

DIADSE – DIALOGUE FOR ADVANCING SOCIAL EUROPE

Country report: Germany

Authors

Esther Koot-van der Putte and Stephanie Steinmetz

Version: 23.05.2016

Table of contents

1. Introduction	2
2. Main domestic labour and social law reforms.....	4
2.1. Measures affecting employment protection legislation, reforming dismissal law and collective redundancies: Short-time work: change of the Kündigungsschutzgesetz (Dismissal Law)	7
2.2. Measures fighting dualisation/segmentation of the labor market, reforms of models of employment contracts, enabling or easing the use of TWAs or other flexible employment constructions?.....	10
2.3. Social dialogue structures and measures reforming collective bargaining and employees' representation systems	10
2.3.1. Collective Labour Law Act: the reform of Art. 5 (<i>Tarifvertragsgesetz TVG</i>).....	10
2.3.2. Minimum Wage Act: a new system for setting of wages (<i>Mindestlohngesetz MiloG</i>)	11
2.3.3. Posting of Workers Act (<i>Arbeitnehmer-Entsendegesetz - AEntG</i>).....	12
2.3.4. Temporary Work Act (<i>Arbeitnehmerüberlassungsgesetz-AÜG</i>).....	13
2.3.5. Trend to decentralize collective bargaining.....	14
2.4. Other relevant reforms/issues/outcomes (i.e. job quality impacts, trade-offs, job to job security constructions, unions legitimatizing measures, etcetera)	16
3. Position and role of the social partners in the social reforms.....	16
3.1. Overview: Role of the social partners during the crisis	16
3.2. Participation in social dialogue: the distinct viewpoints of social partners.....	20
3.2.1. Position towards Stimulus Package I and II	20
3.2.2. Position towards short-time work.....	23
3.2.3. Position towards the reform of the Collective Labour Law	24
3.2.4. Position towards the Minimum Wage Act	25
4. Impact of the reforms on the German labour market	30
4.1. Overview	30
4.2. Impact on employment and working time.....	31
4.3. Impact on non-standard employment forms and quality of work	34
4.4. Impact on wages.....	37
4.5. Impact on collective bargaining	39
5. Conclusions	40
References	43

1. Introduction

Because of its strong export orientation, Germany's economy was more affected by the economic and financial crises in 2008/2009 than other European countries. The gross domestic product (GDP) decreased by 6.5%; only Italy reported similar declines. The reaction of the German labour market to the Great Recession 2008/09 was - compared to other countries - relatively mild and different in comparison to former recessions. This is largely due to the fact that, in contrast to countries such as Ireland and the United States which faced a slump in domestic demand combined with a real estate crisis, Germany had to deal with a world demand shock that mostly affected economically strong firms (Rinne and Zimmermann 2011; Schneider and Gräf 2010). Moreover, various flexibility instruments at the firm level, combined with discretionary adjustments of the institutional framework by policy makers (i.e. enhancement of short-time work schemes), enabled firms to adjust their working hours during this crisis almost solely along the intensive margin by reducing hours per worker (Burda and Hunt 2011). But also numerous arrangements in conjunction with collective labour agreements (job security contracts, mutable working hours) as products of the social dialogue opened possible courses of action. This rather unusual reaction compared to previous recessions was often depicted in the media as the 'German Miracle'. However, it can be put into perspective by looking at two interdependent aspects: the previous labour market reforms and other flexibility instruments.

In early 2008, the future prospects of the German economy seemed to be extraordinarily bright. For more and more German regions, especially in the South, full employment was a realistic perspective. German products like machinery, equipment, and automobiles were in high demand on the world market - much sought after not only by Germany's traditional customers but also by emerging markets. After several years of wage restraint, real unit labour costs had experienced a substantial decline, especially in comparison to Germany's main competitor countries. The main macroeconomic variables looked favourable: The budget consolidation was well under way, the inflation tamed, employment was rising and there was neither a sign of a stock market nor of a housing price bubble. The eruption of the world recession caught the German economy by surprise and at a time when the dominant theme of the economic policy debate was a shortage of skilled workers. Major labour market reforms were undertaken under Chancellor Gerhard Schröder in the years 2003 to 2005 (*Hartz Reforms*). These reforms aimed at fostering flexibility of workers and their integration into the labour market by encouraging and pressing them at the same time

(‘Fordern und Fördern’). Some institutional restrictions (such as temporary employment agencies, temporary contracts and working hours) were loosened. With the exception of older workers, the entitlement period for unemployment benefits was shortened to 12 months. Although not all elements of the labour market reforms turned out to be well-designed, they were on their way to changing the German labour market for the better during the upswing years 2006 to 2008. Positive signals could be observed with respect to a decline of long-term unemployment, an improved matching process between labour demand and supply and the convergence process in East Germany regained momentum (Gartner and Klinger 2010).

With respect to further measures and instruments implemented when the economy went into recession, the Federal government not only allowed the stimulation of the decreased aggregate demand by *passive automatic stabilizers* (such as the unemployment aid system), but also pursued more controversially discussed *active stabilization policy measures*, such as two economic stimulus packages. The most important measures - apart from certain direct fiscal policy measures (e.g. car scrapping subsidies) - were a large amount of labour hoarding and the use of short-time work foremost by the large export-oriented manufacturing sector. The approach worked well because its use was based on expectations by employers of a short recession only that proved to be true. Many of the most affected companies correctly anticipated to have a fundamentally appropriate structure of their products to meet the future demand in global markets as well as within Europe and Germany (Paesler 2011). The extent of the German stimulus programs in the EU were among the largest in the EU, and empirical evidence showed the effectiveness of the 2009/2010 recovery packages in overcoming the crisis (e.g. Brügelmann 2011, p. 1).

In addition, tripartite national social dialogue was one of the main responses to the financial crisis in Germany. This took place only at a consultative level. Nonetheless, the union involvement was considerable, particularly at the sectoral/subnational level (e.g. social dialogue response via sectoral agreements and not via a national pact, see Baccara and Heeb 2011). When the crisis hit the German labour market, the government invited the social partners to several meetings between 2008 and 2009 to find solutions. All of these consultations focused on protecting employment levels as a major shared concern. As Zagelmeyer (2010) notes, government, union and employer association representatives met to discuss the economic situation, the two stimulus packages and further measures. The purpose of those meetings was to build upon the expertise of unions and employer associations and to secure their support in implementing new measures. Lengthening entitlement periods for

short-time work at the national level was, for example, complemented by collective agreement clauses (negotiated during the crisis) in the metal and electrical industry.

This report presents the findings from research carried out in the framework of the international project ‘DIADSE - Dialogue for Advancing Social Europe’. We examine developments in Germany with regard to social dialogue and labour law reforms in the period of 2008-2015, with an emphasis on the effects of the socio-economic adjustments undertaken in this period and the greater or lesser involvement of social partners in designing and implementing the reforms. Using a mixed-method approach this report is based on various sources: available research literature, legislation, reports published by national authorities or independent bodies, and the most reliable and up-to-date quantitative data from official sources, such as Eurostat, the national statistical office in Germany and the WSI-Tarifarchiv. In addition, and to provide some in-depth views on the developments during this time, seven telephone interviews with 9 representatives from the social partners (8 representatives of the major workers’ and employers’ organizations and one with an external scientific expert) have been collected. Interviews were recorded and partially transcribed to facilitate the analyses.

The report is divided in 5 sections: Section 2 outlines the main reforms, while section 3 provides an overview of the role of social partners throughout the period under study. Particular attention is paid to the viewpoints of social partners on their degree and forms of participation in the changes of employment legislation and collective bargaining. Section 4 is dedicated to an evaluation of the labour market effects of the reforms undertaken by looking at descriptive statistics on employment and unemployment, working time, types and quality of work as well as wages. Finally, section 5 summarizes the results and provides the main conclusions regarding the social dialogue over the last seven years in Germany.

2. Main domestic labour and social law reforms

As indicated in the introduction, Germany stands out among OECD countries as having implemented a number of major labour market reforms in the years preceding the crisis. In particular the so-called *Hartz Reforms* were enacted in four legislative packages ‘Hartz I to IV’ between 2003 and 2005. While most commentators focus on Hartz IV¹ and its impact on the reduction of unemployment and reforming the social security, the reforms were rather wide-ranging, covering improvements in job placement, a general cut in unemployment

¹ It tightened the access to unemployment insurance and the period of entitlement was dramatically shortened which put a lot of pressure on unemployed workers to leave unemployment. The reforms however also had an effect on the still employed workers: they were willing to accept concessions, because employees were afraid to lose income and status if they would be dependent of the new social security system.

benefit duration and, importantly, the phasing out of early retirement options. These reforms contributed to a reduction in structural unemployment, an adjustment that is still going on even though long-term-unemployment remains quite stable. Moreover, they have offset some of the cyclical increase that would otherwise have occurred. As a consequence, when the global financial crisis hit Germany in 2009 the institutional environment of the labour market was already profoundly changed. These pre-conditions are, however, important to consider when explaining the differences in labour market outcomes of Germany relative to past recessions and in comparison to other countries.

Table 1 shows that also during the crisis Germany took several measures in response: the federal government passed the Financial Market Stabilization Act (*Finanzmarktstabilisierungsgesetz, FMStG*) in October 2008, followed by Stimulus Package I and II (*Konjunkturpakete I and II*) in November 2008 and January 2009. The expenditures of these packages amounted to about €36 billion in 2009 (~1.5 % of the country's GDP), and almost €47 billion in 2010 (~1.9 % of the country's GDP) (Leifels et al. 2009). In particular the second package was the country's biggest economic stimulus package since World War II and was perceived as a main way out of the crisis. Ronald Pofalla, the general secretary of Chancellor Angela Merkel's conservative Christian Democrats (CDU) told the N-tv television channel shortly after the agreement on the second stimulus package: "*The governing coalition has created the preconditions to give us the chance to emerge stronger from this crisis*" (Der Spiegel 2009). The first package included, e.g. a personal income tax deductibility of health care contributions, an increased child benefit and child tax deduction, and a reduction in unemployment insurance contributions. The major budget items of the second stimulus package were investments in transport infrastructure, income tax deductibility of handyman services, and a regressive depreciation of investments in immovable property. The reforms took the general direction of stabilizing the German banking sector, ensuring the supply of credit and safeguarding economic stability, consumer purchasing power and employment. Public investment was also increased. In sum, during the period of interest (2008-2014), the main changes have been:

- The extension of short-time work schemes (*Kündigungsschutzgesetz*)
- The change of the Collective Labour Law Act (*Tarifvertragsgesetz*)
- The introduction of the Minimum Wage Act (*Mindestlohngesetz*)
- The introduction of the minimum wage in the Posting of Workers Act (*Arbeitnehmerentsendegesetz*)
- The introduction of the minimum wage in the Temporary Work Act (*Arbeitnehmerüberlassungsgesetz*)

Table 1: Timeframe of labor market reforms in Germany during the last decade

	Reforms and Measures	Implemented	Main measures	Likely effect	Role Social Partners
During the crisis	Financial Market Stabilisation Act (<i>Finanzmarktstabilisierungsgesetz</i>)	2008	Securing newly-issued refinancing instruments (up to 36 months) for German banks until the end of 2009; and has to be established by issuing debt securities up to a max. of €100bn.		
	Stimulus Packages I and II (<i>Konjunkturpakete I und II</i>)	2008-2009	Financial measures to stimulate and stabilize the economy		Strongly involved; corporatist
	Short Time Work Extension (<i>Reform of the Kündigungsschutzgesetz</i>)	2009	Measures affecting employment protection legislation	Reducing effects of the economic crisis (preventing unemployment)	Strongly involved; corporatist
After the crisis	Collective Bargaining Empowerment Act (<i>Change of the Collective Labour Act</i>)	2014	Measures reforming collective bargaining	Empowerment of the collective bargaining process protecting employees from 'race to the bottom' on terms of labour.	More opposite relations; discussion
	Posted Workers Act (<i>Extension of the Arbeitnehmerentsendegesetz to all branches</i>)	2014	Measures fighting dualisation/segmentation on the labour market	Preventing labour competition through foreign workers; preventing 'race to the bottom' on	Opposite relation. Employers were very critical, employees were quite positive
	Minimum Wage Act (<i>Introduction of Mindestlohngesetz</i>)	2015	Measures fighting dualisation/segmentation on the labour market	Reducing precarious work; reducing labour advancing fair pay; disburdening social security system	Opposite relation. Employers were very critical, employees were quite positive
	Temporary Work Act (<i>Arbeitnehmerüberlassungsgesetz</i>)	2015	Measures fighting dualisation/segmentation on the labour market	Preventing labour competition for temporary workers.	Opposite relation. Employers were very critical, employees were quite positive; discussion

Source: partly based on Hüfner and Klein (2012) and extended with own information

The above-mentioned changes will be discussed in more detail in the next paragraphs. Besides the already mentioned stimulus packages, in particular the extension of short-time work schemes, the support for companies training their short-time workers during downtimes, and a reduction of employers' social security contributions in general and for short-time workers under certain circumstances had an impact on the course which the social partners chose in dealing with the crisis. In this context, it should however also be emphasised that not all labour law changes (in particular those after the crisis) can be seen in relation to or as an effect of the economic crisis (Vogel 2013).

2.1. Measures affecting employment protection legislation, reforming dismissal law and collective redundancies - Short-time work: change of the Kündigungsschutzgesetz (Dismissal Law)

In times of crisis, Germany commonly relied on the use of short time work² and also in 2009 the extension of short-time work (*Kurzarbeit*)³ may be labelled as the 'German answer' to the economic crisis (Brenke et al. 2011). The attractiveness of short-time work for both - employees and employers - is the availability of public funding. If certain requirements⁴ are met, Germany's Federal Employment Agency will compensate the employee's loss in remuneration to a certain degree. Short-time work, therefore, often creates a win-win situation: The government saves unemployment benefits, the employer retains a qualified workforce and saves salary costs and the employees keep their jobs while their pay is reduced to a smaller extent than their working hours (Shyer and Leder 2012). In short, the extension of short-time work is a construction under which the government provides subsidies allowing people to work fewer hours without suffering a commensurate drop in earnings.

During the crisis in 2009, special regulations for the short-time working allowance were introduced: with the introduction of the first Stimulus package the government prolonged the regular entitlement period for short-time working allowances granted due to a temporary shortfall in orders from 6 to 18 months in the (change took effect on 1 January

² This instrument was already used in the first economic crisis of the Weimar Republic, in the in the second half of the 1960s (post World War II Crisis), the middle of the 1970s and half of the 1980s (oil and energy crises) as well after the Reunification of the two Germanys (see Brenke et al. 2011)

³ Short-time work is a temporary reduction in working hours which is implemented for a whole site or an identified part of an employer's site. It is intended to maintain employment relationships while at the same time reducing salary expenses. Cost savings result from the fact that the employees' remuneration claims are automatically reduced in proportion to their reduced working hours (for example, a 50% reduction in working time would lead to a 50% reduction of the fixed salary).

