eurozone' and sovereign debt crisis, resulted in far-reaching austerity measures and deregulatory labour law and industrial relations reforms in many Member States. These developments, and the role played by the 'Troika' (the European Commission, the European Central Bank, and the IMF) and 'bail-out' packages, have been criticised, and legally challenged at several levels, in national constitutional courts, in the Court of Justice, and before international human rights bodies, such as the ILO and the Council of Europe (Deakin and Koukiadaki, 2013; Kilpatrick, 2014).

The Covid-19 pandemic has challenged the foundations of EU integration, and principles of human rights, democracy, solidarity, and free movement, and also resulted in economic crisis and urgent tasks for labour markets and social welfare systems. At the same time, collective bargaining between social partners has, in several Member States, played an important role in handling the pandemic. In Sweden, for example, quick and flexible adaptations to national, sectoral collective agreements were made, thousands of local collective agreements on short-time work were concluded, and crisis management agreements were put in place in the public health-care sector (Rönnmar and Iossa, 2022; ILO, 2022: 139 ff.).

At national level, key issues related to trade unions, collective bargaining and employee influence are regulated by a multitude of legal sources, including constitution, legislation, collective bargaining, and case law, depending on the characteristics of the labour law and industrial relations system. This legal framework is of great importance for trade union activities and strength, and company-level collective bargaining.

Regulation on trade unions includes issues of freedom of association, formation and representativeness of trade unions, and internal affairs of trade unions. The

[81] The Directive includes guarantees for national systems of industrial relations built on autonomous collective bargaining (cf. Article 1.1.–1.3.). Still, the proposal has been strongly and jointly opposed by, for example, the Swedish social partners, who see it as posing a fundamental threat to the Swedish autonomous collective-bargaining system and key principles of wage formation and mechanisms for wage-setting. In June 2022, the presidency of the Council and European Parliament negotiators reached a provisional political agreement on the draft Directive.

[82] See Case C-438/05 *Viking* and Case C-341/05 *Laval*.

representativeness of trade unions can be the subject of statutory regulation, as in France (Kahmann and Vincent, 2022). Instead, in Sweden, there are minimal formal requirements for forming a trade union, and recognition of trade unions is automatic. There are no statutory or case law-based procedures or criteria for determining the representativity of trade unions. All trade unions enjoy the same basic statutory rights to freedom of association, general negotiation, collective bargaining, and collective action, and further rights are afforded to 'established trade unions', i.e. trade unions that are currently or customarily bound by a collective agreement (Rönnmar and Iossa, 2022). Furthermore, regulation on rights to time-off, training, and practical facilities for trade union representatives is important support for trade union activities.

Regulation on collective bargaining includes the right to – and sometimes obligation of – collective bargaining, and provisions on actors, processes, and outcomes of collective bargaining. The definition and legal effects of collective agreements are key and vary between the countries subjected to study. In Germany and Sweden, for example, collective agreements are legally binding, both for the contracting parties and for their members. A collective agreement has both a normative and mandatory effect. In Sweden, an employer bound by a collective agreement is obligated to apply this agreement to all employees, irrespective of trade union membership. Furthermore, unless otherwise provided for by the collective agreement, employers and employees being bound by the agreement may not deviate from it by way of an individual employment contract. In Germany, deviations from the collective agreements are permissible if they are favourable to the employee (Haipeter and Rosenbohm, 2022; Rönnmar and Iossa, 2022). In contrast, in Ireland, a collective agreement is not legally binding (Paolucci et al., 2022). Systems for extension of collective agreements are established by way of statutory regulation in, for example, France and Germany.

The legal scope for company-level collective bargaining and its size, as well as the relation between collective agreements at different levels, is of key importance for the development of decentralised collective bargaining and the role and activities of trade unions at company-level in this context. The relation between collective agreements and other workplace agreements are determined by way of statute, collective bargaining, or case law on, for example, principles on the binding effect of the collective agreement, favourability, opening clauses, and derogations.

Regulation on employee influence includes rights to information, consultation, and co-determination, and the interplay between EU and national law. The content of the regulation also differs depending on the single- or dual-channel system of employee representation in place, and the functions and activities of trade unions and works councils, respectively.

## 7.3 Trade union coordination and social partnership

This section deals with the issues of trade union coordination and social partnership in the context of increasingly decentralised (and in some cases like Poland, even disintegrating) collective bargaining. In this context, trade unions' mobilisation of associational and institutional power resources is of particular importance. The discussion focusses on developments in Ireland, France, Germany, Poland, and Sweden.

Trade union strategies towards collective bargaining vary, depending on the institutional context of the industrial relations system at the national level and sectoral specifics at the industry level. As a result, there are different approaches to coordination and social partnership. This is also conditioned by state policies and attitudes of employers (see further Section 2).

