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Collective bargaining on employment

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Industrial
and Employment
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Foreword

In the context of the economic downturn, concerns regarding employment security have moved to the top of the policy agenda. Most of the focus has been on the role of public policy and of social dialogue in addressing the employment impact of the economic crisis. What do we know about the role that collective bargaining can play in addressing employment insecurity? Agreement to wage cuts at the level of the firm may save employment but an overall fall in wages can worsen an economy's problems on other fronts. How can collective bargaining be used as an instrument to maintain employment and incomes at the level of the firm?

This paper examines the manner in which the industrial relations actors have used collective bargaining to address issues of employment and employment insecurity. While the bulk of collective bargaining that has taken place over the last two decades has been on "how to" implement job cuts (e.g. severance pay and early retirement) actors have increasingly used collective bargaining as an instrument to negotiate alternatives and save jobs.

The paper sheds light on attempts by industrial relations actors to reduce employment insecurity – either through "concession bargaining" aimed largely at cutting wages and labour costs or through "innovation oriented" bargaining strategies. The latter aims to reduce labour costs though improvements in work organization and other factors of competitiveness and by so doing protecting incomes and jobs. Thus the crucial issue raised in the paper is how the actors go about tackling employment insecurity – via "low-road" cuts in wages or "high-road" strategies that seek to improve enterprise performance through efficiency gains in operations and other process and product innovations.

The paper assesses practices both in respect of the outcomes of the collective agreements and the impact of these practices on industrial relations systems. While collective agreements have evolved from purely "defensive" instruments aimed at protecting jobs to "offensive" instruments aimed at improving the competitiveness of the enterprise and containing employment insecurity – in practice, bargaining for employment insecurity can be a double-edged sword. The authors argue that the practice of linking employment and competitiveness in collective agreements through "concession bargaining" opened the door in some countries to tradeoffs which undercut industry standards and have eroded the architecture of collective bargaining. In addition, while there are interesting and groundbreaking agreements aimed at adaptation rather than mere survival, as the authors point out, "The 'high road' is not too busy".

In the context of the current economic crisis, the paper highlights the importance of the interplay between collective bargaining actors and the State. Innovative collective agreements on measures to contain employment losses often go hand in hand with public policy support such as public subsidies to support work-sharing linked to vocational training in Germany. The paper also points to the need to strengthen the social partners and industrial relations institutions, without which firms may lack the institutional capacity to strike the bargains needed to save jobs, maintain incomes and improve firm performance.

I am grateful to Thomas Haipeter and Steffen Lehndorff for undertaking this study and commend the report to all interested readers.

May 2009

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Contents

1. Introduction

The present study provides an overview on existing research and data covering the large array of collective bargaining on employment insecurity. Based on the relevant literature, its aim is to assess how collective bargaining agreements achieve the dual goals of employment security and enterprise adaptability and address non-standard forms of employment. The interest behind this exercise is to learn more about how the capacity to engage in negotiation through collective bargaining has enabled the social partners to address the issue of rising employment insecurity (Ghose et al. 2008).

Given the current economic crisis whose depth and duration may be controversial but whose importance is arguably beyond debate, obviously all kinds of endeavours geared to curtail employment insecurity will be high on the agenda in the near future. While current activities and discussions are justifiably focused on public policy initiatives, it is fair to assume that sooner rather than later, more attention will also be paid to potential contributions of collective bargaining actors. Thus, it is useful to look back at experience gathered over past decades for that matter. In practice, bargaining for employment insecurity can be a double-edged sword.

To begin with, collective bargaining on this issue is multifaceted, hence the need to clearly delineate the topic of this paper. There is no one unanimously supported definition of this group of agreements which would help to capture the wide scope of underlying practices, let alone their actual dissemination (Freyssinet/Seifert 2001; Ozaki 2003). To begin with, the bulk of collective bargaining which has taken place over the past decades in the face of imminent redundancies dealt with ways to smooth the job cuts by supportive measures such as severance pay or early retirement. There has been a long-standing tradition of this kind of collective bargaining, and a brief look at any database on industrial relations issues confirms that this tradition continues to be vital (most agreements include measures such as severance pay, early retirement, and various forms of outplacement of workers).The present study, in contrast, sheds light on attempts to circumvent or diminish redundancies and to contain and reduce employment insecurity. While this approach continues to be less common than the traditional mainstream of easing ways into unemployment, it has become more important over the past two decades.

This leads us to the second definition problem. The distinction between “collective bargaining” and the wider concept of “bargaining on employment” is blurred. There are many countries in which various species of macro-level corporatism are practised, that is, there are either tripartite negotiations on macroeconomic guidelines or an implicit joint understanding amongst major actors on these guidelines, geared to foster what are expected to be employment-favourable income policies or other measures relevant for employment, such as labour market policies (Fajertag/Pochet 2000; Hassel 2006). While these approaches have been practised for decades in many countries, the emphasis within these approaches has changed since the 1980s. In the face of increasingly internationalised markets (and, within Europe, accelerated by the internal market and the Euro zone stability criteria), major collective bargaining actors in many countries have tended to adopt income and labour market policy guidelines in the perspective of the international competitiveness of the economy as a whole, and in their export-oriented industries in particular. Within the framework of the broad move towards supply-side economics thinking and practice, “wage moderation” became the crucial term which embraces the underlying concept of most of these approaches. This trend entailed a move towards “supply-side corporatism” (Traxler 1993) whose forms have differed across countries. They may range from tripartite or at least state-supported agreements on guidelines for wages and other policy areas relevant for employment to a joint understanding that employment depends crucially on competitiveness-fostering approaches to collective bargaining. Above all, and sometimes

intertwined with central bilateral or trilateral frameworks, it included a great deal of decentralisation of collective bargaining. As Ozaki (2003: 10) rightly notes, "decentralization of collective bargaining is above all related to the search for higher competitiveness."