⁴ The short-time working allowance due to temporary shortfall (*KUG*) is granted where the normal working week in companies or company departments has to be shortened temporarily for economic reasons or due to an unavoidable event. The requirements of sections 95 to 109 German Code of Social Law III (§§ 95 - 109 *Sozialgesetzbuch 3 (SGB III)*) must be fulfilled.

2009). While the second Stimulus package introduced the new option⁵ that companies which can prove that a 10% wage cut is necessary for any specified number of staff can also be granted short-time working allowances by their local employment agency (Vogel 2009). As an effect, the short-time work allowance rules have been partly rescinded with effect from January 2012. And due to the positive economic situation, the maximum period for the receipt of the short-time working allowance for short-time work starting from 1 January 2012 was limited to the statutory maximum period of 6 months as per article 177 (1) third sentence German Code of Social Law III (SGB III).⁶

What are the main characteristics of the rules on short-time work (in general)? After receiving official approval, to the local employment agency (*Agentur für Arbeit, AA*) the company pays short-time allowances to affected workers and is subsequently reimbursed by the local employment agency. The allowance for short-time working amounts to 60% (67% for employees with children) of the wage cut (net of taxes). Formerly, the employer was obliged to pay full social security contributions for the working hours cancelled, including the proportion normally paid by the employees. This has been changed by the regulations during the crisis. It is stipulated that employers are to be reimbursed by the Federal Employment Agency (*Bundesagentur für Arbeit, BA*) for half of their social security contribution payments. Reimbursements can amount to 100%. The aim of these regulations is that employers engage in continuous training measures to improve their short-time workers' skills. The federal government has set up a fund of €2 billion for continuous and other training measures for the 2009-2010. This fund was intended to support companies that train staff employed for short-time work. It also supports young people not holding a vocational training degree as well as young persons who have so far failed to secure an apprenticeship or training position.

The new rules on short time work also had effect on credits accumulated on employee working time accounts. After the introduction of the new rules, it was no longer necessary for such working time accounts to be run down to zero before short-time working allowances could be granted. As a new rule, companies could also apply for short-time working allowances for their temporary agency workers (Vogel 2009).

The substantial reduction in weekly working hours during the crisis period (usually associated with a proportional reduction in pay) was also made possible by a higher wage

⁵ In the past (until 2009) applicant companies had to notify the regional employment agency that wages needed to be cut by more than 10% for a proportion of at least one third of employees in order to cope with a temporary shortage of orders or unfavourable weather conditions. Employers can still choose to do this.

⁶ Bundesagentur für Arbeit, January 2015

bargaining flexibility (Reisenbichler and Morgan 2011). This was partly due to the fact that collective agreements have been made more flexible by giving more leeway to companies (Bellmann et al. 2008).⁷ Examples are the introduction of so-called ‘opening clauses’ (*Öffnungsklauseln*, e.g. exemptions from working-time regulations concluded in a collective agreement) or ‘hardship clauses’ (e.g. exemptions from a contracted wage-level during a precarious economic situation). Since the 1990s, multi-employer collective agreements have contained opening clauses or hardship clauses allowing company-level agreements to deviate from sectoral collective agreements, usually in order to reduce costs and maintain employment (Kohaut and Schnabel 2007; Haipeter and Lehndorff 2009).

The financial crisis affected also some of the more general collective bargaining processes: For instance, while the initial demands in the metal and engineering sector wage negotiations in 2008 were relatively high (with over 8% of the demands linked to the excellent business performance by German companies in the first half of 2008), the agreement was concluded with a modest increase of 2.1% in February 2009. More specifically related to the financial crisis, a regional multi-employer collective agreement in the metal and electrical industry concluded in April 2009 contained provisions on short-time work, training and employment protection for Baden-Württemberg and extended the federal Government’s new rules on short-time work by establishing models to compensate employees on short-time work for lost wages (Vogel 2009).

The consent of unions to the application of such measures is often connected to explicit pledges by employers, such as employment guarantees. So-called ‘company-level pacts for employment’ or ‘job alliances’ aim at strengthening long-term employment relationships by increasing the flexibility of employment conditions, thereby contributing to safeguarding jobs in crisis periods. Apart from agreeing on flexible working hours, such pacts also allow for suspension in annual bonus payments, holiday payments or outright wage cuts. Finding agreements among the social partners on such pacts was facilitated by a government decision to base unemployment benefits on the initial income of an employee and thus not to take into account a temporary reduction in pay for the benefit calculation (Dietz et al. 2011). Such pacts have become more widespread since the mid-1990s. Particularly among companies with more than 250 employees more than half of all them had concluded these so-called company-level pacts for employment by 2010.

⁷ This might be also linked to the fact that sectoral wage bargaining has become less popular, reflecting in part the decline of membership in unions and in employer associations.

2.2. Measures fighting dualisation/segmentation of the labor market, reforms of models of employment contracts, enabling or easing the use of TWAs or other flexible employment constructions?

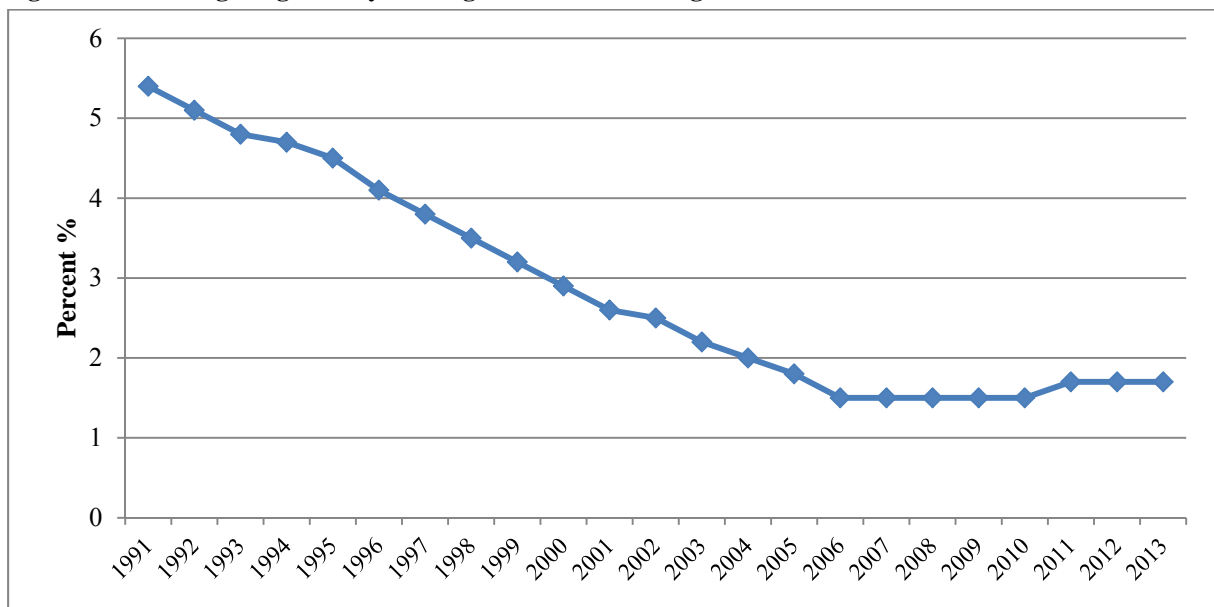
See under 2.3.2 (New system for setting of wages).

2.3. Social dialogue structures and measures reforming collective bargaining and employees' representation systems

2.3.1 Reform of Art. 5 of the Collective Labour Law Act

The reform of Art. 5 of the Collective Labour Law Act⁸ contains the extension of collective labour agreements (CLAs). This extension of CLAs through generally binding declarations (*Allgemeinverbindlichkeitserklärungen, AVE*) has been 'revitalized'. The instrument was widely used in the past. However in the last decades it has declined due to a 50% quorum which has to be met and a decline in employer's density (see Figure 1).

Figure 1: Percentage of generally binding collective labour agreements between 1991 and 2013



Source: Schulten & Bispinck 2013, based on own data of the Tarifregister des Bundesarbeitsministeriums

In this context, collective actors realized that the mechanism for the legal extension of collective agreements (AVE) could be an important means towards stopping the erosion of collective agreements. The reform, which has been going on for years, resulted in three laws put forward by the opposition parties in the German Parliament. The main changes (in force from 2014) are:

- the restriction of the collective agreement commission to an advisory function;
- the removal of the 50% quorum - especially for collective agreements covering common organizations;

⁸ See 11. August 2014 (BGBl. I S. 1348).

- the declaration of the extension of collective agreements for all representative collective agreements;
- no undercutting of a declared extension of collective agreements by other collective agreements;
- if necessary the extension of collective agreements to comparable branches; and finally
- the responsibility to be given to the industrial tribunal rather than the administrative court in the event of disputes connected to the legal extension of collective agreements (AVE).

It should be stressed that the Collective Labour Act reform cannot be considered as an effect of the economic crisis. It is more likely, that the change is a reaction to the ongoing process of declining numbers of employees that are organized within a union.⁹

2.3.2 Minimum Wage Act: a new system for setting of wages (Mindestlohngesetz)

As from 1 of January 2015 in Germany a Minimum Wage Act was introduced. This law guarantees that in principle all workers and employees should receive an hourly minimum wage of €8.50. The Minimum Wage Act further affects the following Acts of Law:

- the Collective Labour Law Act (*Tarifvertragsgesetz; TVG*)
- the Posting of Workers Act (*Arbeitnehmer-Entsendegesetz, AEntG*)
- the Temporary Work Act (*Arbeitnehmerüberlassungsgesetz, AÜG*)¹⁰

However, there are specific legal exemptions from the minimum wage such as young people, trainees, long-term unemployed people, and newspaper delivery staff. For example, a phased payment system will apply to newspaper delivery staff meaning that their minimum wage will sequentially be raised from a minimum of 6.38€ per hour (from 1 January 2015) to €7.23 per hour (from 1 January 2016), and to a minimum of €8.50 per hour from 2017 onwards. Moreover, only for a transitional period of two years (until the end of 2016), it is allowed to deviate from the minimum wage of € 8.50 in the sectoral CLA (WSI 2015). In these branches a CLA must apply (agreed upon by representative social partners), which is declared generally binding by the Minister of Social Affairs. Currently, there are minimum wages for 18 industrial sectors (see for more detail, Bispinck and Jung 2015) covering a total of 4.6 million employees. The minimum wages can differ between sectors and regions (range between € 7.20 and € 14.20). In the following six branches, the minimum wages remain under the level of € 8.50 using the above-described exemption opportunities provided by law. However, the CLA wages will be raised step by step until at least € 8.50 (Bispinck and Jung 2015).

⁹ This was the common opinion in the interviews.

¹⁰ The minimum wage is also guaranteed in public tender procedures.

- *Meat industry*: in October 2015 the minimum wage was raised from € 8.00 to € 8.60 and will be raised to € 8.75 in December 2016.
- *Hairdressing sector*: the minimum wage was introduced in August 2015 at the level of € 8.50.
- *Agriculture, forestry and horticulture*: the lower wage scales of € 7.20 / € 7.40 Euro (East/West) will be raised to € 7.90 / € 8.00 in January 2016 and after that to € 8.60 in January 2017 and to € 9,10 in November 2017.
- *Contract- and temporary work*: the minimum wage for East Germany will be raised from 7.86 to € 8.20 in April 2015 and to € 8.50 in June 2016.
- *Textile and clothing industries (East Germany)*: the minimum wage of € 7.50 will be raised to € 8.25 in January 2016 and to € 8.75 in November 2016.
- *Laundry services in client shops (East Germany, including Berlin)*: the minimum wage of € 8.00 will be raised to € 8.75 in July 2016.

A main purpose of the legal minimum wage is the protection of the employee against a ‘race to the bottom’ on wages (BT-Drs. 18/1558, A II 3, p. 32), and to prevent employees from agreeing upon low wages that are not sufficient to earn a living. Traditionally, these persons would receive social assistance by the German ‘*Grundsicherung für Arbeitssuchende*’ (social security benefits for employment seekers), but with the introduction of the Minimum Wage Act the social security system is also partly disburdened (BT-Drs. 18/1558, A II 3, p. 32).

2.3.3 Posting of Workers Act (Arbeitnehmer-Entsendegesetz - AEntG)

Before the introduction of the Minimum Wage Act in 2015 (see 2.3.2), there have been minimum wages already established for specific branches since many years. The legal basis is the so-called ‘Posting of Workers Act’ (*Arbeitnehmer-Entsendegesetz - AEntG*). A ‘posted worker’ is an employee, who is employed in one EU Member State but sent by his employer on a temporary basis to carry out his work in another Member State. For example, a service provider may win a contract in another country and send his employees there to carry out the contract. This trans-national provision of services, where employees are sent to work in a Member State other than the one they usually work in, gives rise to a distinctive category, namely that of ‘posted workers’. This category does not include migrant workers to go to another Member State to seek work and are employed there.

To guarantee that the rights and working conditions of a posted worker are protected throughout the European Union, and to avoid ‘social dumping’ where foreign service providers can undercut local service providers because their labour standards are lower, the European Community law has established a core of mandatory rules regarding the terms and conditions of employment to be applied to an employee posted to work in another Member State. These rules will reflect the standards of local workers in the host Member State (that is,

where the employee is sent to work). The idea is that where a Member State has certain minimum terms and conditions of employment, these must also apply to workers posted to that State. However, there is nothing to stop the employer applying working conditions which are more favourable to workers such as, for instance, those of the sending Member State (that is, where the employee usually works).

If workers are posted to Germany, they are entitled to receive monetary compensation of not less than the minimum wage required to be paid by employers under the Minimum Wage Act effective from January 1, 2015. Divergent provisions of a collective agreement made between representative employers' and labour organisations take precedence over the legal minimum wage, if they have been made binding for all German or foreign-domiciled employers and their employees coming within the scope of the collective agreement, or if equivalent legal provisions have been issued on the basis of Article 7, Article 7a and Article 11 AEntG, and Article 3a AÜG (Erfurter Kommentar 2015, Schlachter § 3 AEntG). The rules of a federal collective labour agreement apply to the following branches:

- Building industry;
- Cleaning of buildings;
- Mail services;
- Security services;
- Special mining activities in hard coal mines;
- Laundry services in client shops;
- Waste industry;
- Training services; and
- Processing and preserving of meat and production of meat products

From 1 January 2017 a minimum gross wage of 8.50 per full hour must have been agreed and paid, irrespective of any divergent collective agreement.

2.3.4 Temporary Work Act (*Arbeitnehmerüberlassungsgesetz - AÜG*)

Already in January 2003, temporary agency work was strongly deregulated by the first Harz Reform in the Temporary Work Act (*Arbeitnehmerüberlassungsgesetz - AÜG*). A major change was the scrapping of the maximum duration of lease to an employer. Also the prohibition on temporary employment of temporary agency workers was lifted, together with the prohibition on re-employment with the same employer, and the prohibition on 'synchronisation'. This entailed the prohibition to synchronise the contract with a temporary employment agency with the contract of the hirer of the temporarily employed worker (Ellen and Lindner 2015, pp. 13-14).