In the case of Ireland and Poland, two countries with a pluralist type of industrial relations system (even though one belongs to the Anglo-Irish system, and the other to the Eastern-European one), collective bargaining is substantially decentralised, thus confined to the level of company with single-employer collective agreements dominating. Absence of sectoral (industry-level/multi-employer) bargaining has been compensated by the presence of tripartite institutions engaged in social dialogue, although its trajectories have differed substantially.

In Ireland the social partnership system, involving the state, central-level business associations and the Irish Trade Union Congress was established with the conclusion of the Programme for National Recovery in 1987. The system, based on a principle of a trade-off between wage and tax moderation, survived for twenty years but collapsed following the 2008 crisis. The collapse of social partnership appears to be a pivotal point for Irish industrial relations. In the post-crisis years, 'the Irish Congress of Trade Unions and the Irish Business and Employers' Confederation agreed a "protocol" to guide collective bargaining in private and commercial state-owned firms that prioritised job retention, competitiveness, and orderly dispute resolution' (Paolucci et al., 2022).

In Poland tripartite institutions were established in the 1990s as a part of the aquis in course of preparations for EU-membership (Vaughan-Whitehead, 2000) but their development was flawed by subsequent crises (leading to a de facto demise of the central tripartite body in 2013, re-established in 2015) and persistent internal imbalance of power (weak social partners versus dominant government), a phenomena labelled 'illusory corporatism' (Ost, 2011). The only substantive prerogative of tripartite bodies through which trade unions can exercise wage moderation are national minimum wage negotiations, yet since the adoption of the Minimum Wage Act of 2003 they hardly ever succeeded.

However, besides certain similarities, there are substantial differences between the two countries. While in Poland there is no bargaining coordination, neither vertical nor horizontal, it is present and quite vibrant in Ireland. Coordination in Poland is arguably hindered by the advanced pluralisation (three national-level confederations with various political leanings), decentralisation and fragmentation of trade union movement,

while in Ireland trade union federations like SIPTU (pharmaceutical sector), Madate (retail sector) and FSU (financial sector), '[i]n the absence of centralised collective bargaining […] resorted to their own organisational resources to empower shop stewards and revitalise their company-level representation structures' (Paolucci et al., 2022: 70). Vertical coordination in the private sector is informal, yet relevant. Horizontal coordination is observed, albeit not in all sectors. It is, for example, it is non-existent in the food processing industry. In the dynamic perspective, it seems that following the demise of the social partnership system, Ireland has moved away from the neo-corporatist paradigm (although the Irish model, even in its prime received criticism for its ambiguous character, being called 'neo-liberal corporatism, see: Boucher and Collins, 2003) towards a self-regulating system, which encourages comparisons with Sweden.

Sweden epitomizes the Nordic system, and yet shares certain similarities with Germany, through a strong tradition of corporatism, which sets them the apart from the superficial neo-corporatist arrangements in Ireland and Poland. Thus, absence of tripartism in Sweden can be explained by a robust tradition of autonomous (bipartite) regulation of the labour market and industrial relations, with little interference by the state. This is reflected in the strategies of trade unions, which are focused on negotiating with employers at sectoral level but leave room for 'organised decentralisation' via successful negotiation and practical implementation of local collective agreements. Extensive employee representation and information, consultation, and co-determination at local level are also of great importance (Rönnmar and Iossa, 2022). In Swedish case studies from the manufacturing and retail sectors, the white-collar trade union Unionen emphasises two important strategic choices made in the mid-1990s: to strive for national, sectoral collective agreements with substantive regulation on terms and conditions of employment, and to prioritise collective bargaining before legislation. The blue-collar trade union IF Metall emphasises the importance of creating fruitful conditions for local collective bargaining and setting obligatory minimum standards, and using fallback clauses to safeguard the level of wages and terms and conditions of employment and counteract potential inequality in bargaining power (Rönnmar and Iossa, 2022). As for coordination, a meaningful illustration of cross-sectoral coordination is provided by the formation of the Swedish Unions within Industry (Facken inom Industrin) by blue-collar and white-collar/professional-university graduate trade unions in the private industry sector in 1996 (Rönnmar and Iossa, 2022). Swedish trade unions perceive the two dimensions of collective bargaining (national, sectoral and local) as complementary. Furthermore, the Swedish cross-sectoral, social-partner agreement on security, transition, and employment protection which was concluded in 2020 and 2021, also resulting in legislative reforms, can be seen as a strengthening of social partnership and autonomous collective bargaining (Rönnmar and Iossa, 2022).