In his overview on the wide range of employment-oriented bargaining practices in Europe, Zagelmeyer (2000) makes the useful distinction between "social pacts" between the collective bargaining actors and governments, and "employment pacts" between the collective bargaining actors. It is these "employment pacts" on which the present study will be focused, even though it must be taken into account that in some countries tripartite "social pacts" may influence or even provide a legal or political framework for "employment pacts" between the collective bargaining actors (Ozaki 2003; Molina 2008). Further, and even more important, is the close linkage between "employment pacts" and a greater emphasis on decentralised collective bargaining on employment issues within the wider framework of supply-side corporatism. While it would be too simplistic to talk about a clear-cut trend towards decentralisation in collective bargaining, what can be said at any rate is that (1) greater attention has been paid to the distinction and diversification of collective bargaining levels, including the company and establishment levels, and within this move, (2) the "nature" and contents of collective bargaining on employment, and employment insecurity, have changed substantially (Sisson 2005). It is these two intertwined trends which are at the centre of the present study. Following this line of exploration we do refer to industry-level bargaining wherever appropriate, but in most cases it will be the level of firms or individual establishments on which this kind of collective bargaining takes place and on which the emphasis of the present study will be laid.

Looking back at the historical evolvement of collective bargaining on employment insecurity, it may seem confusing that the preferred terms used in the literature aimed at addressing the issue have changed over time. However, the changes in language followed the dynamics in practice. The arguably most important starting point for what has developed over recent decades in this respect was "concession bargaining" in large parts of unionised industries in the U.S., and the automotive industry in particular, since the 1980s. This term reflected the distinctive type of company or establishment-related bargaining between trade unions and management in which measures to ease or smooth job retrenchment in particular industries or companies was traded against cuts in wages or in the wage package.

Things became more blurred once "concession bargaining" spilled over in the 1990s to Europe and in doing so, began to change and expand its contents. As compared to the U.S., and given the diversity of institutional settings across European countries, it is much less obvious in Europe who is responsible or entitled to negotiate with whom at what level and on which issue, and it is equally open to debate which direction negotiations may take. In centralised corporatist environments, for instance, there may be sectoral or central agreements with the intention of fostering competitiveness at sector or company levels by wage moderation or by facilitating flexibility at company level. At the same time, employment pacts may aim at providing greater leeway for local actors to engage with bargaining on these issues, thus opening pathways to decentralised collective bargaining on a large array of issues directly or indirectly connected with the safeguarding or promotion of employment and employment security. Terms coined in the literature of the late 1990s to capture this multifaceted trend in collective bargaining on employment issues include "framework agreements on competitiveness and jobs", "social pacts", "alliances for jobs", "local pacts for the safeguarding of employment", or simply "pacts for employment and competitiveness". The latter term, with its shorthand "PECs", was used by Sisson et al. (1999) in their conceptual paper on this issue on behalf of the European Foundation for the Improvement of Living and Working Conditions. This paper was the platform for the broadest (to our knowledge) existing overview so far on PECs in 11 Member States of the European Union (Freyssinet/Seifert 2001; Sisson 2005). In the

context of these analyses, PECs were defined as "collective agreements at sectoral or company level that deal explicitly with the issues of employment and competitiveness, and with the relationship between them, to either safeguard jobs that are at risk or create new ones" (Freyssinet/Seifert 2001: 11). As Sisson (2005: 2) pointed out, even though "there is no 'typical' PECs", most of them have two objectives: (1) to minimise employment reductions or to stabilise employment, and (2) to reduce costs of organisations or to improve their ability to adapt.

This approach to conceptualise collective bargaining on employment insecurity clearly evolved within the European context, if taking into account the earlier U.S. experience of concession bargaining. Parallel endeavours undertaken within the framework of the ILO (Ozaki 1999) had to agree on a wider concept. As Ozaki noted at a later stage (2003: 1), once the scope of analysis goes beyond Europe and possibly the U.S. and includes other world regions, any "comparative analysis of recent developments in collective bargaining, with particular respect to negotiations on employment and competitiveness" had to take into account all sorts of negotiations dealing both explicitly and implicitly with job protection.[1]

Nevertheless, for the purposes of the present study it appears useful to stick to the narrower term and concept developed in the EU context, i.e. the explicit dealing with employment insecurity. The ambiguous nature of collective bargaining affecting employment as analysed by Ozaki (2003), based on his coverage of negotiations both explicitly and implicitly addressing employment issues, fully applies to the various, if more explicit approaches to PECs in Europe: "Recent developments in collective bargaining reflect the growing ascendancy of enterprise strategies over labour market regulation. While previously labour market regulation (including collective bargaining) aimed at providing equity in working conditions had an important impact on the formulation of enterprise and production strategies, recent collective bargaining outcomes primarily follow enterprise strategies aimed at market performance and competitiveness.

[1] As problems of concept and definition often reflect problems in the real world, it is worth taking a closer look at the discussion of this issue by Ozaki (2003: 1): "The project leading to the drafting of this paper originally sought to analyse the so-called "employment and competitiveness pacts" concluded within enterprises and plants, as well as other agreements, signed at enterprise or plant-level, explicitly striking a trade-off between employment protection and enhancement of competitiveness. It became clear, however, that this conceptual framework was not totally appropriate for an internationally comparative work. For one thing, the incidence of collective agreements explicitly integrating trade-offs between employment and competitiveness is still rather limited. There are a few countries, e.g. Germany, where the 1990s witnessed a notable spread of "employment and competitiveness pacts", but such relatively comprehensive pacts integrating the considerations of employment and competitiveness are still rare in many of the countries studied, in particular outside Western Europe. (…) In some of the countries, a degree of trade-off is often implicitly accepted by the parties, without appearing explicitly in the texts of the agreements. (…) In other countries, e.g. the USA and Australia, legal and political factors have fostered negotiations focussed on the enhancement of competitiveness, and have not encouraged the integration of job security considerations into the trade-offs."