In the law several principles were introduced to balance the potentially harmful effects of the change in law. For example: the principle of equal treatment concerning wages, vacation and working time. Nevertheless, in the first years after the change of the Temporary Work Act, it was clear that temporary agency workers were paid one third lower than regular workers. This practice was judged unlawful by the highest labour court in Germany, because the union that was party to the collective labour agreement for temporary work had insufficient bargaining power (Bispinck and WSI Tarifarchiv 2011, p. 26, cited by Ellen and Lindner 2015, p. 14).

In the years after the liberalization, the annual average of temporary agency workers doubled from 385.000 to 761.000 between 2004 and 2008. During the economic crises, the amount decreased from more than 823.000 (July 2008) to 580.000 (April 2009) as temporary workers were most affected by the job losses, but after the crisis the numbers stabilized and reached the pre-crisis levels (Ellen & Lindner 2015, pp. 13-14).

As from January 1, 2015, the Temporary Work Act provides a minimum wage for temporary workers of €8.50 (brutto) per hour which is the result of the introduction of §1 II Minimum Wage Act (MiLoG). On the other hand is provided that a legal enactment can deviate from this minimum wage (§3 a MiLoG) by introducing lower wages. Until the end of 2016 these legal enactments have priority to the Minimum Wage Act according to MiLoG (Erfurter Kommentar 2015 Wank AÜG § 3a Rn. 1-13).

2.3.5 Trend to de-centralization of collective bargaining

The collective bargaining and employees' representation systems have not been changed by the crisis or the measures taken to overcome the crisis. Traditionally, in Germany wages are determined by social partners in a collective labour agreement that applies to certain branches or industries. This can be at the federal or local level. The works' council is not allowed to negotiate on topics which are normally agreed upon in a CLA (§77 par. 3 Works Councils Act). This system can be indicated as a 'dual system'.

Since the mid-1980s an increasing number of topics has been transferred from the industry- to the establishment-level via so-called '*opening clauses*' making it possible to negotiate some topics at the establishment level. These clauses 'open' the possibility to decrease the collectively agreed-upon wage floors under certain circumstances. The use of opening clauses makes it possible for social partners to delegate their power to the level of the establishment. This development could result in works' councils playing a more prominent role in negotiating terms of labour. The opening clauses are used in many different ways.

Originally introduced to provide companies with the option to fall below the standards if they run into economic trouble (so a kind of crisis is an explicit precondition for the application of an opening clause), they are nowadays used to enhance the firms competitiveness (Bosch 2004). Also the scope of the opening clauses varies. While some allow the company level parties to deviate within the limits stated in the collective labour agreement, others provide more space for company-level negotiations but retain veto rights for unions and employer associations.

So far, a lot of research focused on the effect of German works councils and, in particular, on the role of establishment performance and employment issues (see Jirjahn 2011; Bispinck 2006; Addison 2004). However, the knowledge on the impact of works councils' on wages is rather underdeveloped and there is still no general consensus on the interplay between wages and works councils (see for detail: Ellguth et al. 2012). At company level it is allowed to exceed regulations from the collective labour agreement (*Günstigkeitsprinzip*), this is supposed to be in favour of the employee. Only opening clauses provide a (legal) way to fall below these standards (Ellguth et al. 2012).

With regard to the impact of the crisis on collective bargaining arrangements a general characteristic was a closer cooperation between management and employee representatives in the most affected industries. Mechanisms that were already familiar (such as opening clauses and joint dispute resolutions) also worked during the crisis, and unions exercised wage restraint and entered into a series of negotiations on concessions. In particular a core feature of the German Industrial Relation system during the crisis years was an increased used of the above-described 'opening clauses' at the establishment level. This was an important way to cut costs and enhance flexibility, and as they allowed companies to deviate from collectively agreed standards such as working time or pay.¹¹ Overall, there is no steep rise in industrial action recorded by official or alternative statistics. The Annual Collective Bargaining Reports of the Institute for Economic and Social Research (WSI) which regularly analyses pay developments agreed in sectoral collective agreements show that collectively agreed wages continuously rose between 2008 and 2010 even though with a slower pace (by 2.9% in 2008, 2.6% in 2009 and 1.8% in 2010 in comparison to the previous year). The slower wage rise clearly reflects the impact of the crisis (Bispinck 2013).

¹¹In companies bound by a sectoral collective agreement, such clauses have been regularly used before the crisis.

2.4. Other relevant reforms/issues/outcomes (i.e. job quality impacts, trade-offs, job to job security constructions, unions legitimatizing measures, etcetera)

During the crisis, many sectoral collective bargaining agreements exchanged pay freezes for limits on redundancies. As described already in the previous sections, managements sought to avoid or defer redundancies in the core workforce using flexibility instruments: besides the discussed use of ‘Opening Clauses’ another closely related alternative was the use of the so-called *concession bargaining*: many companies have concluded collective agreements, or works agreements, to address the challenges of the crisis and to negotiate (labour) cost reductions while providing the workforce with limited no-redundancy guarantees. As an outcome of the concession bargaining, an agreement was concluded by the management, trade unions and/or works’ councils. In most cases the unions and workforce made great concessions, in order to avoid loss of employment, and also to increase the competitiveness of the employer and the changes of survival of the undertaking. The management in return offered employment guarantees and tried to avoid redundancies (Zagelmeyer 2013, p. 235).

3. Position and role of the social partners in the social reforms

3.1. Overview: Role of the social partners during the crisis

Overall it can be stated, that the German industrial relations system proved able to facilitate solutions for dealing with the global economic crisis. The various measures revised or newly introduced by the federal government had an impact, if not on the German IR system itself, then on the course which the social partners chose in dealing with the crisis. From mid-2008 onwards, employer associations and trade unions as well as company managements and work councils in the worst affected industries worked closer together aiming at maintaining employment levels and avoiding redundancies or even works closures.

With regard to the role and visibility of the social partners, the literature highlights the closer cooperation between employee and employer representatives at the height of the crisis - especially at the establishment level (Vogel 2013). It was notable that government representatives and employers alike welcomed the unions’ willingness to scale back their demands and cooperate more fully (Lehndorff 2010).

When the crisis hit Germany, the government invited the social partners to several meetings to find solutions (the so-called ‘Konjunkturgipfel’ (summits on economic activity)). In this context, two so summits on economic activity stand out: The first summit involved 32 participants and took place on December 14, 2008 (Merkel will wetterfest, 2008) and the second took place on April 22, 2009 including about 40 participants. Both summits aimed at

discussing the general economic and labor market situation as well as the planned stimulus packages (Hess, 2008).

As Zagelmeyer (2010) notes, government, union and employer association representatives met to discuss the economic situation, the two stimulus packages and further measures.¹² These consultations usually involved the Chancellor, representatives of the Federal Government, trade unions, employers' and trade associations, major German companies, the Council of Economic Advisors, as well as representatives of academia and the research community. Participants were invited to present their views, analyses and interpretations of the crisis, and its possible future developments and scenarios, as well as its economic and social implications (Zagelmeyer 2010). The government built upon the expertise of unions and employer associations, but also tried to secure their support in implementing measures. Lengthening entitlement periods for short-time work at the national level was, for example, complemented by collective agreement clauses (negotiated during the crisis) in the metal and electrical industry.

During the crisis, trade unions as well as employers' associations also contributed to the public discussion and voiced their concerns, especially during the run-up to the above-mentioned tripartite summit meetings. The Confederation of German Trade Unions (*Deutsche Gewerkschaftsbund, DGB*) and its member unions continued to take a position and to voice their demands. In terms of their effect on public policy, the unions claim to have proposed the extension of short-time work, the car scrapping bonus program, and support for environmentally-friendly building renovation. Yet the unions also criticized the hesitant approach of the German government and condemned the amount of fiscal stimulation as insufficient. In addition, they made repeated calls for consumer subsidies and emphasized that more money should be invested in education and infrastructure.

The Confederation of German Employers' Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände e. V., BDA*) likewise contributed to the public debate. They repeatedly called for an investment in education and infrastructure and for a reduction in social security contributions and non-wage labour costs. The BDA emphasized the successfully functioning of the social partnership in Germany and the joint achievements of employers and unions during the crisis. And according to the chair of the BDA, Dieter Hundt, it was the jointly pursued collective bargaining policy that helped maintain employment

¹² On 13 October 2008, the Federal Minister of Economics and Technology met with representatives from various sectors to discuss potential elements of a package of measures (Stimulus Package I). Immediately after the Government had decided on the first stimulus package, another meeting took place on 5 November 2008, hoping to secure support of the social partners for the package (Merkel beruft Konjunkturgipfel, 2008).

levels. In addition, also representatives of sectors fundamentally hit by the crisis such as the Employers' Associations for the Metal and Electrical Industry (*Gesamtmetall*) stressed that the crisis was overcome through the teamwork between employers, unions, works councils and policy-makers.

So far, there have been several academic studies examining the impact of the crisis on industrial relations more generally in Germany (see for more details, Vogel 2013): Most of these studies (Lehndorff 2010, Zagelmeyer 2010, Kloepper and Holtrup 2011) clearly indicate that the crisis had an impact on industrial relations at the establishment level. Social partners were obliged to jointly find solutions for overcoming the crisis which led to a regained strength of the formerly fragmented collective bargaining system at the firm level. However, it could also be shown that unions adopted different strategies to deal with the crisis which could be attributed to the varying impact of the crisis on individual branches of industries (Dribbusch and Birke 2012). Overall, however, the positive impression that social partners have successfully managed to mitigate the effects of the crisis remains. The stabilization of the employment level, particularly in the most crisis-hit industries is mainly an effect of the cooperative, solution-seeking behaviour of social partners at the establishment and sectoral levels. This achievement was also due to the relative flexibility of the German system of industrial relations. More specifically: the possibility to deviate from collectively agreed standards by means of opening clauses, and the wage restraint and concessions negotiated during collective bargaining rounds. Moreover, the reforms and measures taken by the federal government (such as prolonging short-time working entitlement periods and introducing two rescue packages) set the right framework for social partner action (Vogel 2013)

One scepticism, however, is shared by all those studies is whether the closer cooperation between the social partners will last beyond the crisis. As indicated by Eurofound (2013), closer cooperation might prove to have been a fruitful strategy during the crisis - most of all in industries hit hard by the crisis (such as the metal and chemical industries), which in Germany are also union strongholds. However, during an economic upturn, earlier concessions might just mean more issues for conflict when unions resume their claims for better working conditions and pay, e.g. for fixed-term employees or temporary agency workers who suffered most from the crisis.

In this regard all the interviews conducted in the framework of this study, support the overall positive evaluation of the 'crisis management' of the social partners and the government. Both - trade union and employer representatives - indicated that this contributed to the successful overcoming of the economic crisis.

'The cooperation of the social partners and the government worked very well to overcome the crisis. The circumstances worked in favour of this process: the conditions and the high speed, the close cooperation. It could only be done this way. (DGB representative)

'In 2010, for example, the chemical industry, which normally has the highest wage demands, agreed upon to drop their wage demands and accept a one-time payment. That was a huge concession from side of the unions but it showed that the main aim was about to remain effective and to save jobs and not so much to maintain old claims.' (BDA representative)

From the interviews it was clear that both unions and employers representatives were positive about the tripartite cooperation during the crisis. The IG Metall representative characterized the cooperation during this time as *'Crisis-Corporatism'* (*Krisenkorporatismus*) which functioned very well to overcome the crisis. And also the representative of the Employers' Associations for the Metal and Electrical Industry was very pleased with the cooperative *'crisis management'* and cooperation with the unions.

In addition to the evaluation of the crisis management, the interview with the industrial relation expert from the IW Cologne showed that further characteristics of the economic crisis in Germany contributed to the fast recovery.

'The fast recovery is attributed to several factors. One is that the crisis in Germany was not a structural but an economic, demand side driven one concerning particularly the export-oriented sector. On this aspect all the involved partners agreed and it was used as a common basis to address the question what can be done to overcome this economic crisis. In this regard, the tripartite cooperation between the social partners and the government was very much focused on stimulating demand on the one side and on the other side to maintaining employment levels and avoiding redundancies or even works closures. Together with the government solutions and concrete proposals were discussed in formal and informal meetings on basis of a common analysis of the situation.'

The special and particular circumstance in Germany leading to the fast and successful overcoming of the crisis was also underlined by the DGB representative, who indicated that *'The crisis should not have lasted longer'*. And as the IW-expert pointed out *'For all sides it was clear that the measures taken were restricted to a particular time frame and could not have been continued if the crisis would have lasted more than two years.'* The BDA expert on employment and labour markets also stressed that short-time work was highly successful in Germany, but only because the crisis was restricted to a manageable period (also that it was a

demand side driven crisis). Simultaneously he warns that the instrument *'is not a panacea for all possible emerging future crises'*.

Interestingly, when asked about the current state of cooperation between the social partners, most of the interviewees (besides the DBG representative) clearly indicated that *'the relations are back to where they were before the crisis 'or have even become worse'* (depending on the sector or the branch, voiced by the ver.di representative).

'After the crisis everything is like before, the same conflicts occur and the close cooperation belongs to the past.' (IG Metall representative)

'Unfortunately, the special bounds of trust belong to the past. There are the same strikes as before the economic crisis.' (Gesamtmittel representative)

It seems that the scepticism voiced by several academic scholars regarding the continuation of the closed cooperation between social partners has come true. While the social partners were very motivated to work together during the crisis due to the shared interest in combating the crisis, after the crisis though, the relations showed more or less to the same *'classical conflicts'* as before the crisis.

3.2. Participation in social dialogue: the distinct viewpoints of social partners

3.2.1. Position towards the Stimulus packages I and II

As already indicated in the previous section, during the times of the crisis social partners were consulted by the German government before the decisions were made regarding public policy initiatives. In October 2008, the Federal Minister of Economics and Technology met with representatives from various sectors to discuss potential elements of a package of measures (*Stimulus Package I*). One meeting took place on 5 November 2008, immediately after the government had decided on the first stimulus package, when it hoped to secure support of the social partners for the package. As Zagelmeyer (2010) reports, on 29 December 2008, a joint press statement expressing support for the government's first stimulus package was issued by the leading employers' and trade associations - the BDA, the BDI (Confederation of German Industry), the DIHT (German Association of Chambers of Commerce) and the ZDH (Central Association of German Crafts) implicitly demanding additional activities, including reductions in both corporate and income tax, improved bank loan arrangements for businesses, a reduction in employers' social security contributions, support for short-time work, and additional investments in education and infrastructure (BDA et al., 2008).