While sharing some characteristic with Sweden, in terms of tripartism largely missing from the national system of industrial relations (arguably due to the federal state structure where locus of control is mainly laid at the level of a constituent state, i.e. Land), Germany presents a case of a dual-channel system. Trade unions do not operate in a

workplace, and employees are voiced only by a works council. Trade unions' main purpose and focus is collective bargaining. So-called free collective bargaining and workplace codetermination involve different actors on the employee side, and constitute two levels of labour regulation. This is a key factor, determining the strategies of trade unions. Trade unions, on the one hand, retain a monopolistic position in collective bargaining, while works councils, on the other hand, are responsible for the implementation of collective agreements at the workplace level. Thus, the two types of bodies ought to cooperate. Facing decentralisation of collective bargaining, trade unions have chosen rather to get involved in the process than to stay out of it, reasoning that organised decentralisation is better than uncontrolled (so-called 'wild') one. As a result, they have engaged in number of endeavours in partnership with works councils, the meaningful example of which is derogation from the sectoral agreement in the metalworking industry, where the works council and IG Metall acted together at company level in implementing the agreement derogating from the industry-level agreement (Haipeter and Rosenbohm, 2022). German unions have also been forced to respond to the employers' strategy of opting-out of collective bargaining by creating a special membership status (OT – ohne Tarifbindung) by employer associations. The trade unions' strategic responses involve primarily union organising and new forms of member participation (Haipeter and Rosenbohm, 2022) (see further Section 4).

France represents a specific variation of the Continental-European system, due to a long tradition of state involvement in industrial relations (that could be traced back to the dirigisme paradigm in public policy). As a result, the national system of industrial relations in France is often labelled statist/etatist. This played a decisive role in promoting collective bargaining and sustaining it at industry-level with the 'favourability principle' playing a major part. Tripartism has been present in France since the early post-war years. With one of the lowest density rates in the EU, French trade unions' legitimacy is in large part facilitated by their bargaining activities. Since 2017 coordination of bargaining between levels is no longer based on the 'favourability principle', but rather on the complementarities of bargained topics (Kahmann and Vincent, 2022). As exemplified by the electrical sector, the 'role of the industry federation in company level bargaining may vary to some extent from one trade union confederation to another, but the general picture is that of a loose coupling between union actors at both levels' (Kahmann and Vincent, 2022: 31). The picture is similar for the metal and retail sector. Inter-union coordination, given the pluralisation of union movement, is weak but may vary contextually (at company level).

## 7.4 Trade union membership, organising, and participation

Recruiting members, developing them into new activists and encouraging participation at different levels are at the heart of trade unions' associational power. This section analyses the role of trade union membership, organising and participation in the context of decentralised collective bargaining in a cross-national perspective. It focusses on the evolution of union density and the renewal of union approaches to collective bargaining.

### 7.4.1 Cross-country differences in trade union membership

Despite cross-country differences in meaning and significance of union membership, a common rule applies: the likelihood of successful worker representation increases with the degree of organisation of workers (Schmalz and Dörre, 2014). To measure and compare workers' associational power, union membership and in particular membership density is an important, yet imperfect, indicator.

Table 1 presents trade union density for the eight countries under study. Variation is considerable. Union density reaches from 10.8 per cent in France to 65.2 per cent in Sweden. While density has been on the decline almost everywhere in Europe since the 1980s, its rate differs significantly across countries. It is strongest in Ireland and Germany where it has more than halved since 1980. Spain is the only country in the panel data in which density has remained stable, albeit at a low 12.5 per cent. It remains highest in Sweden at 65.2 per cent. Despite declining union density, collective bargaining structures have remained largely in place in continental (Western) Europe, albeit at the price of introducing considerable flexibility. Except for Ireland, Germany and Poland, coverage rates have resisted decline and remained high over the last two decades (Table 1).

**Table 1: Trade union density and bargaining coverage in eight EU-countries***

| | Union density | | Bargaining coverage |
|---|---|---|---|
| | 1980 | Most recent | Most recent |
| France | 18.6 | 10.8 | 98 |
| Germany | 34.9 | 16.3 | 54 |
| Ireland | 57.1 | 26.2 | 34 |
| Italy | 49.6 | 32.5 | 100 |
| Netherlands | 34.8 | 15.4 | 75.6 |
| Poland | - | 13.4 | 13.4 |
| Spain | 13.3 | 12.5 | 80.1 |
| Sweden | 78.1 | 65.2 | 87.7 |

Source: OECD/AIAS/ICTWSS database, based on national sources (Visser, 2021).

It is noteworthy that membership decline has been uneven also across sectors, occupations, and companies. In Germany, for example, the automotive industry managed to keep union

density at high levels of over 50 per cent, whereas in retail it strongly declined after several well-organised chains went bankrupt. Membership is still significant in the privatised postal, telecommunication and transport services, but unions fail to reproduce this pattern amongst new market competitors (Birke and Dribbusch, 2019). The increase in the proportion of women in union membership has not been sufficient to offset the effects of the loss of male members in terms of density.