From the viewpoint of a truly international comparison these caveats obviously make sense. However, it is striking that Freyssinet and Seifert (2001: 3) discuss quite similar problems within the European context: "Whilst there are no distinct, generally accepted criteria for helping to define pacts for employment and competitiveness in an unequivocal manner, and to distinguish them from other collective bargaining or tripartite agreements on wages, working time, work organisation, qualifications and the like, the main subject dealt with in this report will, to a certain extent, remain open to interpretation. The dividing lines between PECs and other agreements of comparable scope remain fluid. The question of which agreements are merely the fruit of traditional collective bargaining policy (which may have been slightly 'souped up' and/or given a new label) and which agreements represent something genuinely new, in keeping with the notion of what PECs are all about, cannot always be given a clear answer. Should any kind of agreement on wage concessions, differential pay scales, more flexible working time and so on be referred to as a PECs? If not, which additional criteria need to be fulfilled? Is an explicit reference to safeguarding employment or increasing the number of jobs all that is needed to qualify these agreements as PECs, even if their actual content is somewhat dubious? Turning this argument around, is a lack of explicit reference to employment in such an agreement a sufficient reason for disqualifying it as a PECs, even if its content suggests that it could be classified as such?"

Thus, the order of ascendancy seems to have been reversed" (Ozaki 2003: 33). As we see it, this general tendency in collective bargaining in the course of the 1990s can best be underscored by more recent and most advanced examples of collective bargaining on employment insecurity. Moreover, the assumption that "jobs would be created through higher competitiveness" attributed by Ozaki (2003: 1) in particular to Australian and U.S. American approaches may regarded as an almost consensual starting point for most current collective bargaining on employment issues, including the PECs in the European context. Therefore, it appears sensible to put the explicit employment pacts at the centre of the present study.

Finally, our more focused, and maybe limited, approach appears particularly justifiable in the light of more recent shifts in both practice and literature on this topic. It is now the "deviation" from collective agreements, with the declared intention to enhance competitiveness and to protect jobs that has come into prominence. This shift in emphasis towards what will be called in the present study "derogations" or "deviant collective agreements" reflects more recent moves in some, if not all, European countries towards local job guarantees in exchange for an explicit undercutting of norms laid down in multi-employer collective agreements on wages, working time or other topics.

Looking back at the 1990s, the literature on new trends in collective bargaining on employment had mostly optimistic connotations, particularly in the European context. A critical scholar like Sisson (2005: 7) attributed to PECs the capacity to bring about a combination of decentralised collective bargaining with a substantial enlargement of both range and depth of the issues addressed: "Collective bargaining, it seems, is proving itself to be very capable of coping with the increasing complexities of managing the employment relationship as well as continuing to provide a mechanism for dealing with issues of distribution." Another critical observer like Ozaki (2003), after noticing a tendency to subordinate equity in working conditions under firms' striving for competitiveness in contemporary collective bargaining, finds "new space for social partnership" in the same bargaining process. To some extent, there may have been a climate change over recent years, for that matter. As the European Foundation for the Improvement of Living and Working Conditions finds, the follow-up agreements in the current decade seem to be "less acceptable in recent years than PECs were in the 1990s" (Eurofound 2007). One major concern connected with recent trends in deviant agreements has been the underlying power shift within the relationships of the collective bargaining actors to the disadvantage of the trade unions, entailing major risks for the future architecture and functioning of existing collective bargaining systems (Bieling/Schulten 2003). The implication for collective bargaining systems may be one of fragmentation or "hollowing out", rather than one of potential modernisation, as was argued with respect to their predecessors in the 1990s. If this was the case, it might entail repercussions on employment security through the back door.

As becomes obvious in this very brief observation of some major trends in collective bargaining on employment insecurity over recent decades, it is hardly possible to separate the potential impacts of collective agreements on employment security from their side-effects on the industrial relations systems, and the repercussions of these side effects on employment. Therefore we will address, in what follows, both the major contents of agreements (chapter 2) and the processes, i.e. the actors involved, their place within the architectures of national systems of industrial relations, and the implications of these environments for the capacity of collective bargaining actors to engage in negotiation on employment insecurity (chapter 3).

The present study will draw primarily on a review of existing research into the incidence of collective bargaining tackling employment insecurity in Europe and, to some extent, in the U.S. As to other industrialised countries, we refer to the information and assessment given by Ozaki (2003) but cannot go beyond it. However, for more recent experience in Europe, the European Industrial Relations Observatory database (EIROnline) of the European Foundation for the Improvement of Living and Working Conditions

serves as a valuable source of information. Outcomes of collective bargaining will be reported to the extent that findings are available, under the methodological caveats discussed in chapter 2. It should be noted, however, that the literature available on collective bargaining addressing employment insecurity is still limited, which may reflect differences in pertinence of this topic in the practice of collective bargaining across countries. Given this limitation, we are happy to be in a position to present some of our own, yet unpublished, research on "deviant collective agreements" in chapter 3.

2. Collective bargaining addressing employment insecurity: Drivers, contents, outcomes

The present chapter is dedicated to employment insecurity. After a brief review of the main reasons for the rise in importance of these agreements, their main contents will be presented in a stylised and exemplary manner. The chapter concludes with a short discussion of the problems of assessing the outcomes of collective bargaining on employment insecurity.

2.1 Drivers

In the wake of the end of the "golden age" of post-war capitalism in the advanced industrialised world, with unemployment rates remaining at unaccustomed high levels in many of these countries, the fight against unemployment and employment insecurity gradually moved centre stage either as an implicit precondition or an explicit issue of collective bargaining. Given the fundamental management prerogative on decisions over employment in companies, the incidence of negotiations on issues related to employment insecurity are far from self-evident. Negotiations on this issue will only take place if labour law in a given country sets limits to the unfettered "commodification" of labour, or if the presence of trade unions and the probability of the social conflicts entailed make negotiations over the containment of employment insecurity a matter of political rationality. Moreover, given these limitations to managerial unilateralism, negotiations may become a prime choice for any industry or company that needs to maintain and improve economic efficiency within an environment of employment insecurity, as much of this efficiency will be based on the motivation of the workforce.