In the framework of discussing the second stimulus package (*Stimulus Package II*) several meetings were organized between the government and different representatives of the

social partners in January 2009.¹³ Also the second stimulus package was welcomed by the BDA, as it included additional public investment in infrastructure, a reduction in employers' social security contributions, and enhanced opportunities for companies to maintain employment levels (BDA 2009). In addition, the DGB welcomed the package as it would meet union demands for investment in education and infrastructure, income tax reductions, and additional support for short-time work (DGB 2009).

On 13 March 2009, the BDA, the BDI, the DIHT and the ZDH met with the Chancellor in Munich to discuss issues related to the financial crisis, for example, company finance, corporate taxation, simplification of the regulations of short-time work. A second 'Konjunkturgipfel' (economic growth summit) took place on 22 April 2009; it included about 40 participants. While the purpose of the summit was to discuss the economic situation, the unions demanded a third stimulus package, the employers' representatives demanded a reduction in non-wage labor costs, and industry associations demanded easier access to bank loans (Schmergal 2009).

During the interviews with the different social partner representatives the generally positive evaluation of the involvement of the social partners and the measures taken in the different stimulus packages could be confirmed:

'The fact that Germany survived the crisis so well cannot be attributed to the prior Labour Market Reforms (Hartz IV) but to the introduction of short-time work. An important factor why Germany survived the crisis so well, were the so-called 'Abwrackprämien' introduced with the stimulus packages - households were stimulated to buy new cars, because they would receive an amount of money in case they turned in their old car. These are economic measures by which the government tried to stimulate the demand.' (IG-Metall representative)

'The social partners worked together very well. The government succeeded in bringing together the social partners and consulted the social partners very frequently. One of the measures that were very positive for the craft branch were the investments aids by the government in case of applying energy saving measures to (old) buildings. These are typical activities for the craft branch (for example: replacing old windows by new windows or the isolation of walls. These

¹³ On 9 January 2009, the Chancellery organized a meeting with the entrepreneurs and associations of small- and medium-sized enterprises to discuss potential policy elements in a second stimulus package. On 13 January 2009, the Chancellery held a meeting with the central associations of business with the objective of explaining the coalition decisions of 12 January 2009 concerning the Stimulus Package II in order to ensure acceptance by business and rapid impact. On the same day, the Federal Minister of Economics and Technology held two separate discussions regarding the preparation of the Annual Economic Report (projection of the economic development) with (a) the joint Committee of business associations, and (b) the German Trade union Confederation).

investment aids worked well for the branch and helped the branch to overcome the crisis.’ (ZDH representative)

It has been, however, also emphasised from the side of the unions, that there were various discussions on the scope and the details of the different stimulus packages (also a third stimulus package has been demanded by the unions but was not realised because it was also clear, in particular, from governmental side whether a third stimulus package was really necessary¹⁴). A representative of ver.di indicated that together with the DGB there were continuous efforts undertaken to suggest improvements of the planned stimulus packages around the topics of the short-time work allowance and employment support in order to develop better strategies to target the particular groups in need.

‘In the discussion of the stimulus packages we have missed the discussion around improving the existing employment policies for supporting employment. The existing plans were not precisely targeting the groups mostly affected by the crisis and in need of support.’(ver.di representative)

Interestingly, different viewpoints have been expressed with respect to the instruments and measures taken. Some representatives – in particular from the unions – emphasised that they doubt that measures and instruments introduced for instance through the Hartz reforms prior to the crisis were really essential to overcoming it.

‘In my opinion it is a myth that due to the greater labour market flexibility which has been introduced through the Hartz reforms Germany masters the crisis so well. This rather led to an easier dismissal of temporary workers.’ (ver.di representative)

Others, in particular the BDA representatives, pointed clearly out that, besides the relevant additional measures taken during the crisis (like short-time work), *‘the complete instruments for the labour market flexibilisation have been already in place before the crisis.’* In this context, in particular, the ‘opening clauses’ played a major role.

‘One key collective agreement was the ‘Pforzheimer Abkommen’ from 2004 as this was the first time that within one of the bigger branches it was agreed upon that in times of a crisis deviations from the collective agreement can be done (even though they had to be negotiated with the social partners). This served as a role model for the massive developments in the area of collective agreements which followed through an extensive use of ‘opening clauses’. Those concerned more the flexibilisation of working time than the wages.’ (BDA representative)

¹⁴ This was also emphasized during the interview with the industrial relations expert from the IW Cologne)

3.2.2. Position towards short-time work

Even though employers and unions alike welcomed the new short-time working rules introduced by the federal government, the DGB also stressed that employees should not be expected to bear the ‘costs of the crisis’. Employers’ demands for longer working hours and fewer holidays were not the right means for overcoming the crisis. Instead, an extension of short-time work and stimulation of domestic demand were needed.¹⁵ For instance, Claus Matecki, member of the executive committee of the DGB, called in a press statement for an improved crisis management in February 2009. Despite this fact, Matecki stressed that it was necessary to use further actions besides the short-time working allowances, in order to avoid the adverse economic effects in the medium term. He argued the federal government had to take further action and that the rescue packages already adopted were not sufficient and should be supplemented by further measures to foster employment (Vogel 2009).

In March 2009, Martin Kannegiesser, Chair of the Employers’ Associations for the Metal and Electrical Industry (Arbeitgeberverbände der Metall- und Elektroindustrie (Gesamtmetall)) commented on the situation in the metal and electrical industry in a press statement. He stated that the protection of jobs and employment was the main aim of the use of the instruments. In his opinion, companies would need further relief for their personnel costs if short-time work had to mitigate the effect of low order books for as long as possible. He therefore suggested that the full costs of employers’ social security contribution payments would be beard by local employment agencies. He also emphasized that, because of lasting order shortages, companies would be forced to consider dismissals in the long run. He stated however that cost reduction measures should be accompanied by corporate investment in research and development. Finally, Kannegiesser called on companies to encourage product innovation even in times of economic crisis. In his opinion, product innovation is the key to securing greater market shares and future economic success for companies, thereby also ensuring future employment (Vogel 2009).

In the interviews it became clear that from the beginning that the common and most urgent aim was ‘to save jobs’.

Short-time work was a very important measure in order to save jobs. Also the possibilities to negotiate on flexibilisation and the use of working time schemes were means to overcome the crisis. Most important was that employment was saved.’ (DGB representative)

¹⁵ Unions like IG Metall and the IG BCE nonetheless negotiated collective agreements which allowed companies more flexibility in shaping working conditions and pay during the crisis.

'The fact that Germany survived the crisis very well is not the prior Labour Market Reforms (Hartz IV) but the introduction of short time work. Apart from the reduction of working hours, the use of the working time accounts was a very important means to safeguard employment.' (IG Metall representative)

'Short-time work has been one of the most important measures.' (Gesamtmetall representative)

As in previous decades, short-time work was consistently seen as the instrument to achieve this goal, although discussions emerged on the configuration of this measure.

'Short-time work was very attractive to employers, because the costs of social insurance contribution were paid by the Federal Agency for Labour (Bundesagentur für Arbeit) instead of the employer. Short-time work worked very well to save jobs. Important were also the measures of the government to financially support education of the employees, who were in short time work; they were employed but also had a lot of spare time that was used for study. On the other hand, ZDH mainly organises small enterprises, and was critical towards short-time work. The instrument was in practice not very useful to small firms. One of the reasons was the administrative burden that was placed on the employers (for example filling out the complicated application forms for short time work). As a result, short-time work was used more often by large employers than by small employers.' (ZDH representative)

Again, also the role of the 'opening clauses' (e.g. exemptions from working-time regulations concluded in a collective agreement) was mentioned as they played a major role to adapt so fast to the circumstance according to the industrial relations expert of the IW Cologne, *'...as they offered employers affected by the economic crisis the needed flexibility to shift and deviate from the agreed collective agreements, for instance with respect to wage increases'*.

3.2.3. Position towards the reform of the Collective Labour Law Act

The procedure for extension of the CLA has been changed in 2015 together with the introduction of the Minimum Wage Act. Before the change took place several proposals have been presented regarding the extension. Aim of these proposals was to make it easier to meet the conditions of the extension of the CLA. The political parties Bündnis 90/Die Grünen, Die Linke and the SPD proposed an initiative-law for a Reform of the Extension. Although the CDU was sceptical, the employee-wing of the party stated to be positive about the reform of the extension. Also the unions in Germany declared the reform of the extension to be a central reform project for the *'Neuordnung der Arbeit'* and presented also reform proposals. Some of

the entrepreneurs associations, for instance in the construction industry and the craftsmanship branch, were also supportive about a reform of the extension. However, the BDA as the central association of Employers actually was against the change of the extension (Schulten and Bispinck, *Handwerk eine Stärkung* 2013).

In the interviews the predominant positive welcoming of the reform of the CLA became also visible; however, with respect to the evaluation of the impact of this reform all interviewees - unionist and employers - agreed that it is too early to draw any final conclusions. The interviewee from the Employers' Associations for the Metal and Electrical Industry (Gesamtmetall) mentioned that a possible effect could be in relation to the change of the Posting of Workers Law. This law applies when there is a universally declared binding CLA in a branch. Through the new regulation the declaring binding has been made easier, which could have - in the opinion of Gesamtmetall representative - a small effect on the posting of workers.

'The change of the Labour Law Code can be seen as a very good initiative but it is too young and recent to draw any conclusions.' (DGB representative)

'The reform is welcomed from the ZDH as in the last years the density of employers in the craft branch has been declining. The small employers try to reduce costs and that is why they leave the employers' organization. However, in practice, the reform so far does not have any clear effect. One of the reasons is that the Federal Ministry of Labour still uses the 50% quorum when judging an application for declaring a collective labour agreement generally binding. A reason for this is that there is also a rule in Germany that says that a small group cannot bind a larger group.' (ZDH representative)

3.2.3. Position towards the Minimum Wage Act

The introduction of a statutory minimum wage (SMW) through the Collective Bargaining Empowerment Act in Germany represents the culmination of a long process initiated in the mid-2000s that has led to a relative consensus on the need to better protect employees from the wage dumping taking place in certain sectors and businesses. The introduction of the SMW by the state, though contrary to the principle of the social partners' autonomy, can be seen as a sign that the various stakeholders explicitly recognize that the collective bargaining system is no longer able to guarantee decent working conditions for a growing number of employees, including both those not covered by collective agreements as well as those who are working in areas where the trade unions have grown so weak that the sector's minimum floor is too low.

There has been much debate about the SMW of €8.50 in Germany before and after it came into effect at the beginning of 2015. One major factor in changing attitudes towards the idea of a minimum wage has been a shift of opinion in the German trade union movement. In the past, they were very reluctant to abandon their opposition to the SMW. The relatively powerful trade unions in the manufacturing sector, in particular, feared that their frequently above-average wage levels would come under pressure if a lower minimum wage was introduced. On the other hand, the trade unions in the service sector, in which wage levels have traditionally in some cases been considerably lower, were finding it increasingly difficult to reach acceptable minimum standards in collective bargaining. Against this background, they were the first to start campaigning for a SMW. For some years, this lack of consensus within the trade union movement provided successive governments with an excuse to prolong the decision, particularly since the expansion of low-wage work was widely regarded as necessary in order to reduce unemployment. It was not until 2006 that the unions affiliated to the DGB mobilized themselves to make a joint demand for a SMW. Since May 2010, the recommended level of €8.50 per hour stood. Therefore, it was no big surprise that the DGB very much welcomed the introduction of a SMW within the new coalition agreements. It was in particular seen as a way to improve the living and working conditions of people in precarious employment conditions (e.g. full-time employed but still depending on additional support). But also the increase of companies' competitiveness was stressed as an additional added value of a SMW. The only most severe critique raised by the DGB was related to fixing the GMW until 2018 and not earlier.

In contrast to the unions, the BDA was much more critical towards the introduction of a SMW. In the opinion of the employers association, the introduction of a SMW would leave 'skid marks' on the labor market, as it would be particularly difficult to integrate marginal groups (low-qualified) into the labor market. In this context, the Munich based economics institute IFO (ifo Institut - Leibniz-Institut für Wirtschaftsforschung an der Universität München e.V.), had forecasted an almost one million job loss. In the discussions around the SMW, the BDA plead for more *differentiation* allowing for deviations from the SMW so that in particular existing collative agreements would not be violated. In addition, most of the controversy - in particular raised by the employer side, surrounded the obligation to keep a record of employees' working hours. Similar obligations already existed under the Act on Working Time and the Posted Workers Act, but should now be extended to workers in non-standard part-time employment, so-called 'mini-jobbers' (allowed to earn a maximum of €450, with social security contributions paid by the employer). The argument raised by the

BDA was that such obligations are unreasonably bureaucratic.¹⁶ Moreover, they emphasized that the employers' liability for subcontractors was an even bigger burden than the documentation obligation. Finally a further insecurity was related to the amount of people entitled to a minimum wage. In 2012, depending on the definitions used, estimates of the number of people potentially affected by the minimum wage ranged from 4.7 to 6.6 million, a difference of 40%.

After one year of SMW, almost 3.7 million workers are benefitting from the new law that constitutes *'the biggest social reform in several decades'*. Andrea Nahles, SPD Minister for Social Affairs and Employment, trade unions, and research institutes have arrived at a similar conclusion: *so far no negative impact on the employment market could be observed*. On the contrary, it seems that the new law has led to more equity and more jobs. Several economists have backed up the Minister's assessment and the WSI goes even further in believing that the introduction of the €8.50 per hour minimum rate has actually been instrumental in kick-starting employment. *'At a certain level we could say that the minimum wage has boosted purchasing power and increased demand thus favoring job creation'*, WSI specialist, Thorsten Schulten analyzed.

Latest employment figures published by the Federal employment agency on 5 January 2016 confirm that the German employment market appears extremely healthy, and even in East Germany the job market has not suffered significant negative effects. Also more employer-sympathizers, like the Institute for Employment Research (IAB) in Nuremberg and the Cologne Institute for Economic Research (IW) cannot deny that *'The minimum wage has not up until now had any negative effect on the jobs market'* (Hagen Lesch, researcher at IW) and that *'Overall the experience has been a success'* (Joachim Möller, head of IAB). However, that does not mean that those 'critical' institutes continue their negative stance. Currently both, the IW and the IFO, see the positive assessment for the SMW as being linked to 'the favorable economic climate' and warn that it would be too soon to confirm if the minimum wage is a 'success story' or not.

Besides the persistence of critiques concerning the SMW the questions remain whether the level should be raised by January 1, 2017 (as favored by the trade unions) and whether there should be a derogation regime put in place for asylum seekers. Following in the unions' footsteps, employers are not calling for a special refugee minimum wage either, as that

¹⁶ The discussion also focused on the adequate threshold. While the BDA argued that the min wage should be €2800, the Christian Democratic Union (CDU) wants such documentation to have an income threshold of €1,900, with a threshold of €450 per month for part-time jobs.

would risk putting the German unemployed against the refugees. Employers are however calling for an extension of existing derogations that were originally put in place for the long term unemployed as well as a revision to the law over internships. Those decisions however will be taken by an independent commission which will comprise three union representatives, three employers' representatives and an independent president.