Most analyses of union density have focussed on economic factors such as the level of (un)employment or movements in prices and wages (see: Hyman and McCormick, 2013). However, such approaches fail to explain the often counter-cyclical trends in Northern Europe that can be best explained by the unions' key role in the administration of unemployment benefits. Hence, institutional factors are also important, and many comparative analyses have indeed highlighted the legal framework and government policy as well as general support for union security as determinants of union density. Clegg (1976) insists on the significance of the specific industrial relations institutions, namely the structure of collective bargaining. Membership density is high where the extent of bargaining – the proportion of workers in a plant, industry or country covered by an agreement – is high. But, if there is membership decline, do union approaches to bargaining have a role in this? And, if these are a relevant factor, is it possible to adapt them and use them as an opportunity to revitalise unions and works councils, thereby potentially compensating for the loss of institutional and structural power resources in bargaining?

### 7.4.2 Trade unions' organisational responses to the decentralisation of collective bargaining

The discussion about the role of membership and activism in a changing context for collective bargaining first came to the front in the 1990s when certain U.S. unions saw the 'organising model' as a response to persistent membership decline, contrasting it starkly with the dominant 'servicing model' to collective bargaining (Voss and Sherman, 2000). In European trade unions, this debate was received selectively or did not filter through from academia (Thomas, 2016). Trade unions have generally hesitated to review their practices with regard to membership in the context of decentralised bargaining. Germany and Ireland are an exception to this rule in that they developed distinctive participative approaches.

#### 7.4.2.1 Membership participation and organising: an uneven situation

Trade unions share an ethos of internal democracy that extends to collective bargaining. It supposes a bidirectional relationship between union negotiators and members. Ideally, union members participate in the formulation of claims, the ratification of draft agreements and their follow-up. They may also participate in negotiation processes, be it through adjusting claims or industrial action. Beyond such ethos, however, there is significant variation in trade union approaches to collective bargaining and democracy, between countries but also sectors and unions. Such variation highlights differences in social relationships between the constituent parts of the union (members, activists, lay officers,

full-time officials). Müller et al. (2018), e.g., make an analytical distinction between managerial, professional, and participative relationships in bargaining.

Out of these three ideal-types, only the 'participative relationship' considers members as potentially active participants in collective bargaining alongside professional union staff and leaders. Participative relationships tend to be well represented in countries with a strong union tradition in collective bargaining (Müller et al., 2018: 650). However, despite the persistence of such traditions in Italy (Armaroli and Tomassetti, 2022), Sweden (Rönnmar and Iossa, 2022) or France (Kahmann and Vincent, 2022), in neither of those three countries membership participation and organising have been prominent in redefining trade union strategies in relation to decentralised bargaining.[83] To be sure, such approaches are not easy to implement since they can question the union's traditional role in industrial relations (Rehder, 2008) and require the restructuring of organisational resources. Also, decentralised union democracy has been dicussed as precluding overall strategic direction and potentially detrimental to union efficiency (see: Hyman and McCormick, 2019). Maybe more fundamentally, unions may not feel an urgency to develop membership and activism as they see themselves in a situation of relative institutional security, be it in the form of high bargaining coverage or above-average union density.

Still, innovative approaches to membership and activism can be identified in Ireland and Germany - two countries that have been hit particularly hard by the transformation of collective bargaining. These approaches can be characterised as participative as they share an emphasis on strengthening the participation of membership throughout the different phases of the decentralised bargaining process and rely on robust feedback mechanisms between members, activists and union leaders. However, unlike more 'radical' bottom-up approaches to organising, union staff retains the leading role in coordinating action between levels and actors.

The remainder of this section focusses on these approaches. Both converge in that they conceive the decentralisation of collective bargaining as an opportunity for strengthening union and works council vitality at company level. Yet, the rationale underlying the decision to develop such an approach varies, reflecting profound differences in collective bargaining context. In Germany, IG Metall promotes extended membership participation to assure, first and foremost, the quality and legitimacy of derogatory deals with management. In Ireland, SIPTU's efforts to reinforce membership participation in

[83] This is not to say that problematic evolutions in terms of membership and bargaining coordination cannot be identified. By negotiating alongside the workplace representation bodies, local (and sometimes national) Italian trade unions have maintained a degree of control over company bargaining. The lack of bargaining depth at this level as well as increased competition with 'outsider' unions may however be perceived as a problem (Armaroli, 2022). In large French business groups, company union delegates enjoy much autonomy from their union, resulting in low levels of union information and control over company bargaining. Activism and membership are often limited to elected worker representatives, feeding into the much-observed poverty of company bargaining (Kahmann and Vincent, 2022). In Sweden, unions largely oversee what is negotiated at company-level. Union density stands at about 65 per cent, but there are signs that the weakening of local union clubs entails problems for the pursuit of company bargaining (Rönnmar and Iossa, 2022).

company bargaining represent a response to the breakdown of national social partnership and a condition for establishing pattern bargaining.