On the other hand, it must be noted that an environment of unemployment and of employment insecurity may limit the potential impact of trade unions. As unions have always proved to be more vulnerable in phases of business slump compared to phases of economic recovery and rapid employment growth, it is more than evident that the post-1970s economic developments have entailed marked shifts in the power relationship to the disadvantage of trade unions. For that matter, the drop in the wage shares of national income in the U.S., and even more markedly in the EU (OECD 2007), is an equally significant indicator as the drop in trade union density in most EU countries over recent decades (European Commission 2006). This power shift is to a large extent based on a fundamental reorganisation of capitalist production systems. The globalisation of production and 'financialisation' of corporate governance have broadened the leeway for companies vis-à-vis unions because companies can put pressure on unions for making concessions by threatening them with the relocation of production, the outsourcing of certain business units or functions or by legitimising higher targets for the rate of return. Reorganisation makes employers less dependent on unions, but it also makes single employers less dependent on employers' associations as representatives of collective interests vis-à-vis the unions. The beneficiaries of the power shift are not the employers' associations but the single employers, a fact that can pose organisational problems for the employers' associations as well.

Thus, it is fair to assume that while employers in many cases face a need to negotiate on employment insecurity, the balance of powers in these negotiations tends to tip in their favour. This ambiguity involved with negotiations on employment insecurity should be borne in mind as a problematic underlying the whole scale of bargaining issues and approaches discussed in the present study.

Both historically and systematically, there are different reasons and causes behind collective bargaining on employment insecurity. The different causes, in turn, entail different rationales and approaches of the actors involved which impact on the contents of the agreements. While it is true that these causes are not mutually exclusive it may be helpful, for a better under-standing of underlying rationales and drivers, to distinguish different emphases across typical cases of collective bargaining on employment insecurity.

The first, and arguably most "classical", cause behind collective bargaining on employment insecurity are structural shifts and crises in the economy. These crises may include cases like the continuous downsizing of particular industries such as steelworks or shipyards in Western Europe and the U.S. in the process of international redivision of labour. They may also include, within the same process, the loss of competitiveness of major industries in some countries vis-à-vis rising players from other parts of the world in increasingly globalised markets, such as the automotive industry. In the latter case, the gap in labour costs between unionised and non-unionised parts of the same industry within a given country may become ever more important (the same applies to sections covered by collective agreements in contrast to those not covered). The latter two problems were the factors that stood at the very beginning of concession bargaining in the U.S. in the early 1980s (Kochan et al. 1994; Massa-Wirth 2007). The basic constellation of interests in these cases has always been the objective of employers to cut down on labour costs in general, and on numbers of workers employed in particular, whereas the main interests of employee representatives and unions has been to slow down this very process. Traditionally, this type of bargaining resulted in the retrenchment of staff and restructuring of business, possibly supported by labour market policies. Over the years retrenchment has been gradually supplemented by more sophisticated measures such as changes in wage and personnel structures (we will return to contents of agreements in chapter 2.2).

A second cause of collective bargaining on employment insecurity, closely related to but different from the first, has been the failure of individual companies within highly competitive markets, in most cases connected to changing fortunes over business cycles. Arguably one of the most prominent cases in this respect was the crisis of Europe's largest car manufacturer, Volkswagen, in the early 1990s. Clearly, the situation was different from the concession bargaining cases in the U.S. motor industry in the precedent decade. The VW case was more one of survival and recovery, rather than strategic retrenchment (even though retrenchment, i.e. the strategic reshuffling of production capacities, functions and staff across the global production network of this firm was always present in the background of all negotiations). The rationale behind collective bargaining at VW was, in the colloquial wording of those days, the "cut-down on hours rather than workers". It resulted in the so-called four-day week which was revised by a return to the 35(+)-hour industry standard only recently. In a nutshell, the core issue in the course of survival and recovery has been the reduction of labour costs linked with major emphasis on flexibility of labour and operations, rather than primarily on retrenchment of staff.

A third driver of collective bargaining on employment insecurity is the globalisation of business operations in general, and the continuous reshuffling of the division of labour within international value chains in particular. Again, this driver is connected with those indicated before, but it has gained distinctive characteristics over recent years. The flagship terms here are "relocation" of businesses and operations at a global scale (Pedersini 2006), and "restructuring" of business units geared to increase profitability. The more traditional aspect within this challenge is the emergence of competitors with lower wage costs, particularly from newly industrialised countries. Most prominently, however, is the transfer of extra-organisational challenges to internal ones within multinational

corporations. The "internalisation" of international relocation and the frequent, and in many cases almost continuous, restructuring of organisations have been closely linked with shareholder value oriented corporate governance. As Raess and Burgoon (2006) found, greater openness of industries and individual businesses, especially FDI openness, tends to impose a greater need for concession bargaining on local employee representatives facing the risk of relocation. Individual establishments may be confronted with the risk of retrenchment or shutdown even if they are in the black (cf. Detje et al. 2008 for recent examples). "Global financial markets-driven capitalism has turned shutdowns from an effect of crises and structural change into a 'normal' tool of corporate restructuring" (ibid.: 243).

This move gives rise to new challenges, new topics and new actors when it comes to collective bargaining on employment insecurity. The more the competitive challenge becomes an internal one to be tackled within large companies, and the less the issue at stake is to rescue 'marginal suppliers', the more the full range of measures geared to improve business efficiency beyond the simple cut-down in wages or staff comes into play. As to the actors, the competition amongst locations becomes an issue of negotiation between supranational employee representations and management, and of articulation within these supranational representative bodies. Other than retrenchment and survival or recovery, it is the adaptation[2] of the business to changing market situations and business strategies that is the issue here. It should be noted again that the three emphases are not mutually exclusive, neither are the drivers and rationales behind collective bargaining. However, collective bargaining on employment insecurity driven by relocation of businesses has triggered negotiations on a wide range of issues which in most countries and companies had never been on the bargaining agenda before.

Interestingly, relocation and restructuring have increasingly been used as role models for upheavals within the public sector in many countries. One strand of activities has been the privatisation of formerly state-owned companies, which in many cases entails major cutbacks on jobs and the deterioration of employment stability (Schulten et al. 2008). Equally important has been the strive within public services for the adoption of governance techniques such as cost centres developed for the purposes of large private businesses, particularly in health care. Today, public services unions and employee representatives are increasingly confronted with employment insecurity challenges even though in the public sector of most countries employment stability, for the time being, exceeds that experienced in private industries (Pacelli et al. 2008).