Also in the interviews the rather opposite positions of the trade unions on the one side and the employers' associations on the other side came to the fore. As indicated above, the DGB representative confirmed the supportive attitude from the unions' side and emphasized that *'...so far no negative side effects could be observed.'* The ver.di representative however also underlined that the minimum wage *'...is a start as wage dumping can be prevented, but it is still not a living wage.'*

The interviewed representatives of the BDA as well as from different employers' associations in contrast were rather critical and emphasized that the fundamental ideas of the industrial relations - namely the autonomy of the social partners - have been violated through this law.

'We were and still are against the statutory minimum wage as it violates the collective bargaining' [...] Also the unions are in this respect ambivalent. On the one hand they are in favour of the minimum wage; on the other hand they want to retain the autonomy of the social partner in the collective bargaining.' (BDA representatives)

'The minimum wage belongs to the negotiation topics of social partners. There is no need for any intervention of the government by law. That the minimum wage has now been settled by law can be seen as a poor testimony.'(...) *'The Minimum Wage Act was adopted by a framework law, which is called 'Collective Bargaining Autonomy Empowerment Act'. This name really does not apply, because in our opinion, the collective bargaining has only been weakened by the introduction of the minimum wage.'* The metal employers are also afraid that employers will no longer be willing to be a member of the employers' organization if more and more labour conditions traditionally subject to collective bargaining are regulated by law.' (Gesammetall representative)

'A minimum wage should not be set in an act of law, but in a collective labour agreement. Setting the minimum wage in an act of law is a violation of the fundamental freedom of collective bargaining. Social partners showed that they are able to agree on minimum wages in several sectoral collective labour agreements before the minimum wage act entered into force. A sectoral agreement on minimum wage can be much more specific than a general minimum wage of € 8.50.' (ZDH representative)

At the same time, all interviewees underlined that the timing of the introduction of a minimum wage stands in no relation to the experiences of a good cooperation between the social partners in times of the crisis and should rather be seen as a combination of positive factors contributing to the possibility to push the Act forward.

'The Minimum Wage Act has no relation to the crisis. It is more a result of the fact that Germany survived the crisis so well. The unemployment has remains 'rather low. So that is why there is now attention for quality instead of quantity. That is the reason why the Minimum Wage Act could be adopted right now.' (IG Metall representative)

'I doubt that the introduction of the minimum wage is related to the experiences of the economic crisis. It is might be rather attributed to the current political climate and the ruling political parties and the political possibilities.' (ver.di representative)

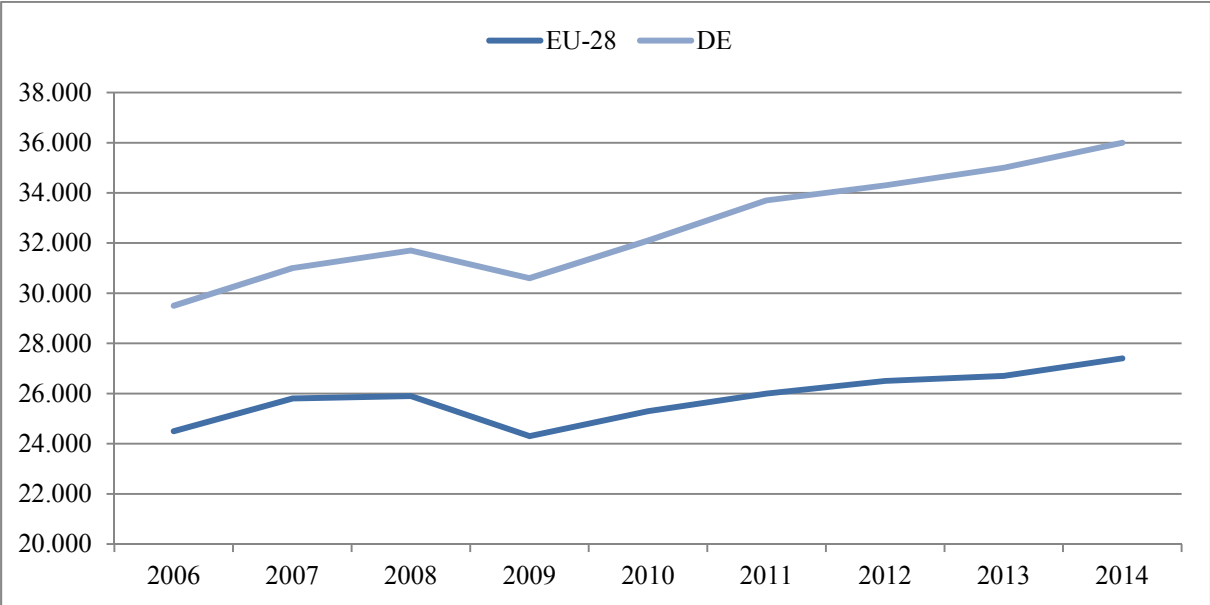
'A connection between the Minimum Wage Act and the experiences during the crisis is too farfetched. The introduction of the Minimum Wage Act is based on a combination of factors: the good economic conditions, the ending of the legislature period of the government, the fact that the FDP as the only clear opponent of the minimum wage was not in the government and that the societal climate was positive.' (BDA representatives)

4. Impact of the reforms on the German labour market

4.1. Overview

As already indicated at the beginning of this report, with a decline in the GDP by 4.7% between 2008 and 2009 the German economy was hit comparably hard by the crisis (Figure 2). Only Japan was hit even worse than Germany. The decline continued in the beginning of 2009, but already in the course of 2009 the German economy started recovering - at least in some sectors.

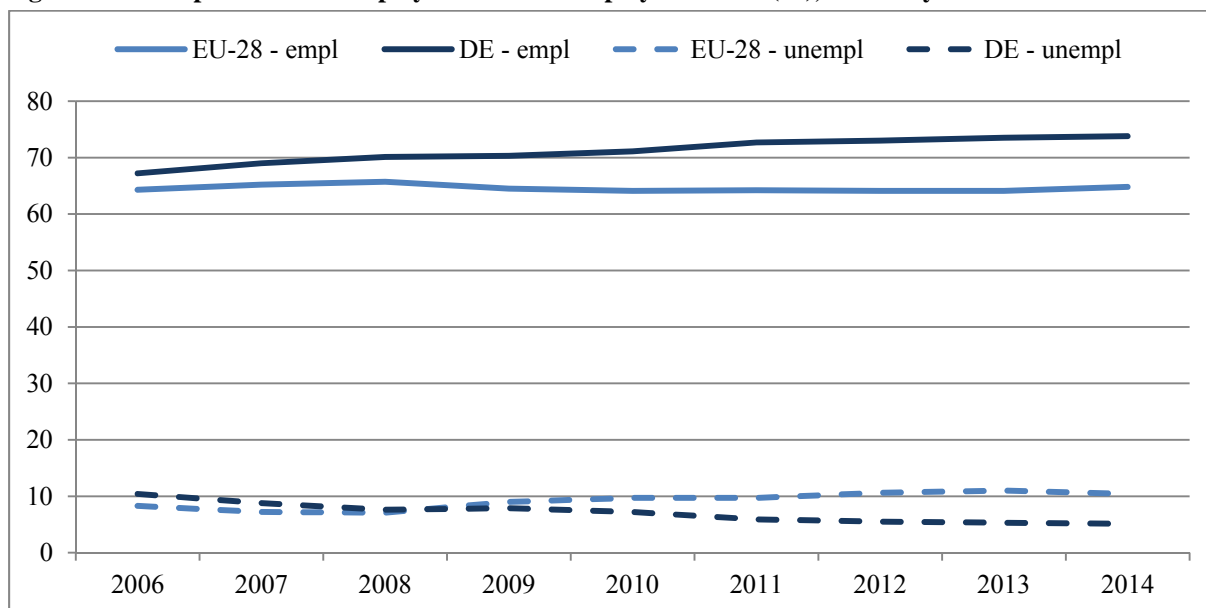
Figure 2: Gross domestic product at market prices (current prices, million euro), Germany and EU-28



Source: Eurostat, extracted on Feb. 2016

Interestingly, the German recession has, unlike in the other countries, never translated into an employment decline. Quite to the contrary, the size of the German working population remained at a record level of more than 40 million people through both 2008 and 2009. It even reached a new record level in May 2011, when the number of employed exceeded 41 million. This is also mirrored in relative stable employment rates during 2008 and 2009 and an increase from 2010 onwards (Figure 3). When looking at unemployment rates, Germany's recent performance was and is also remarkable by international standards. Whereas the level of unemployment in countries such as the US, the UK or France increased substantially since early 2008, Germany experienced only a moderate increase. By the end of 2010, the country's unemployment rate was even lower than at the beginning of the recession (Figure 3).

Figure 3: Development of the employment and unemployment rate (%), Germany and EU-28



Source: Eurostat, extracted on Feb. 2016

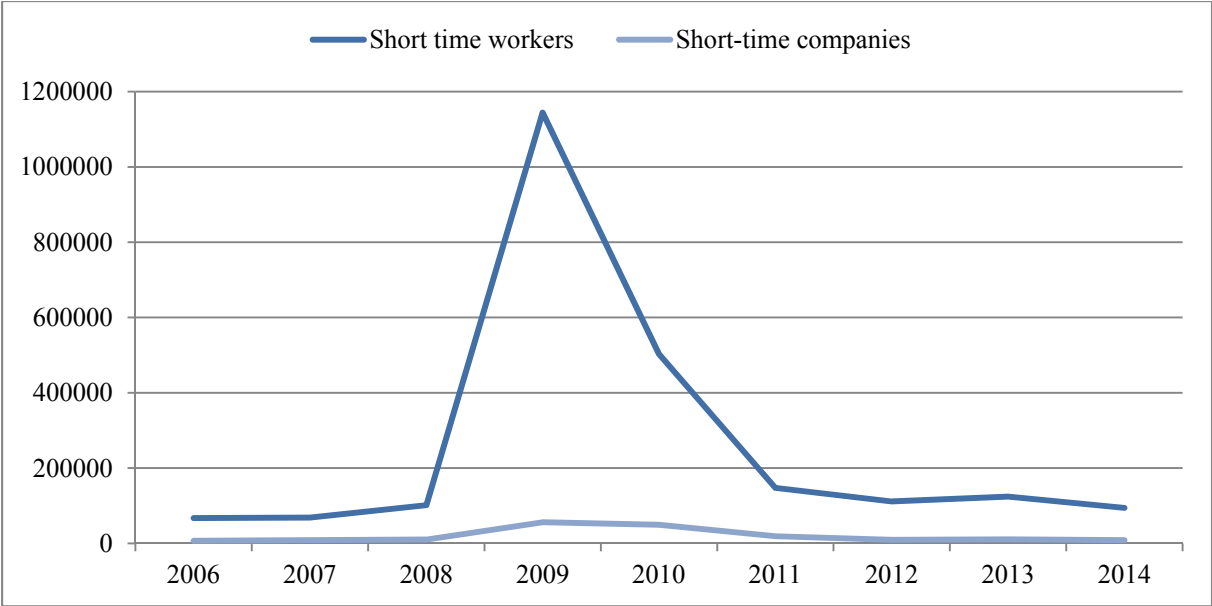
4.2. Impact on employment and working time

Besides the rather low impact of the crisis on employment and unemployment rates, the picture changes when looking at hours worked per worker (across sectors). During the crisis, the number of short-time workers strongly increased (see Figure 4). By May 2009, short-time work affected 64,000 companies and approximately 1.5 million employees (3% of all employees which was one of the highest among OECD countries); but by December these numbers had fallen to 53,000 and 800,000 respectively.

Brenke et al. (2010) conclude that without the extensive use of short-time work, unemployment would have risen by about twice as much as it actually did in 2009. The costs for employers for hours not worked were thus much lower than in many other OECD countries operating such schemes (Hijzen and Venn 2011). In particular, extending subsidies for a temporary reduction in working hours at the beginning of the crisis significantly helped to cushion the job losses. An in-depth analysis conducted by the Federal Employment Service in October 2009 concluded that in the month of June 2009 there was an average reduction in working time of 30.5%, corresponding to the preservation of about 432,000 full-time equivalent jobs. A job loss of such magnitude would have added one percentage point to the unemployment rate (Baccaro and Heeb 2011). However, Hufner and Klein 2012 also correctly remark that in order to derive the true number of jobs saved, i.e. after accounting for effects such as STW subsidies, the crisis experience must be compared to a counterfactual.

This has been done by Hijzen and Venn (2011) which estimated that around 235.000 jobs were saved (0.6% of employment), the second highest in the OECD after Japan.

Figure 4: Development of the numbers of short-time workers and companies (in thousands), 2006-2014



Source: Statistisches Bundesamt, extracted on Feb. 2016

Short-time work was especially common in Germany’s industrial sectors that relied heavily on exports, and those service sectors closely linked to industrial production (Brenke et al. 2011). In this context, short-time work helped the companies to be well prepared for a reoccurring increase in the demand for their goods and to expand their production again without a big time loss. Short-time workers were, however, also found in sectors, such as the service industry or public administration in which no discernible reasons for the reduction in work hours were present. Overall, the fall in total hours worked (-2.7% in 2009) can explain to a large extent why a decrease of employment in terms of persons could be avoided (see Table 2). At the same time, productivity per hour worked declined, while the affected companies accepted a strong change in unit labour costs (6.2 percentage change) in 2009. However, as expected by the federal government and large parts of the affected manufacturing industry, the indicators improved fast again due to the fast return of economic growth in 2010 and 2011.

An important feature of any short-time work system is the costs imposed on employers, which provide incentives not to overuse the scheme. Too generous subsidization, by contrast, risks keeping ailing companies alive, thus preventing needed structural adjustment (Dietz et al. 2011). The German system in 2009 struck a reasonable balance in this regard: the costs for employers, including the reductions legislated during the crisis, amounted

to around 8% of total labour costs. The decline in unit labour costs in Germany was related, among other things, to the behaviour of social partners. Trade unions showed a comparatively large degree of wage restraint in recent years, and collective bargaining processes have generally resulted in a moderate wage growth which was accompanied by adjustment, restructuring, and reorganization processes within firms. Labour income has thus been lagging behind capital income for many years; and firms were relatively competitive by the end of 2008.

Table 2: Overview of core measures related to short-time work

Year	2007	2008	2009	2010	2011	2012
Indicators	Percentage change to previous year					
Total hours worked	1.6	1.2	-2.7	2.3	1.8	0.3
Productivity per hour worked	1.7	-0.1	-2.5	1.8	1.6	0.2
Unit labour cost	-1.0	2.3	6.2	-1.5	1.2	2.8
	Total numbers / stocks					
Short-time workers, 1.000	68	101	1,144	503	148	118
Temporary agency workers, 1.000	614	612	560	742	775	-

Source: Fuchs et al. 2012, pp. 6 and 10-11; IWD 2012, p. 4, and Advisory Group of Leading Research Institutes (Projektgruppe Gemeinschaftsdiagnose 2012, p. 22).