#### 7.4.2.2 IG Metall: Assuring the quality of derogatory deals

In the German metalworking and electrical industry, the decentralisation of collective bargaining mainly involves derogations from regional sectoral agreements. Already in the late 1990s, IG Metall, Germany's largest industrial union with 2.2 million members, began experimenting with increased membership participation in local negotiations with management over deviation (Turner, 2009). As derogation can entail a lowering of terms and conditions, at least temporarily, the core idea of the new approach is that members would be more receptive to such an outcome if they were involved in the process.

Three forms of participation characterise IG Metall's approach to negotiating derogations (Haipeter and Rosenbohm, 2022): ongoing information of trade union members through meetings during negotiations; member participation in company-level union bargaining committees; and, crucially, votes by members on whether to start negotiations and whether to accept a negotiated outcome. Experience has shown that members who are involved are much more likely agree with the outcome of the process. There has also been a further, and largely unexpected, effect, however. In many cases, the union has been able to recruit new members as employees have wanted to participate and have a voice (Haipeter, 2010). Given these unexpected results, in 2006 the union's district organisation in North Rhine-Westphalia demanded that certain benefits should be available for union members only.

In retrospect, experiences with derogations were the starting point for a 'member-oriented offensive strategy' that IG Metall developed in the early-2010s (Haipeter and Rosenbohm, 2022). This involved tying the budgets of IG Metall's organisational units to income from membership dues, underpinned by annual operational objectives and target membership figures. Member orientation thus became a cross-sectional strategy and a benchmark for measuring success across the full spectrum of the union's activities, a process in which the experiences of negotiating derogations played a decisive role (Hassel and Schroeder, 2018). This strategy can boast some success. Unlike most other unions affiliated to DGB (Deutscher Gewerkschaftsbund), IG Metall has consolidated its membership levels over the last decade.

#### 7.4.2.3 SIPTU: Rebuilding bargaining strength from below

Since the collapse of national social partnership in 2009, the main levels at which collective bargaining takes place in Ireland are the company and the plant levels. The breakdown of centralised bargaining triggered SIPTU (Services Industrial, Professional and Technical Union; general union), Ireland's largest affiliate to the ITUC (Irish Trade Union Congress) with 180,000 members, to strategically target strongly unionised companies in commercially buoyant export sectors, such as the pharmaceuticals, chemicals, and medical sectors. A main objective of the renewed approach to collective bargaining was the coordination of

the bargaining system 'from below' (Paolucci et al., 2022). It was intended that the pay deals reached in strongly unionised firms in these sectors would set the trend for the restoration of collective bargaining on pay rises after a period of widely pervasive concession bargaining.

The participation of union members in decentralised bargaining is key to SIPTU's strategy (Paolucci et al., 2022). Targeting companies characterised by favourable conditions, both in terms of workers' structural power and established union presence, facilitates officials' work towards re-engaging union members at the workplace level. Meetings with members are organised to discuss issues of concern and shape the bargaining agenda. These are followed by regular surveys to assess workers' priorities over time. In some rare instances, small campaigns, involving overtime bans and work-to-rules – whereby workers refused to give their input into companies' teams and structures – are organised. Meanwhile, SIPTU used its internal training structures to prepare sector-level officials and shop stewards for company-level bargaining by enhancing their negotiating skills. To assure coordination between companies, union officials, each specialised in a specific company, collaborate daily, primarily by sharing information on the status of pay talks in relevant workplaces.

At workplace level, the renewed approach to bargaining has led to rebuilding organisation and representation at the firm level and the revitalisation of membership participation after 22 years of centralised tripartite bargaining (Paolucci et al., 2022). These days, all major Irish unions soon have accepted the return to decentralised pay bargaining as an opportunity to reconnect with members and to demonstrate unions' effectiveness in gaining pay rises.

## 7.5 Company-level trade union practices, and processes and outcomes of decentralised collective bargaining: examples from France, Ireland and Germany

This section analyses how, at company level, trade unions and works councils deal with the evolving environment of collective bargaining. What practices can be observed? What power resources do they rely on and combine? How do they impact bargaining outcomes and processes at this level? To answer these questions, this section pursues a cross-industry and cross-country analysis of three companies, building on the conceptual tools and analyses developed in the preceding sections. To capture the variety of company bargaining, it was decided to vary sector (pharmaceutical and manufacturing industries) as well as type of market economies: the three company cases belong to the liberal (Ireland), coordinated (Germany) and (post) statist (France) variants of capitalism. In all of them, company bargaining is significant and occurs either constantly or irregularly. The respective material is taken from Paolucci et al. (2022), Haipeter and Rosenbohm (2022) as well as Kahmann and

Vincent (2022). Rather than generating testable hypotheses about trade union involvement and impact in company collective bargaining in Europe, the aim of this section is to demonstrate, more modestly, the usefulness of a power resources-based approach as a research heuristic in comparative studies.