This observation leads us to a fourth driver pertinent to the topic of the present study which goes beyond the three causes and rationales behind collective bargaining on employment insecurity covered in the literature so far. There may be a great deal of political pressure behind moves towards collective bargaining on employment insecurity which should be identified as a driver in its own right. The direction of this pressure, however, may differ substantially. As we will see in the example of France, the government initiative towards the establishment of the statutory 35-hour week triggered a wave of company bargaining activities on the reorganisation of working time, which contributed to a substantial widening of the thematic scope of company bargaining, and gave a boost to the number of establishments involved in company bargaining on all sorts of issues, including employment insecurity, unknown so far in the French context (Bloch-London 2000). Government policy can also play a central role in the development of collective bargaining as an element of an overriding national strategy on employment and labour market issues, as pursued in the Netherlands by the end of the 1990s (Freyssinet/Seifert 2001: 20). Bargaining subjects ranged from pay levels and wage differentiation, reductions in working time, fostering of greater flexibility, and continuing vocational training, to the organisation and quality of work. This approach, as the authors conclude, "contrasts starkly with partly politically motivated innovations which merely

[2] We owe the distinction between these three emphases in collective bargaining to Sisson (2005).

'fiddle around' with labour costs." The latter could be very much observed in Germany in the so-called "Agenda 2010" policies in which the Federal government aimed at deregulations in the German labour market (Lehndorff et al. 2009). As the government announced that it would change the legal framework of collective bargaining if there was no agreement between collective bargaining actors on the so-called "opening" of collective agreements to local deviations or derogations, it exerted pressure on the collective bargaining actors in general, and on the trade unions in particular, to pave the way for changes in the architecture of the system. This in turn gave a new twist to the decentralisation of collective bargaining which had increasingly been practised from the mid-1980s. As will be described in chapter 3, it resulted in cracks in the foundations of the collective bargaining architecture. At the company or establishment level it opened the door to bartering temporary job guarantees against the undercutting of industry standards. Thus, ironically enough, employment insecurity may not just become an issue of collective bargaining because there is such insecurity, it may also become an issue of collective bargaining because major actors utilise employment insecurity as a vehicle to bring about changes in the architecture and the functioning of the collective bargaining system in a given country. It is in this vein that Ozaki (2003: 14) rightly holds that, "one of the factors strengthening the pressure (towards decentralization of collective bargaining) is the predominance of neo-liberal economic thinking among policy makers."

Given these strong drivers, it is hardly surprising that the incidence of decentralised collective bargaining on employment insecurity has increased markedly since the 1980s. Even though the incidence differs across countries, which can be attributed not least to the industrial relations practices and systems (see below), the increase in pertinence is beyond dispute amongst observers. Assessments have been based primarily on experts' opinions (Freyssinet/Seifert 2001; Ozaki 1999 and 2003). In a very small number of countries, including Spain, France and Germany, these assessments have been supplemented by government statistics on collective bargaining and on surveys amongst establishments or employee representatives. As to the former, according to the collective agreements register of the French Ministry of Labour, five per cent of all firm-level agreements in 2007 addressed the safeguarding of employment, as compared to less than three per cent three years earlier. However, it would be useful to take into account that agreements addressing other topics may have employment implications, too. Thus, it is noteworthy that local agreements on working-time organisation soared after the introduction of the 35-hour week and still was the main topic of roughly one-quarter of all firm-level agreements in 2007 (Ministère du travail 2008: 281).

At the same time, it is interesting to note that in neighbouring Germany the importance of employment and competitiveness pacts exceeded the French practice substantially. As a survey amongst works councils in Germany undertaken in 2003 revealed, almost one-quarter of establishments with works councils had employment and competitiveness pacts of various kinds. Most importantly, there was hardly any link between the incidence of such local pacts and the economic situation of the firm. As Seifert and Massa-Wirth (2005: 238) note for the German case, the pacts "are losing their exceptional nature. Originally conceived as adjustment instruments in crisis situations that threaten jobs and the company's very existence, PECs are fast becoming a new 'normal' regulatory instrument while collective bargaining standards are becoming guidelines that give firms considerable leeway to come to company-specific solutions. The impact of PECs on competition is setting a trend that other firms find difficult to resist."

This assessment underscores the political, rather than just numerical, importance of the drivers discussed here, as they impact directly or indirectly on the contents and outcomes of collective agreements on employment insecurity and equally on the architectures and processes of collective bargaining. The increase in collective bargaining on employment insecurity may be regarded as an indicator of the rising vulnerability of trade unions on the one hand, but equally of companies and industries operating in trade union strongholds on the other. The move towards collective bargaining on employment

insecurity began historically as the drive of industries and individual companies towards the loosening of rigidities imposed by earlier collective agreements, which were increasingly regarded as millstones on increasingly competitive international markets. As these new collective bargaining practices evolved and spread abroad to countries with stronger organisational bases in industrial relations than existed in the U.S., they took on a new form. It is true that the shift in power relations to the disadvantage of unions remained a key feature of this process. In consequence, collective bargaining on employment insecurity has remained an inevitably ambiguous exercise for the actors involved as it combines the potential to enrich the bargaining agenda and enable collective actors to develop win-win solutions for individual businesses and employees on the one hand, with potential institutional side effects on the other which may destabilise established industrial relations systems as a whole. But it is also true that these dynamics entail a widening of bargaining issues and the involvement of new and more actors, and that they have evolved from primarily defensive agreements (focused on cutting down staff and wages) to more offensive agreements, addressing a wider scope of topics relevant for the competitiveness of industries and companies. It is this scope in the contents of agreements that will be explored in what follows, before turning to the impacts on the processes of collective bargaining.