Even though short-time work was an important instrument, it only accounted for a third of the observed working-time reduction in the crisis years; other practices, according to Boysen-Hogrefe and Groll (2010), were reductions of working hours with proportional reduction in pay, reductions in paid overtime and in the positive balances in the working time accounts as well as an increase in part-time employment. In particular, working time accounts (*Arbeitszeitkonten*) have helped companies to smooth employment levels and adjust working hours over the business cycle as an alternative to the use of short-time work. About one third of the companies in Germany with more than 20 employees used working time accounts to maintain employment levels during the crisis (Zapf and Brehmer 2010). Every employee has a working time account, and during the crisis it was agreed by unions and employers to use these working time accounts in a way that employees could work with a negative account. They worked less hours (due to less work in the company) but did not have to lose their jobs. After the crisis, the working time accounts became positive again, due to more hours that were worked. The reduction in working hours due to the use of working time accounts was about half of the size of the reduction that was due to short-time work in 2009 (7.0 hours vs. 13.4 hours per employee; Zapf and Brehmer 2010). A majority of firms that used short-time work also used working time accounts (51.8 percent), whereas fewer than one in ten firms that used working time accounts also made use of short-time work (Boeri and Brücker, 2011).

Therefore, companies seem to have used working time accounts first to adjust at the intensive margin, and when individual accounts were close to zero, they switched their strategy and used the instrument of short-time work. Such strategies show, that firms were very reluctant to fire permanent staff which is partly attributable to the difficulties they experienced in finding skilled workers during the economic boom of the mid-2000s (Boysen-Hogrefe and Groll 2010; Dietz et al. 2010).

Finally, it has also to be noted that in contrast to other countries Germany entered the crisis not only with comparatively solid domestic fundamentals, such as a flexibilized labour market, the absence of a construction and housing boom as well as solid household and corporate balance sheets, but succeeded also soon in overcoming its initial lack of a specified strategy for fiscal consolidation: In other words, the combination of a fundamentally good shape of the German economy, the initial fiscal stimulus as well as a still rather strong foreign demand for German products particularly outside of the Euro zone and the credible commitment to consolidation struck the right balance for recent German economic successes.

4.3. Impact on non-standard employment forms and quality of work

As indicated throughout the report, due to the various measures implemented prior or during the economic crisis, labour market flexibility increased in Germany. Whereas the traditional institutional setting of standard employment was preserved, it was accompanied by a growing segment of nonstandard forms, such as marginal employment and temporary agency work (Eichhorst and Marx 2011). The most prominent form of non-standard employment are the so-called ‘*mini-jobs*’ in Germany (see Figure 5). ‘Mini-jobs’ are mostly marginal part-time jobs paid a maximum of €400 a month.

While in December 2010, 7.4 million people had a mini-job (4.9 million employees, two-thirds of them women) and were exclusively in precarious employment; 2.5 million people had a mini-job as a second type of employment. Moreover, at the same time a further 260,000 people worked in so-called ‘1 euro-jobs’¹⁷, for which they receive, in addition to the social minimum, not more than between 1 and 2.5 Euros per hour.

However, according to Dr. Hagen Lesch from the Cologne Institute for Economic Research (Institute der deutschen Wirtschaft Köln (IW)) “Apparently mini-jobs have been transformed into regular employment”, as since the start of 2015 the number of mini-jobbers has certainly dropped by 1.7%, whilst over the same period a large number of jobs (equivalent

¹⁷ These jobs officially count only as ‘employment opportunities’ and not as regular employment, which means that there are no social insurance entitlements attached and only limited labor law entitlements.

to a 2.1% rise) that are subject to social security contribution have been created. Similar trends are reported by the Federal Employment Agency claiming that the introduction of the Minimum Wage Act is at least partly responsible for a 2.4 % decline in the number of mini-jobbers. However, a report by the so-called Minijob-Zentrale¹⁸, the central organization in charge of the mini-job registration¹⁹, reported more nuanced numbers. In the first year after the introduction of the minimum wage, the number of mini jobbers in the commercial sector has in comparison to last year fallen by 2.4%. Compared to the previous quarter, the number of commercial mini-jobbers, however, increased by 0.4%. In the field of household activities, the number of registered mini jobbers has increased by 4.1% compared to last year. Compared to the previous quarter, an increase of 2.2% is observed. However, the increase of registered mini jobbers in private households is desired and fiscally incentivized to reduce illegal employment.

Figure 5: Development of the number of ‘mini jobbers’ (as main type of employment)



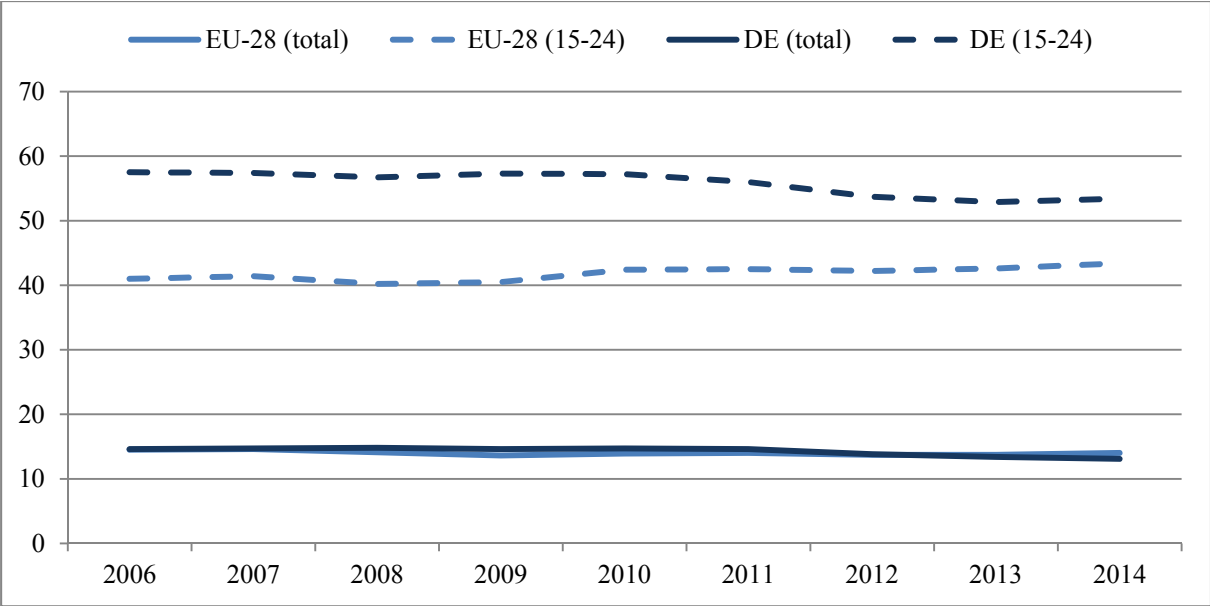
Source: IAB, extracted on Feb. 2016

In addition, since 2003 temporary work has been almost entirely deregulated, leading to a sharp increase in low-paid employment. The annual average number of temporary workers for 2010 was 780,000, in contrast to only 330,000 in 2003. However, recent numbers show that the share of temporary workers is with 13.9% close to the European average (see Figure 6). The share among youth is above 50%, though in contrast to most other European

¹⁸ More concretely the quarterly overview report of the Knappschaft Bahn See, a German pension insurance, see for more details https://www.minijob-zentrale.de/DE/Service/03_service_rechte_navigation/DownloadCenter/6_Berichte_und_Statistiken/1_Quartalsberichte_d_MJZ/2015/quartal_4_2015.pdf?__blob=publicationFile&v=3
¹⁹ Some 4.86 million workers had a marginal part-time job in 2014.

countries most of the young people surveyed stated that they have a temporary contract due to being in education or training.

Figure 6: Temporary employees as percentage of the total number of employees, age 15-64 and 14-24



Source: OECD, extracted on Feb. 2016

Temporary agency work is - though small in relative terms - comparatively high (penetration rate of 2% as compared to 1.6% on EU average). There has been a strong upward trend in temporary agency work in Germany since 2003, among other factors driven by the deregulatory reforms as part of the Hartz packages, with only a brief decrease in the beginning of the economic crisis.

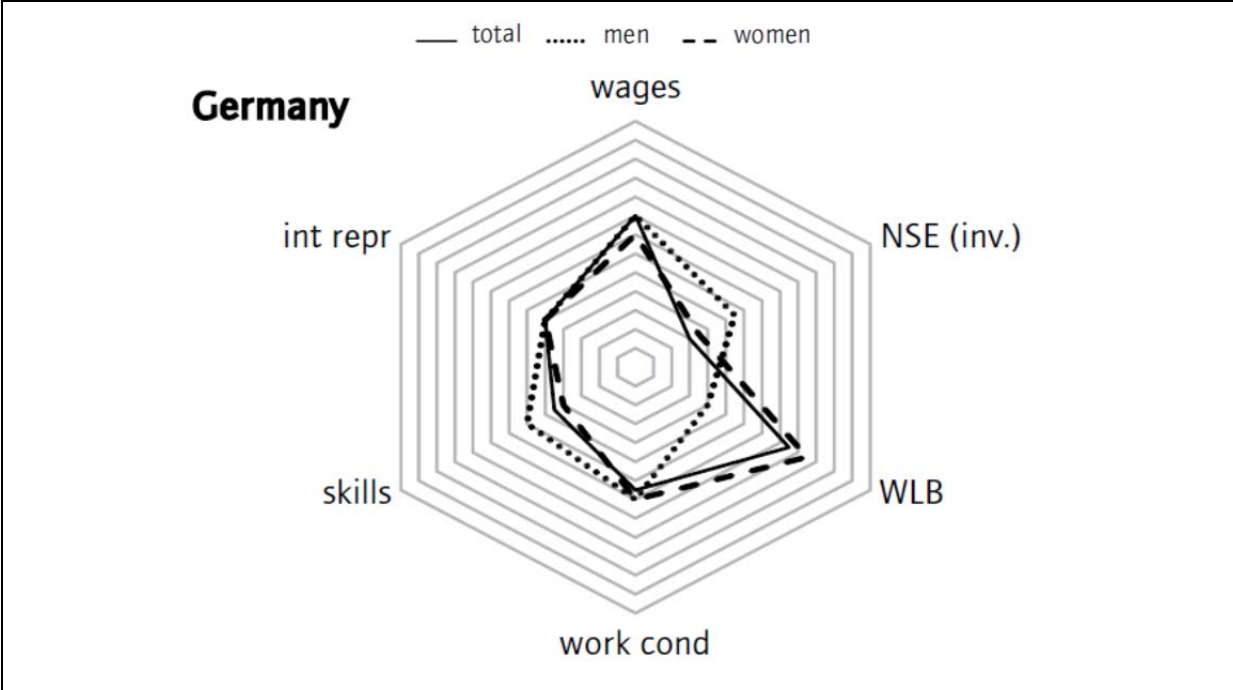
Apart from this, Germany has also special rules for so-called ‘*arbeitnehmerähnliche Personen*’.²⁰ These are ‘self-employed persons who can be compared to employees’ (‘employee-like freelancers’). For instance, publishers’ associations and trade unions (such as the Deutscher Journalisten-Verband (DVJ, *German Federation of Journalists*), the Vereinte Dienstleistungsgewerkschaft (ver.di, *United Services Union*) and the Deutsche Journalistinnen- und Journalisten-Union within ver.di (dju - *German Union of Journalists*)) have concluded the ‘Remuneration agreement for freelance full-time newspaper journalists’ and the ‘Collective agreement for employee-like freelance newspaper journalists’ which apply to the area of journalistic freelance employees. There is a special legal provision in the Collective Labour Law Act on employee-like freelancers: §12a *Tarifvertragsgesetz*. It states that the rules of this Act also apply to workers who are not classical ‘employees’ but so-called

²⁰ Unfortunately, there are no official statistic available. According to the Statistical Office in Germany, however in 2014 around 5 % of all self-employed were self-employed without any employees (so-called ‘solo self-employed’).

‘employee-like freelancers’. This is a form of precarious work: workers are classified as ‘independent contractors’, whilst there are actually carrying out the same activities as colleagues, who have an employment contract. In certain branches CLA’s contain special rights for these groups like, for example, in the sector of Radio Journalists.

Finally, when going beyond quantitative labour market indicators and focusing on job quality Leschke et al. (2012) show that Germany in comparison to other EU countries takes at best a mid-way position in terms of the different areas of job quality (wages, working conditions, involuntary part-time and fixed-term work (inverted), work-life balance and job security, skills and career development and collective interest representation) (see Figure 6).

Figure 6: Country-specific radar chart for ranking on job quality (total, men and women), sub-indices for 2010



Source: Leschke et al. 2012, p. 46

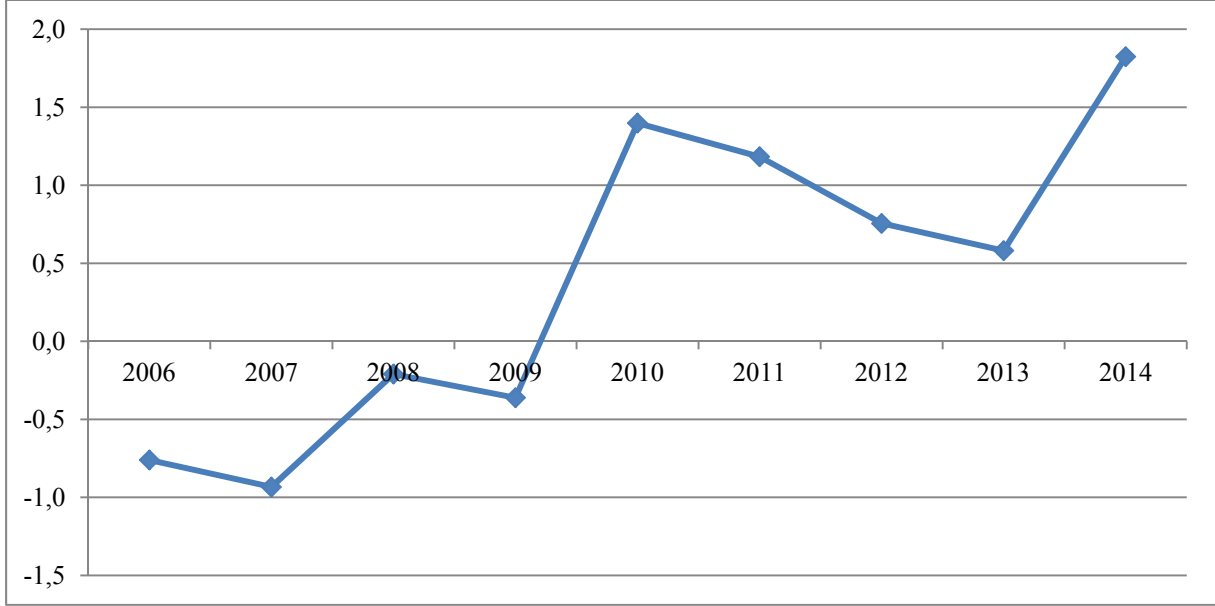
Note: the larger the area encompassed by the lines the better is the job quality; WLB: Working time and work-life balance; NSE: non-standard employment inverted.