### 7.5.1. Electric: the weight of statutory prescriptions

Electric is a French multinational that is a global leader in the provision of electrical energy and automation solutions for private homes, buildings, and industry. It employs 130,000 people worldwide and 15,500 in France. Its internal bargaining structure is complex. Other than at group-level, bargaining also takes place at intermediate (individual subsidiaries or their regrouping) and local (plant) levels. Bargaining activity is intense. Between 2019 and 2021, some 160 company agreements were signed. There is also the sectoral agreement in manufacturing, but its significance is limited for management and company union delegates, except for the sector's generally binding job classification scheme. At European level, there is a framework agreement on the anticipation of organisational change.

Reflecting the traditionally strong role of interventionism in French industrial relations, the (multi-) annual statutory obligations for collective bargaining channel and set the pace for trade union activity at Electric. They cover a wide array of topics such as wages, equal opportunities as well as workforce management and career trajectories. This requires specialist negotiating skills. The five representative unions at Electric have supported the development of company-specific resources to deal with bargaining imperatives. The agreement on union rights goes beyond the legal requirements in terms of time-off, number of union representatives, and union budget. Electric management also provides specific training for union negotiators, including a private business school degree co-designed by the company. The wealth of company specific resources contrasts with those of the sectoral unions. Their ties with the unions at Electric are weak and there is very little coordination between company and sectoral bargaining.

Unions at Electric – and to some extent also management – find it difficult to take some distance from the bargaining agenda determined by public policy. Considerations of compliance tend to dominate over the search for company-specific solutions. The group level agreement on strategic workforce planning (GPEC) is a case in point. Initially adopted by Electric HRM as an ambitious social partner tool to prevent social plans, its development has progressively come to a standstill since the statutory obligation in 2005 to negotiate such agreements. The tendency towards formalism in bargaining also links to the scarcity of associational power resources at Electric. Data on union membership are unavailable, but interviewees believe that it has been declining over time. Activism tends to be restricted to members who hold a representative mandate. Industrial action is limited to plant closures and the partial centralisation of collective bargaining at group level, endorsed by the unions, has further contributed to pacifying industrial relations.

Bargaining processes and outcomes appear satisfying to the unions at Electric. Terms and conditions are much better than those fixed by the sectoral agreement, even if

the unions underline a tendency towards the individualisation of wage rises. Workers' favourable structural power resources are key to management's longstanding investment in collective bargaining: Most workers at Electric are highly qualified engineers and managerial staff (cadres) who operate in high autonomy working environments. As the labour market for such personnel is tight and organisational restructuring is frequent, management uses collective bargaining to guarantee worker satisfaction and social peace.

### 7.5.2 PharmCo: a regain of local bargaining power and skills

The mobilisation of power resources in decentralised bargaining reveals quite distinct patterns at PharmCo site in Ireland. It produces food chemicals and comprises three plants. The diversified, and vertically integrated, organisational structure has sheltered this PharmCo facility from the threat of relocation and contributed to an increase of its workforce. The site employs over 600 workers.

The company recognises trade unions and meaningful collective bargaining is in place, despite the lack of strong institutional support mechanisms. Most unionised workers in the production plants– around 260 laboratory and quality control workers, supervisors, operatives, and warehouse workers – are represented by SIPTU (Services Industrial, Professional and Technical Union), while 50 craft workers are Connect members. Union density amounts to over 50 per cent, well beyond the standards at Electric. Up to 2016, pay deals at PharmCo were comparable to median pay rises in the sector. However, in the case of the agreement negotiated in 2018, the 3.6 per cent pay agreement negotiated by unions at PharmCo significantly exceeded the 2.5 per cent median rise in the wider chemicals, pharmaceutical and medical devices sector – a trend not repeated in the 2020 pay agreement. Due to the company's remarkable financial performance, a main challenge faced by the union is to temper members' expectations regarding pay increases. Given these difficulties, the union has sought to improve the overall reward package by negotiating new items, such as extra paid holidays and additional health insurance benefits.

SIPTU's bargaining tactics at the site are strongly marked by the strategy developed by SIPTU at national level as a reaction to the loss of institutional power resources linked to the collapse of the social partnership. It evolves around re-engaging union members at the workplace, assessing workers' bargaining priorities as well as rebuilding local negotiating skills. The benefits of such an effort to strengthen associational power resources are apparent at PharmCo where a formal workplace representation structure called the 'Committee' has been established. It comprises 10 shop stewards, each representing a specific division of the company. It is led by a chairman, who is elected by the members, and by a sector-level trade union official, external to the company, who is directly employed by SIPTU. The Committee is the locus for all the discussions that are relevant to collective bargaining. While the Committee defines a shared bargaining agenda, considering the view of all the members previously surveyed, only the Chairman and the Sectoral Official sit at the actual bargaining table. The role of local negotiators has dramatically changed as bargaining activity intensified and shop stewards directly regulate the terms and conditions

of employment. To strengthen shop stewards' bargaining power, SIPTU has also invested significant resources in developing their negotiating skills through training.