2.2 Contents[3]

The distinction between 'defensive' or reactive strategies on the one hand and 'offensive' or pro-active strategies on the other suggested by Freyssinet and Seifert (2001: 21) appears useful for the present context. As these authors point out, it would be too narrow to look just at the employment outcome intended, i.e. the preservation of existing vs. the creation of new jobs. If the link between employment and competitiveness is taken as a framework for categorising collective agreements, the criterion should be whether agreements are geared only towards reducing labour costs, or if they aim at a reduction of labour costs in connection with improvements in work organisation and other factors of competitiveness. To develop the argument further, the reduction of labour costs is always a key component of collective agreements dealing with employment and competitiveness, and it would be hard to find any agreement which tackles employment insecurity without addressing ways to reduce labour costs. However, the crucial question is how this objective is to be attained. Is the approach based primarily on the retrenchment of staff, or wage cuts, or the extension of working hours, or is the reduction of labour costs a target defined relative to turnover, i.e. to be met by gains in efficiency of operations or other process and product innovations. Thus, the distinction between defensive and offensive approaches to collective bargaining on employment insecurity may also be flagged by the commonly used terms of "low vs. high roads" towards business success or towards economic and employment success of socio-economic models.

[3] Most of the information on contents of collective agreements from the 1990s provided in the following section is based on the two large overviews undertaken by the ILO (Ozaki 1999 and 2003) and the European Foundation for the Improvement of Living and Working Conditions (Freyssinet/Seifert 2001). In what follows, only additional sources for other and in particular for more recent information will be indicated.

Box 1. Typical instruments designed to curtail employment insecurity in pacts on employment and competitiveness

Employability

- Training
- Internal staff pools
- Temporary transfer of workers to training agencies or 'work foundations'

Wage cuts

- Reduction in pay levels and associated benefits
- Lower starter rates for new employees
- Reduction in hourly pay by working-time extensions
- Outsourcing of services to industries or establishments with lower pay levels

Working time redistribution/reorganisation

- Temporary or long-term reduction in the work week
- Greater variability in and extension of working hours without overtime premium
- Increased use of part-time work
- Extension of operating hours (e.g. weekend work)

Stabilisation of workforce

- Conditions for use of fixed-term contracts and agency work
- Transformation of precarious into more stable jobs
- Additional employment for specific groups (e.g. young people, the long-term unemployed)
- Relocation of the workforce within the company
- In-sourcing of formerly outsourced activities

Process or product innovation

- New forms of work organisation (e.g. team work)
- Investment in new products or technologies

Voice

- New information or consultation rights of employee representatives.

Sources: Own compilation extending Freyssinet/Seifert (2001), Ozaki (2003) and Sisson (2005).

In what follows, we present key components of collective agreements addressing employment and competitiveness along the lines of a simple typology. Dwelling on and extending typologies developed in earlier studies, we would like to distinguish the following key bargaining contents regarding the instruments designed to curtail employment insecurity (c.f. Box 1 for details):

a) Employability: Agreements in firms facing downsizing measures or restructuring may, apart from measures accompanying redundancies, aim at preparing (potentially) redundant workers for a better fit with internal or external labour markets.

b) Wage cuts: Agreements on wage restraint or wage differentiation for either all workers or sub-groups, and the expansion of atypical employment forms. These measures may include an undercutting of industry standards.

c) Working time redistribution/reorganisation: Measures to redistribute work including collective reductions of working hours or the promotion of part-time work. In general all measures related to the redistribution of working hours amongst workers will be linked with a more flexible organisation of working time.

d) Stabilisation of the workforce: Training measures, job rotation models, facilitating of non-standard employment but also integration of temporary or agency workers and in-sourcing of formerly outsourced activities.

e) Process or product innovation: Measures aimed at reviewing work practices and introducing new forms of work organisation; innovation prospects may also include investment in new products and new technologies.

f) Voice: Many agreements include procedural innovations with respect to employee voice such as the involvement of workforce representatives in the process of cost cutting or reorganisation. These stipulations may exceed the legal minimum standards in the respective countries as management is interested in getting the cooperation of the representative bodies; the latter, in turn, may use this achievement as a bargaining chip in future processes.[4]

As with the drivers and reasons behind agreements in chapter 2.1, it should be stressed that these instruments are not mutually exclusive. Obviously components from one group can be combined with measures from others. However, a more detailed content analysis would reveal typical overlaps of contents, and other combinations which are rather unlikely to occur. By way of example, agreements primarily geared to wage cost cutting will generally not refer to product and process innovation, whereas both these groups of components may well be combined with measures aiming at redistribution of work or at enhancement of the flexibility of staff.

A second observation regarding the contents of agreements is that all components may in principle be combined with either job retrenchment to a greater or lesser degree, including early retirement measures, with the intention of safeguarding core activities of the firm, or in contrast with job guarantees (guarantees of employment and/or no compulsory redundancy, either open-ended or for a specific period).

Thus, the instruments stylised in Box 1 may be combined in various ways within basically three types of agreements:

- Agreements providing (temporary) employment guarantees for all or parts of the workforce;
- Agreements with a mix of employment guarantees and measures to reduce staff;
- Agreements without particular objectives regarding employment effects (based on the implicit assumption that improvements in competitiveness will entail the safeguarding of jobs).

Next we will present for each group of instruments a few examples of collective agreements chosen by their pertinence to the guiding question of the present study.

2.2.1 Employability

The rationale behind measures aimed at the improvement of employability is to prepare redundant workers for a better fit with internal or external labour markets. Thus, the line between this group of measures and the bulk of agreements dealing with downsizing of organisations and staff reductions is blurred.[5] This, in turn, makes it most likely that employability-geared measures will gain importance in the present economic crisis.

[4] The crucial role of employee voice and bargaining and the involvement of workforce representatives will be discussed in chapter 3.

[5] As indicated in the introductory chapter, procedural agreements on the retrenchment of staff (e.g. severance payments, early retirement schemes, old-age part-time/partial retirement schemes) are not covered in the present brief overview as they are geared to downsizing of staff, rather than avoiding redundancies in the first place. While these are very important topics in collective bargaining the present study is focused on measures to increase employment security.