4.4. Impact on wages

In the past 10 years national trade unions in Germany have generally been able to secure only moderate wage increases. At the same time, from 2002 onwards there has been a negative wage drift: in other words, increases in real wages have predominantly been below the average collectively agreed wage rises. If price development is also taken into account it turns out that since 2004 there has been no compensation for inflation: instead, in most years the real income has fallen.

This development is also mirrored in a comparison of average real gross incomes between 2006 and 2014 (see Figure 7). While in Germany the gross income of dependent employees rose by only 1.3% in real terms in the decade leading up to 2009, the average rise in the EU-27 was 7.9%. With the 2009 crisis, wage stagnation in Germany continued until 2010 where for the first time in years an increase could be observed, which was, however, followed by a decline in real wages until 2013.

Figure 7: Change in real wages (% , in comparison to the previous year) per employee



Source: WSI Tarifarchiv, extracted on Feb. 2016

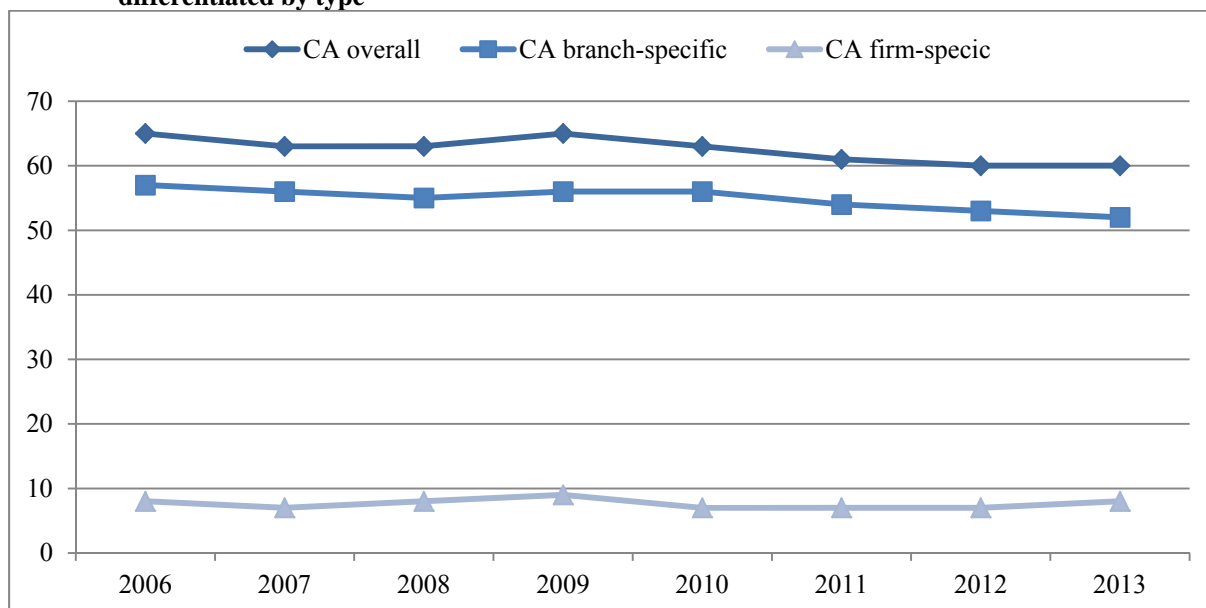
There are many reasons for the negative real wage development. First of all, for a considerable time not all 28 million employees liable for social security contributions have been covered by a collective agreement. In this context, the lack of a statutory minimum wage in Germany during that time is quite obvious. It must be noted, however, that the mere existence of a collective agreement does not guarantee decent wages; the wage structure also depends on the relative strength or weakness of the negotiating partners. The trade unions were particularly constrained in those branches of the private service sector in which low wages are especially evident. Another contributory factor in was the replacement of full-time by part-time work (see section above). As shown, the number of full-time employees fell from 25.5 million in 2001 to 23.6 million in 2010, while the number of part-time employees grew from just under 10 million to 12.5 million over the same period. This structural change in employment was government policy and has been underpinned with various tax and social policy measures. This was accompanied by the expansion of non-standard ‘precarious employment’ (including ‘mini-jobs’) and temporary work (see section above). As a result of all these developments the low-wage segment - that is, the number of those who earn less than

two-thirds of the median wage - expanded between 1995 and 2014 to more than 22% or 6.6 million employees.

4.5. Impact on collective bargaining

German bargaining coverage has fallen considerably, from 72% in 1990 to 60% in 2013 (Bispinck and Schulten 2010), largely because of declining membership in employer' organizations (see figure 8).

Figure 8: Development of the share of employees (%) covered by collective agreements (CA), differentiated by type



Source: WSI Tarifarchiv, extracted on Feb. 2016

Moreover, as indicated in the previous sections, Germany has seen a marked trend towards the use of opening clauses in sectoral agreements. In exchange for employee concessions on pay and working time, employers usually offered job protection (Glassner and Galgóczi 2009). The 2010 WSI-Betriebs- und Personalrätebefragung²¹ showed that an opening clause was in use in 58% of the establishments. One-third of these clauses introduced variable working time; 18% extended the agreed working time, and 7% temporarily reduced it. Pay-related issues were less widespread: in 13% of the clauses an already agreed pay increase was deferred, and in 6% basic pay was reduced (Bispinck and Schulten 2010).

With respect to crisis management, Kloepper and Holtrup (2011) stress that unions and employer organisations played a major part in combating the crisis, e.g. shaping short-time working schemes or stimulus packages and advising companies on the introduction of crisis-related measures. For instance, in car and logistic industries constructive crisis management was characterised by a strong cooperation between management and work

²¹ A representative survey of establishments with at least 20 employees and a works council.

councils. The researchers, however, remain sceptical about the persistence of this constructive cooperation. Instead they point out potential future conflicts at the establishment level, such as better working conditions for the core work force, less protection for employees with a fixed-term contract or temporary agency workers, who suffered most from the crisis. This rather sceptical view on the future cooperation between the social partners was also shared by most of the interviewees.

At the level of the enterprise, the social partners tried to cut costs and enhance flexibility, for example by either reducing working time accumulated in employees' working time accounts or introducing short-time work. In establishments bound by a sectoral collective agreement, this was made possible by the use of opening clauses which allowed companies to deviate from certain clauses in the collective labour agreement. Opening clauses were already negotiated before the crisis; however, employer organisations and unions did make particular use of this instrument during 2009 and 2011 (Vogel 2013).

Finally, unions also exercised wage restraint and entered into a series of negotiations on concessions during the crisis years. The WSI's Annual Collective Bargaining Reports shows that collectively agreed wages rise declined from 2.9% in 2008 (in comparison to 2007) to 1.8% in 2010 (in comparison to 2009, see Bispink 2013). The fact that the wage rise was quite moderate in 2010 reflects the impact of the crisis.

5. Conclusion

The aim of this report was to shed light on the developments in Germany with regard to social dialogue and labour law reforms in the period of 2008-2015, with an emphasis on the effects of the socio-economic adjustments undertaken in this period and the greater or lesser involvement of social partners in designing and implementing the reforms. Throughout the report it has become evident that it is important to distinguish between measures and instruments implemented to overcome the crisis and post-crisis measures which are not related to the experiences before.

To start with the crisis period, Bellman et al. (2014) pointed out that the German miracle has to be attributed to the *interaction of several factors*, which have also been confirmed through the findings in this report. First, Germany experienced favourable conditions prior to the crisis. As elaborated in the previous sections, when the crisis hit Germany in 2009 a high level of employment stability could be observed. This can only be understood in relation to efforts undertaken from the early 1990s onwards to flexibilize

working time in Germany: almost half of Germany companies had already in the early 1990s introduced working time accounts (Gross and Schwarz 2009). Moreover, with the use of ‘opening clauses’, which has also be stressed by several interviewees, all industry-wide collective agreements have given the actors at firm-level the opportunities to reduce collectively agreed working time temporarily in order o avoid dismissals, with accompanying wage losses. These within-firm flexibilities allowed reasonable employment adjustments and to make use of schemes such as short-time work, working time accounts and most opening clauses including company-level pacts for competitiveness and employment. These schemes cumulated into relative employment stability coupled with low labour productivity. Additionally, the Hartz reforms (2003-2005) restructured the labour market, thereby facilitating flexibility, and finally during the crisis, efficient government interventions (such as prolonging short-time working entitlement periods and introducing two rescue packages) set the right framework for social partner action and helped strengthen the German economy.

It seems that part of the fast and effective German answer to the crisis can be attributed to these pre-established instruments. In this regard the BDA representatives underlined that, given the nature of the industrial relations in Germany; it would have been unlikely that Germany could have reacted so fast in the reduction of working time if not beforehand the instruments had been already implemented. This allowed the social partners to extend the existing range of instruments for implementing temporary working time reductions - in particular with respect to short-time work.

The reforms introduced after the crisis have to be seen independently from the experiences during the crisis. In this regard, the heavily discussed Minimum Wage Act and the related reforms can rather be seen as a result of a positive and supporting political, economic and societal climate rather than of the positive collaboration experiences during the crisis. The findings of the report confirm that the social partners have very strong and divergent attitudes when it comes for instance to the Minimum Wage Act which is considered as a ‘state intervention’. While the trade unions - although from the beginning supporters of the minimum wage but cautious regarding their autonomy - are now more concerned with how the minimum wage can be increased over the different sectors and branches and over time, the BDA and employers associations are very clear in their rejection and scepticism. Even though the negative forecasts have not come true so far, a common notion is that ‘it is too early’ to draw conclusions, in particular due to the current good economic climate. There is a lot of doubt whether the minimum wage will hold a further crisis.

When it comes to the question about development of the industrial relations and the role of the social partners, the results show that overall the system is a strong one which can master a crisis. This can be attributed to the fact that on the one hand it offers room for conflicting interests with respect to wages and working conditions, while at the other hand strong collaborations are possible when required by the circumstances. Vogel (2013) concluded that social partners during the crisis have successfully managed to mitigate the effects of the crisis. The stabilization of the employment level, particularly in the most crisis-hit industries is mainly an effect of the cooperative, solution-seeking behavior of social partners at the establishment and sectoral levels. This achievement was also due to the relative flexibility of the German system of industrial relations. More specifically: the possibility to deviate from collectively agreed standards by means of opening clauses, and the wage restraint and concessions negotiated during collective bargaining rounds.

In this context, the interviewees have underlined that the common goal of overcoming the crisis and saving jobs as well as the right and adequate instruments at hand increased the willingness of the social partners to collaborate and to put major conflicts temporarily at rest. However, as expected after the crisis the old conflicts remerged and the relation between the social partners returned to pre-crisis conditions and conflicts even increased in some sectors and branches.

Overall, the interviewees also repeatedly stressed are that developments in the industrial relations in Germany and in particular of the collective bargaining system can hardly be generalised. It is rather necessary to differentiate between sectors, industries and branches. In the framework of this report, however, it was not the aim to dig deeper into those details but to provide rather an overview and an evaluation of the major trends.

6. References

- Addison, J.; Schnabel, C.; Wagner, J. (2004): The Course of Research into the Economic Consequences of German Works Councils. *British Journal of Industrial Relations*, 42: 255-281.
- Baccaro, L.; Heeb, S. (2011). Social dialogue during the financial and economic crisis; Results from the ILO/World Bank Inventory using a Boolean analysis on 44 countries, Employment Sector. *Employment Working Paper No. 102*, Geneva: ILO.
- BDA (2009): "Arbeitgeberpräsident Dr. Dieter Hundt: Verabschiedung des Konjunkturpakets II richtiges und wichtiges Signal", media release, 27 Jan.
- BDA, BDI, DIHT and ZDH. 2008. "Gemeinsame Pressemitteilung zur Notwendigkeit verantwortlichen Regierungshandelns in Krisenzeiten", media release, 29 Dec.
- Bellmann, L.; Gerner, H. (2012): Company-level pacts for employment in the global crisis 2008/2009. First evidence from representative German establishment-level panel data. *International Journal of Human Resource Management*, 23(16): 3375-3396.
- Bellmann, L.; Gerlach, K.; Meyer, W. (2008): Company-level pacts for employment. *Jahrbücher für Nationalökonomie und Statistik*, 228: 534-553.
- Bispinck, R. (2006): Betriebsräte, Arbeitsbedingungen und Tarifpolitik. *WSI Mitteilungen* 2005/6: 301-307.
- Bispinck, R. (2013): WSI-Tarifarchiv, 2008-2012, Annual collective bargaining reports 2008-2011, Düsseldorf, URL: http://www.boeckler.de/wsi-tarifarchiv_2231.htm [2013-08-16].
- Bispinck, R.; Schulten, T. (1999). Flächentarifvertrag und betriebliche Interessenvertretung, in: Walter Müller-Jentsch (Hrsg.), *Konfliktpartnerschaft, Akteure und Institutionen der industriellen Beziehungen*, München und Mering: Reiner Hampp Verlag 1999.
- Bispinck, R.; Jung, R. (2015). WSI: „Deutlich bessere Chancen auf existenzsichernde Einkommen“ 2015 - Das Jahr des Mindestlohns: Alle Daten auf einen Blick, p. 1-3 (stand: Januar 2015).
- Boeri, T.; Brücker, H. (2011): Short-time work benefits revisited: Some lessons from the great recession. *IZA Discussion Paper 5635*, Institute for the Study of Labor (IZA), Bonn.
- Boysen-Hogrefe, J.; Groll, D. (2010): The German labour market miracle. *National Institute Economic Review*, 214: 38-50.
- Bosch, G. (2004): The changing nature of collective bargaining in Germany. In: Katz, H.; Lee, W. and Lee, J. (eds): *The new structure of labor relations and decentralization*. Ithaca (NY), Cornell University Press, pp. 1-9.
- Bosch, G. 2011. The German labour market after the financial crisis: Miracle or just a good policy mix? In: D. Vaughan-Whitehead (ed.): *Work inequalities in the crisis: evidence from Europe*. Cheltenham: Edward Elgar, pp. 243-275.
- Brenke, U.; Rinne, K.; Zimmermann, F. (2011): Short-time work: the German answer to the Great Recession, *IZA DP No. 5780*, Forschungsinstitut zur Zukunft der Arbeit (Institute for the Study of Labor).
- Bundesagentur für Arbeit (2011): Der Arbeitsmarkt in Deutschland: Zeitarbeit in Deutschland - Aktuelle Entwicklungen." Arbeitsmarktberichterstattung (January) Bundesregierung, see https://www.bundesregierung.de/Content/DE/_Anlagen/2015/12/2015-12-01-uebersicht-branchenmindestloehne.pdf?__blob=publicationFile&v=2
- Bundesministerium für Arbeit und Soziales (2011): Fachkräftesicherung, Ziele und Maßnahmen der Bundesregierung.