Given the significance of the company in terms of union density, size, and profitability, SIPTU considers PharmCo a pattern setter in collective bargaining. Coordination with wider sectoral bargaining activities is strong. The Chairman and the union official at PharmCo rely on the SIPTU sector-specific pay target that is then communicated to all union members, along with other potential issues for collective bargaining. Meanwhile, the Chairman and the sectoral official evaluate the financial position of the company. If PharmCo rejects SIPTU's pay proposal, it must bring evidence of its inability to afford the pay increase. If the company refuses to provide evidence, the LC (Labour Court) might get involved. Its recommendations are not binding, but PharmCo has generally accepted them.

### 7.5.3 Lights: a sectoral agreement that constitutes the frame for derogration

Lights is a medium-sized company with about 5,500 employees worldwide, of which around 1,500 are employed at the German headquarters. Out of these, about 800 are blue-collar production workers, the remaining workers are white-collar employees working in administration, development, and sales. The company produces luminaires and offers system solutions for lighting. It has both industrial and private customers and is represented by sales subsidiaries almost worldwide. Unlike the French and Irish cases, decentralised bargaining is not the rule at Lights, but limited to instances of derogation from the sectoral agreement to which the company is bound via its membership in the employer association Gesamtmetall.

In late 2019, Lights management approached the works council and IG Metall with the request to negotiate a derogation agreement. The demand occurred against the background of the company's struggle with the transformation of the lighting industry. The technological conversion to LED luminaires had resulted in specific long-term challenges: a high volume of investment that delivered only weak returns over a sustained period, an increased need for additional skills, and the digitalisation of production and products. Unlike instances of 'wild decentralisation', management's request was formulated in the institutional framework of the 'Pforzheim agreement' that regulates derogations from industry agreements in the metalworking and electrical industries. This collective agreement guarantees workers representatives information rights vis-à-vis management and the place of the union as a bargaining partner. Worker representatives checked the company's situation and realised that management's request was not without foundation. They believed that the associational power resources in the company were sufficient to justify the launch of a bargaining process that would be meaningful for workers, too.

Building on IG Metall's guidelines on worker participation and organising in bargaining over derogation, the union and the works council then invited the union members to vote on whether negotiations should be initiated. By underlining their open-ended nature (previous derogation negotiations had come to nothing on two occasions), they gained the support of well over 90 per cent for opening negotiations. To start off,

worker representatives formed a collective bargaining committee. This body then appointed a smaller negotiating committee, led by IG Metall but also including six works councillors from different parts of the company. Prior to this, the committee and the local union administration had produced an employee questionnaire to gauge the workforce's bargaining priorities.

Negotiation over derogation took place between the negotiating committee, Lights management as well as a representative of the regional employers' association. In line with IG Metall's recommendations, workers' access to information played a strategic role in the negotiation process, although it was severely hampered by the pandemic. The union and works council used digital communication channels to disseminate information on the progress of negotiations. As production workers do not have access to digital information at the workplace, worker representatives also placed emphasis on providing information via leaflets and letters to members. In the end, union members voted in favour of the agreement by a clear majority. Its duration is limited to five years. It exchanges the convergence of working-time between different groups of workers and the postponement of agreed industry-level pay increases against, amongst other things, investment commitments, an apprentice quota, the waiver of compulsory redundancies, the participation of the works council in make-or-buy decisions as well as the establishment of a joint task force supervising the implementation of the agreement.

### 7.5.4 Case comparison

In all three company cases, decentralised bargaining occurs in the context of the change and weakening of bargaining structures at sectoral level. It is either limited to incidences of derogation (Lights) or a continuous and longstanding practice (Electric; PharmCo).

In all three cases, its outcomes are judged satisfying by worker representatives. At PharmCo and Electric, the relative scarcity of qualified staff comforts the workforce's structural power and accounts for management's view on collective bargaining as a tool to improve the company's attractiveness as an employer and to guarantee social peace and productivity. At PharmCo, the combination of structural power with the mobilisation of associational power resources allows for stronger dynamics in bargaining and the positioning of the site as a pattern setter in collective bargaining. Enhancing union negotiators' skills, membership participation and cross-company coordination by the union are key to this. The derogation agreement at Lights suggests that the works council and the union partly made up for the workforce's lack of structural power by effectively threatening management to refuse one-sided concessions. Similar to SIPTU, information, membership participation and organising were crucial for this relative success.