As to the content of agreements dealing with this issue, two (in most cases intertwined) approaches may be distinguished. The first is the establishment of either internal or external staff pools. The example of the Italian car manufacturer Fiat presented in Box 2 denotes a case where financial support is given by the state. The linkage between collective agreements and state aid is quite common in procedural agreements on the handling of redundancies (e.g. the establishment of external 'job foundations' and the like within the framework of public labour market policies). In Italy, this kind of provision may also be applied to internal staff or job pools.

Box 2. Internal staff pools – the example of Fiat in Italy

In February 2007, the Italian government, Fiat management and trade unions signed an agreement providing for long-term mobility arrangements for 2,000 employees in the group.

In Italy, the 'mobility' scheme offers a means of continuing to provide income to employees who become surplus to requirements. The workers affected cease to carry out their contractual occupation and are put on a special 'availability list' (lista di mobilità), which assists the employment services in seeking a new job for them. The workers receive an availability allowance (indennità di mobilità) of 80% of their salary, which is paid by the state. Employers are given an incentive to hire workers from the availability list by a reduction in the obligatory insurance contributions, which they pay on behalf of such workers.

Source: Rinolfi (2007).

Internal staff pools have been used in other countries too, in most cases without state aid. Prominent examples may be encountered in formerly state-owned companies such as the telecom sector but also in large public hospitals where downsizing or restructuring of organisations may be handled via "internal job centres" (Knuth/Mühge 2008).

Most likely these approaches will be combined with a variety of measures dealing with training. The importance of training in policies curtailing employment insecurity, however, goes beyond the specific staff pool approach. While training may also be part of collective agreements, in some countries policies aimed at fostering continuous training are most likely to be part of tripartite initiatives. In recent years, this has been the case for instance in Austria (Adam 2007) and in Denmark (Jørgensen 2004). In the latter, further training was combined with "rob rotation" schemes in the 1990s. In job rotation models the company employs substitutes during the period when employees participate in training and educational courses. For measures based on the law on active labour market policy, the Labour Office pays an allowance for up to six months amounting to the maximum unemployment benefit, provided that the employer continues to pay the workers the normal wage during the training period. There are individual agreements similar to the Danish model in some other countries, namely in Northern Europe. As Freyssinet and Seifert (2001: 32) note, however, the integration of the job rotation concept in collective bargaining is rare and may be encountered at best in Scandinavian countries.

Given the current economic crisis, the weak incidence of training measures as part of the collective bargaining agenda addressing employment insecurity highlights an important issue on which collective action is needed. The issue here is not just the curtailing of job losses in the short term. It is also about providing the skills needed in the midterm, i.e. in the economic recovery after the crisis. Thus, "retraining – not redundancy" (Bosch 1992) may become a high profile issue on the collective bargaining agenda in the near future.

2.2.2 Wage cuts

As mentioned in the introductory chapter, wage reductions or, at least, wage "moderation" have been at the core of employment-oriented collective bargaining strategies. Following the guidelines of supply-side focused economic thinking, wage moderation used to be the ultimate rationale behind both explicit and implicit employment pacts at national or sectoral levels. These approaches practised in many countries, most pronounced within

corporatist environments of small and open economies such as in the Netherlands, have been described in great detail by earlier studies on employment-oriented collective bargaining strategies (Freyssinet/Seifert 2001). While the current upheaval in macroeconomic policies may entail a critical review of these approaches, it must be stressed that at the firm level, wage moderation and in many cases explicit wage reductions have been arguably the most widespread element in employment and competitiveness agreements. It is true that at the macroeconomic level wages must be regarded both as a cost and as a demand factor, and recent economic debates tend to give more emphasis to the latter than they used to in recent decades, but at the level of individual firms the demand aspect is abstract, while the cost aspect is concrete. Thus, there is no indication that at this level there could be a reversal of mainstream approaches in the near future.

Wage moderation and reductions at firm level can take different forms (see Box 1) and they can be either temporary or permanent in nature. Most importantly, they can be the prime instrument for regaining competitiveness, or they can be combined with other instruments, such as process or product innovations and investment decisions. Over recent years, another distinction has become increasingly important, that is, wage reductions can be either direct and explicit, or they can be implicit insofar as the monthly wages remain untouched whereas the working times are extended.

The classic case of employment pacts focused on wage reductions has been concession bargaining in the U.S. since the 1980s. In his in-depth comparison of concession bargaining in the U.S. and in Germany, Massa-Wirth (2007) finds substantial differences between the approaches in these two countries, depending on the power relations, the industrial relations systems, and on the strategic orientations of major actors. The core difference is the extent to which there is genuine bargaining in which workers gain some employment security by making other concessions and the extent to which concessions are embedded in a broader set of policy measures aimed at fostering competitiveness (Table 1).

Table 1. Concession bargaining in Germany and the U.S. – Key elements until late 1990s

Dimension	Germany	U.S.
Diffusion	Increase from the mid-1990s	Dependent on business cycle. Most prevalent in the 1980s.
Concessions of labour	Cuts in extra pay and wage package beyond industry agreements. Reductions below industry standards (collective agreements) in extraordinary cases, while collectively agreed pay increases are moderate. Working-time extensions and flexibilisation. Measures to increase productivity.	Reductions in collectively agreed wage standards. Differentiation of pay structures (e.g. lower entry wages). Cuts in wage packages. Liberalisation of employment standards.
Concessions of management	Job guarantees or guarantees for safeguarding of establishment. Engagement in investment. Medium-term promises.	Employer's guarantees in exceptional cases. Symbolic promises. Short-term promises.
Equity within workforce	Equal distribution of burdens amongst core staff.	Unequal distribution of burdens to the benefit of "senior workers".

Source: Massa-Wirth (2007: 172)

One interesting aspect mentioned by Massa-Wirth (2007: 179) is the slowdown of the dynamics of concession bargaining in the U.S. in the 1990s due to the increase in

"peripheral" workers. The distinction between core and periphery and the boost in temporary workers and agency staff has been increasingly important in many European countries, too. Within a context in the 1990s in which the "liberalisation" of labour markets was considered a key policy objective, local employment pacts were a means to achieve greater external flexibility, while at the same time protecting core staff through unequal burden sharing. This, in turn, gave rise to new equity challenges within workforces in the current decade (see chapter 2.2.4).