- Burda, M.; Hunt, J. (2011): What explains the German labour market miracle in the great recession? *NBER Working Papers, No. 17187*. NBER, Cambridge, MA.
- Crimmann, A.; Wießner, F. (2009): Wirtschafts- und Finanzkrise - Verschnaufpause dank Kurzarbeit. *IAB-Kurzbericht 14/2009*. Institute for Employment Research (IAB), Nuremberg.
- Dietz, M.; Stops, M.; Walwei, U. (2011): *Safeguarding jobs in times of crisis - lessons from the German experience*. Geneva: International Labour Organization (ILO).
- Dribbusch, H.; Birke, P. (2012): Trade unions in Germany. Organisation, Environment, Challenges. See <http://library.fes.de/pdf-files/id-moe/09113-20120828.pdf>
- Eichhorst, W.; Marx, P. (2011): Reforming German Labor Market Institutions: A Dual Path to Flexibility. *Journal of European Social Policy*, 21(1): 73-87.
- Ellen, E.; Lindner, F. (2015): *Labour market measures in Germany 2008-13: the crisis and beyond*. Geneva: International Labour Organization (ILO).
- Ellguth, P.; Gerner, H.; Stegmaier, J. (2012): Wage bargaining in Germany, the role of works councils and opening clauses. *IAB-Discussion Paper*, 5/2012.
- Erfurter Kommentar zum Arbeitsrecht (2015). München: Verlag C. H. Beck.
- Eurofound (2013): Wages and working conditions in the crisis. European Foundation for the Improvement of Living and Working Conditions, Dublin. See: <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/wages-and-working-conditions-in-the-crisis>
- Fuchs, J.; Zika, G. (2010): Arbeitsmarktbilanz bis 2025: Demografie gibt die Richtung vor. *IAB-Kurzbericht 12/2010*. Institute for Employment Research (IAB), Nuremberg.
- Fuchs, J.; Hummel, M.; Klinger, S.; Spitznagel, E.; Wanger, S.; Zika, G. (2010): Prognose 2010/2011: Der Arbeitsmarkt schließt an den vorherigen Aufschwung an. *IAB Kurzbericht 18/2010*. Institute for Employment Research (IAB), Nuremberg.
- Funk, L. (2012): The German economy during the financial and economic crisis since 2008/2009 0 - an unexpected success story revisited. Konrad-Adenauer-Stiftung e.V., Sankt Augustin/Berlin.
- Franz, C.; Lehndorff, S. (2010): Arbeitszeitentwicklung und Krise - eine Zwischenbilanz. *IAQ-Report: Aktuelle Forschungsergebnisse aus dem Institut Arbeit und Qualifikation*, 7: 1-12.
- Gartner, H.; Klinger, S. (2010): Verbesserte Institutionen für den Arbeitsmarkt in der Wirtschaftskrise. *Wirtschaftsdienst*, 11: 728-734.
- Haipeter, T.; Lehndorff, S. (2009): Collective bargaining on employment. *Industrial and Employment Relations Working Paper 3*. Geneva: International Labour Organization (ILO).
- Hayter, S.; Fashoyin, T.; Kochan, T. (2011): Collective bargaining for the 21st century. *The Journal of Industrial Relations*, 53(2): 225-247.
- Heyer, G.; Koch, S.; Stephan, G.; Wolff, J. (2011): Evaluation der aktiven Arbeitsmarktpolitik – Ein Sachstandsbericht für die Instrumentenreform 2011, *IAB-Discussion Paper 17/2011*.
- Hess, D. (2008); Merkel beruft Konjunkturgipfel ein, 14 Dec. 2008, Handelsblatt. See: www.handelsblatt.com/politik/deutschland/merkel-beruftkonjunkturgipfel-ein;2105250 [17 Sep. 2009].
- Herzog-Stein, A.; Seifert, H. (2010): Der Arbeitsmarkt in der Großen Rezession - Bewährte Strategien in neuen Formen. *WSI-Mitteilungen*, 11: 551-559.

- Herzog-Stein, A.; Lindner, F.; Sturn, S.; van Treeck, T. (2010): Vom Krisenherd zum Wunderwerk? Der deutsche Arbeitsmarkt im Wandel. *Institut für Makroökonomie und Konjunkturforschung Report*, 56: 1-18.
- Hijzen, A.; Venn, D. (2011): The role of short-time work schemes during the 2009-09 recession. *Social, Employment and Migration Working Papers*, No. 115. Paris: OECD.
- Hüfner, F.; Klein, C. (2012): The German labour market: preparing for the future. *Economics Department Working Paper No. 983*, ECO/WKP(2012) 60. Paris: OECD.
- IAB (2013): Tarifbindung der Beschäftigten. Institut für Arbeitsmarkt- und Berufsforschung. See: http://doku.iab.de/aktuell/2014/tarifbindung_2013.pdf
- Institut der deutschen Wirtschaft Köln (2011): Der große Run bleibt aus, Pressemitteilung, No. 15/26, April 2011.
- ILO and World Bank (2012): Inventory of policy responses to the financial and economic crisis. Joint Synthesis Report. Geneva: International Labour Office; Washington, DC: World Bank.
- Jirjahn, U. (2011): Ökonomische Wirkungen der Mitbestimmung in Deutschland: Ein Update. *Schmollers Jahrbuch*, 131: 3-57.
- Klinger, S. et al. (2011): Did recruitment problems account for the German job miracle? *International Review of Business Research Papers*, 7(1): 265-281.
- Klöpffer, A.; Holtrup, A. (2011): Ambivalenzen betrieblicher Krisenbewältigung (Ambivalence in crisis management at the establishment level). Schriftenreihe Institut Arbeit und Wirtschaft 10. Bremen: IAW. See: http://www.iaw.uni-bremen.de/ccm/cms-service/stream/asset/?asset_id=1277012
- Kohaut, S.; Schnabel, C. (2007): Tarifliche Öffnungsklauseln - Verbreitung, Inanspruchnahme und Bedeutung. *Sozialer Fortschritt*, 56(2): 33-40.
- Kotthoff, H. (1994): Betriebsräter und Bürgerstatus. München und Mering: Rainer Hampp Verlag.
- Lehndorff, S. (2010): Before the crisis, in the crisis, and beyond: The upheaval of collective bargaining in Germany. Duisburg-Essen: Mimeo.
- Leschke, J.; Watt, A.; Finn, M. (2012): Job quality in the crisis – An update of the Job Quality Index (JQI). *Working Paper No. 2012.07*. Brussels, European Trade Union Institute.
- Markovits, A. (1986): The politics of the West German trade unions: Strategies of class and interest representation in growth and crisis. Cambridge: Cambridge University Press.
- Möller, J. (2010): The German labor market response in the world recession - Demystifying a miracle. *Zeitschrift für Arbeitsmarktforschung*, 4, 325-336.
- Müller-Jentsch, W. (1997): Soziologie der industriellen Beziehungen. Eine Einführung. Frankfurt a. M.: Campus.
- OECD (2010): Moving Beyond the Jobs Crisis. Paris: OECD.
- Paesler, M. (2011): Theory and historical development of the social market economy in Germany. In: Seidelmann, R. (ed.): *The New Germany - History, Economy, Policy*, Baden-Baden 2011: Nomos, pp. 111-120.
- Reisenbichler, A.; Morgan, K. (2011): From 'sick man' to 'miracle': Explaining the robustness of the German labour market during and after the financial crisis of 2008-09. Paper prepared for the American Political Science Association Annual Meeting, Seattle, September 2011.
- Rinne, U.; Zimmermann, K. (2011): Another economic miracle? The German labor market and the great recession, *IZA-Discussion Paper 6250*. Bonn: IZA.

- Schmeral, C. (2009): Ein neues Bündnis für Arbeit", in *Wirtschaftswoche*, 22 Apr. 2009. See: <http://www.wiwo.de/politik/ein-neues-buendnis-fuer-arbeit-394730/> [17Sep. 2009].
- Schneider, S.; Gräf, B. (2010): Deutschlands Beschäftigungswunder - Kurzarbeit, flexible Tarifverträge und gesunde Unternehmen, Research Briefing, *Wirtschaft und Politik*, Deutsche Bank Research.
- Schulten, T.; Bispinck, R. (2013a): Handwerk, eine Stärkung, Stabileres Tarifvertragssystem durch Stärkung der Allgemeinverbindlicherklärung?
- Schulten, T.; Bispinck, R. (2013b): Stabileres Tarifvertragssystem durch Stärkung der Allgemeinverbindlicherklärung? *Wirtschaftsdienst*, 93(11), 758-764.
- Sorge, A. (1999): Mittbestimmung, Arbeitsorganisation und Technikanwendung. In W. Streeck and N. Kluge (Hrsg.), *Mitbestimmung in Deutschland* (pp. 17-134). Frankfurt a. M.: Campus.
- Spiegel (2009): Help for Europe's Biggest Economy: Germany Seals 50 Billion Euro Stimulus Plan, *Der Spiegel Online* 13 January 2009.
- Streeck, W. (1995): German capitalism: Does it exist? Can it survive? Köln: Max-Planck-Institut Für Gesellschaftsforschung.
- Streeck, W.; Rehder, B. (2003): Der Flächentarifvertrag: Krise, Stabilität und Wandel. *Industrielle Beziehungen*, 10(3), 341-362.
- Steinke J.; Koch, S.; Kupka, P.; Osiander, C.; Dony, E.; Güttler, D.; Hesse, C.; Knapp, B. (2012): Neuorientierung der Arbeitsmarktpolitik Die Neuausrichtung der arbeitsmarktpolitischen Instrumente aus dem Jahr 2009 im Blickpunkt: Mehr Flexibilität und größere Handlungsspielräume für die Vermittler? IAB Forschungsbericht 2/2012. Institute for Employment Research (IAB), Nuremberg.
- Tijdens, K.; Van Klaveren, M.; Bispinck, R.; Dribbusch, H.; Öz, F. (2011): Employees' experiences of the impact of the economic crisis in 2009 and 2010: A German-Dutch comparison. University of Amsterdam, *AIAS Working Paper 109*. Amsterdam: AIAS.
- Thelen, K. (1991): *Union of parts: Labor politics in postwar Germany*. Ithaca: Cornell University Press.
- Thelen, K. (2000): Timing and temporality in the analysis of institutional evolution and change. *Studies in American Political Development*, 14(1), 101-108.
- Trinczek, R. (2006): Betriebe ohne Betriebsrat: Zur Einleitung. In I. Artus, R. Trinczek and S. Böhm (eds.), *Betriebe ohne Betriebsrat. Informelle Interessenvertretung in Unternehmen* (pp. 9-39). Frankfurt a. M.: Campus.
- Vogel, S. (2009): New allowances for short-time work in bid to offset economic crisis, Eurofound, Cologne Institute for Economic Research (IW Köln), <http://www.eurofound.europa.eu/observatories/eurwork/articles/new-allowances-for-short-time-work-in-bid-to-offset-economic-crisis>.
- Vogel, S. (2013): Germany: Impact of the crisis on industrial relations, Eurofound Observatory: EurWORK Published on: 17 June 2013, Cologne Institute for Economic Research (IW Köln), <http://www.eurofound.europa.eu/observatories/eurwork/comparative-information/national-contributions/germany/germany-impact-of-the-crisis-on-industrial-relations>
- Whittall, M. (2000): The BMW European works council: A cause for European industrial relations optimism. *European Journal of Industrial Relations*, 6(1), 61-84.
- Whittall, M. (2005): Modell Deutschland under pressure. *Economic and Industrial Democracy*, 26(4), 569-592.

- Whittall, M. (2010): The problem of national industrial relations traditions in European works councils: The example of BMW. *Economic and Industrial Democracy*, 31(4), 70-85.
- WSI (2015): Deutlich bessere Chancen auf existenzsichernde Einkommen. 2015 – Das Jahr des Mindestlohns: Alle Daten auf einen Blick.
- Zagelmeyer, S. (2010): Company-level bargaining in times of crisis: The case of Germany, Working Paper No. 9. Geneva: ILO. See: http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---dialogue/documents/publication/wcms_158353.pdf.
- Zagelmeyer, S. (2013): Tackling the crisis through concession bargaining: evidence from five German companies. *International Journal of Manpower*, 34 (3), 232-251.
- Zapf, I.; Brehmer, W. (2010): Flexibilität in der Wirtschaftskrise: Arbeitszeitkonten haben sich bewährt, IAB Kurzbericht 22/2010, Institute for Employment Research (IAB), Nuremberg.

Online resources:

Eurostat:

<http://ec.europa.eu/eurostat/de/data/database>

OECD:

<http://www.oecd.org/employment/emp/onlineoecdemploymentdatabase.htm>

Statistisches Bundesamt:

<https://www.destatis.de/DE/ZahlenFakten/Datenbanken/Datenbanken.html>

Statistik der Bundesagentur für Arbeit Beschäftigungsstatistik, Geringfügig entlohnte Beschäftigte nach ausgewählten Merkmalen, Nürnberg, Datenstand Juni 2014, see <http://statistik.arbeitsagentur.de/Navigation/Statistik/Statistik-nach-Themen/Beschaeftigung/Beschaeftigung-Nav.html>

WSI Tarifarchiv:

http://www.boeckler.de/wsi-tarifarchiv_64293.htm

ANNEX

Information and background of the interviewees:

Representatives from union- side

1. DGB representative (Deutscher Gewerkschaftsbund, Confederation of German Trade Unions - interview with one federal executive representative responsible for labour market topics)
2. Ver.di (Vereinte Dienstleistungsgewerkschaft, United Services Union, one interview with a representative of the department of Law / Law Policies)
3. IG Metall (Industriegewerkschaft Metall, Industrial Union of Metalworkers, one interview with two representatives, one from the department of General Social and Labour Politics and one from the department Social and Labour Market Politics)

Representatives from employer-side

4. BDA (Bundesvereinigung der Deutschen Arbeitgeberverbände e. V., Confederation of German Employers' Associations, one interview with two representatives, one from the department for Wage and Tariff Policy) and one from the department for Labour Market Topics)
5. ZDH (Zentralverband Deutsches Handwerk, German Craft Branch, one interview with a representative of the department Labour Market, Industrial Relations and Labour Law)
6. Gesamtmetall (Federation of German Employers' Associations in the Metal and Electrical Engineering Industries, one interview with a representative of the department International Relations)

Independent expert

7. IW Cologne (Institut der deutschen Wirtschaft Köln - The Cologne Institute for Economic Research, one interview with an expert on industrial relations)