Bargaining processes, on the other hand, vary considerably between the cases. Differences in institutional power resources seem to play a major role in this. Decentralised bargaining at Electric is strongly marked by the prescriptions of public authorities and therefore tends towards formalism. This contrasts notably with bargaining processes at PharmCo which are more contingent due to the absence of such institutional prescriptions.

At Lights, the bargaining process is to some extent framed by the provisions contained in the sectoral framework agreement on derogation, while remaining open about the issues which are addressed. In both the Irish and the German cases, union efforts to strengthen their organisational power levers in decentralised bargaining have entailed the strengthening and streamlining of internal deliberative processes in company bargaining.

## 7.6 Concluding remarks

This chapter analyses the role of trade unions in decentralised collective bargaining, and trade union participation in and influence on the processes and outcomes of collective bargaining at company level. The analysis is based on developments in eight EU Member States and highlights a multitude of similarities and differences at national, sectoral, and company levels as regards trade union access to and mobilisation of structural, associational, and institutional power resources in the context of collective bargaining decentralisation. The focus on company-level collective bargaining, including specific company case studies, reveals current and future challenges as well as potential for innovation in decentralised collective bargaining. This study and analysis is exploratory and does not aim at building, developing, or testing theory. This chapter contributes to the research discourse on decentralised collective bargaining in a novel way through its operationalisation of the power resources-approach to company-level collective bargaining.

The analysis of the institutional and legal framework of trade unions and decentralised collective bargaining (Section 2) highlights that international and EU labour law provides a strong legal recognition for fundamental trade union rights, including freedom of association and right to collective bargaining. However, trade unions' access and possibility to mobilise institutional power resources, not least in company-level collective bargaining, depend to a large extent on the national institutional and legal context. Thus, the characteristics of the national labour law and industrial relations system, which vary greatly among the countries studied, create institutional power resources of various strength, that the trade unions can – and do – mobilise in order to influence the processes and outcomes of company-level collective bargaining. Key aspects in this regard are, for example, the interplay between EU law and national labour law, the balance between legislation and collective bargaining, the degree of state influence or industrial relations voluntarism, the forms of employee representation and influence, and the legal regulation of trade unions and collective bargaining.

Trade union coordination and social partnership (Section 3) are important in collective bargaining. Trade unions' capacity to coordinate across levels of collective bargaining and establish social partnership relations with employers are related to their successful mobilisation of institutional and associational power resources. These power resources partly stem from the characteristics and traditions of national industrial relations

systems. The analysis shows that trade union coordination and social partnership (in an autonomous, bipartite form) are frequent in, for example, Germany and Sweden, where the institutional and legal frameworks for industrial relations enable trade unions to achieve the objective to coordinate and establish partnerships. The result is trade unions' influence on the processes and outcomes of company-level collective bargaining. In national industrial relations contexts marked by disorganised decentralisation and lower degrees of coordination (or lack thereof), for example, in Ireland and Poland, trade unions can mobilise associational and structural power resources to achieve a certain degree of coordination and social partnership and compensate for a lack of institutional and legal support. In national industrial relations contexts characterised by state intervention, for example, in France, trade unions can rely on state intervention to achieve the objective of extensive coverage and effective enforcement of collective bargaining, wherefore trade union strategies and activities of coordination and social partnership are less frequent.

The analysis of trade union membership, organising, and participation (Section 4), illustrates that despite the overall decline in trade union density and the increasing importance of guaranteeing the coordination of collective bargaining across units and levels, relatively few national trade unions have developed membership-focussed approaches as a response to the decentralisation of collective bargaining. Such limited engagement has many sources, one of them being perceived institutional security in the form of high trade union density, extensive collective bargaining coverage together with a strong legal framework. Conversely, innovation in membership approaches has been strongest were the unions' decline of institutional power has been the most pronounced, resulting from the erosion of centralised coordination in collective bargaining. Where trade unions took on the challenge of organisational change, they conceived decentralisation as an opportunity to consolidate and even improve their power position. Evidence points to converging benefits in the form of renewed deliberative vitality, new members, and a reinforced coordination capacity.

The discussion on company-level trade union practices, processes and outcomes of decentralised collective bargaining (Section 5) emphasises the importance of structural power resources for the outcomes of company bargaining, but also shows that institutional and associational power resources may complement the lack or presence of such structural power resources. Thus, it emphasises the potential interchangeability of structural, associational, and institutional power resources. It notably shows that the mobilisation of associational power in company bargaining, at least under otherwise favourable structural conditions, has the potential to offset the effects of a loss of institutional power in terms of social partnership regulation.

Overall, trade unions are key actors in decentralised collective bargaining. Despite a strong European trend towards decentralised collective bargaining, sometimes in disorganised and fragmentised forms, the company case studies and the analysis show that trade unions have access to, and can mobilise, structural, associational, and institutional

power resources. As a result, they can influence the processes of company-level collective bargaining and achieve quality outcomes.

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