In the comparison between the U.S. and Germany, the latter may stand, to some extent, for typical approaches in Europe over the 1990s. The quid pro quo principle in particular has always played an important role in negotiations, even though Freyssinet and Seifert (2001) are very cautious when it comes assessing to what extent this principle is actually applied in practice. What continues to be typical for European approaches at any rate are the blurred lines between and the complex mixture of (explicit or implicit) wage cuts and various modernisation measures. One of the paradigmatic cases here is Volkswagen with its series of collective agreements on working time, wages, wage structures, and work organisation (Box 3). What must be stressed here is that traditionally pay levels at VW has been substantially higher than the industry standards (in Germany the company has its own collective bargaining regime outside of industry bargaining in the metalworking industry). What the complex employment pacts roughly described in Box 3 actually provided is a gradual adaptation of standards at Volkswagen to those in the regional metal industry agreements.

Box 3. Concession and modernisation bargaining at Volkswagen

The agreement on the introduction of the so-called 4-day-week (or 28.8 hours per week) in 1993 triggered a series of employment pacts in this company. The initial agreement stipulated a working-time reduction by 20% for the whole workforce, combined with an only partial compensation for wage losses entailed. The company, in turn, refrained from dismissals over the two-year period covered by that agreement. The agreement triggered a substantial reorganisation and flexibilisation of working-times and a fundamental review of working practices which gave rise to the soaring economic efficiency of the company in the course of the 1990s (Haipeter 2000). In phases of business slump, however, it was followed by consecutive deals, the latest two being struck in 2004 and 2006.

The 2004 agreement stipulated, among other things, a pay freeze until 2007. Additionally a new pay grading system was introduced. The bargaining parties agreed that, compared with current levels, the future pay grades for new employees will be lowered with the tendency to adapt pay levels at the overall standards in collective agreements of the metalworking industry. Overtime rates are paid only if weekly working time exceeds 40 hours. The cost-cutting package was estimated to save the company about €1 billion per year in labour costs in exchange for a company promise to safeguard employment until 2011 and to make further investments to secure the future of its German manufacturing plants.

Central to the latest agreement, struck in 2006, is an extension of the current standard weekly working time of 28.8 hours in exchange for a company commitment to agreed production volumes at the six German sites of VW. The average weekly working time may be extended up to 33 hours a week for production workers and up to 34 hours a week for administrative employees, without an increase in monthly wages. In any week, the working time can vary within a timeframe of 24 hours to 33 hours for production workers, and between 25 hours and 34 hours for other employees, without affecting the monthly wage. Working time can be further extended to 35 hours a week but in this case the company has to pay the additional hours. For 5% of employees, weekly working time can be extended to up to 40 hours a week with a special pay arrangement.

Source: Dribbusch (2004 and 2006)

Another high profile example of intertwined working time extensions and pay reductions or pay moderations was the French subsidiary of the German manufacturer Bosch in 2004. It was paradigmatic both for the relocation challenge within multinational companies and for the questioning of collectively agreed industry standards on pay and working time at the national level. The agreement was negotiated under the threat of relocation to other countries and stipulated an extension of the standard work week from 35 to 36 hours together with cuts in bonus payments for shift work and wage moderation over a three-year period. In exchange, management committed itself to investment in a new product line geared to save 190 out of 300 jobs threatened at the Vénissieux plant. The

deal was particularly controversial against the background of the statutory 35-hour week in France (Braud 2004).

While the deals struck at Volkswagen do not interfere with industry standards, the Bosch deal in France highlights the ambiguous tightrope act between industry standards and employment guarantees. While in some cases this tightrope act proved to be just a temporary deviation from industry standards with standards being eventually reinstated after the recovery of the firm or establishment, there are also examples of breaches in pay or working time standards with only very limited employment effects. One high profile example of failure in this respect was wage reduction and working time extension in two German mobile phone factories in Germany. In June 2004, a plan by the German-based electronics group, Siemens, to move 2,000 jobs from Germany to Hungary was cancelled as a result of the conclusion of a 'supplementary agreement' by management and the German Metalworkers' Union (IG Metall) at two mobile phone plants. The Siemens deal stipulated that from October 2004 average weekly working hours were increased from 35 to 40 hours for full-time workers without any compensation in pay (Funk 2004). The return to the 40-hour week in these plants, pushed forward as an explicit pilot model in 2004 by one of the largest and most powerful German companies, sparked a controversial debate on the alleged need to extend working hours in Germany in order to regain price competitiveness on export markets and to safeguard jobs in manufacturing. In the course of events, the substantial reduction in pay entailed proved to be an important element in the sale of the establishments to the Taiwanese company BenQ which eventually closed down the two plants in 2007. Thus, the employment effect of the 2004 employment pact boiled down to the postponement of dismissals, while its impact on the architecture of the collective bargaining system in Germany may be argued to be more lasting (see below, chapter 3.3).

The Siemens/BenQ case is symptomatic of the problematic of "deviant collective agreements" which will be explored in greater detail in chapter 3. Concession bargaining may not just be a challenge to labour standards agreed at national or industry levels, with effects on the employment conditions of workers. The same standards may be part of the regulatory framework and important for ensuring the same competitive conditions for firms. By taking labour standards out of competition, they ensure that firms can compete on a level playing field. "Deviant agreements" change the conditions under which firms compete. A conflict on wage cuts in Denmark demonstrates the difficulty. The food processor Danish Crown announced at the end of 2004 that it would close its Tulip meat factory in Ringsted and relocate production to Germany, if a new local collective agreement failed to introduce a cost reduction equivalent to a wage cut of 15 per cent. Such an agreement was accepted by the majority of the plant workers but was rejected by the Danish Food and Allied Workers' Union which argued that it was not in line with the relevant sectoral agreement. Trade union representatives were then involved in a second round of negotiations and a new agreement was reached, which envisaged a 14 per cent reduction in wages and defined a different distribution of wage cuts among the various groups of employees. The agreement was meant to be part of a special pilot scheme allowing substantial deviations at decentralised level from the conditions set by the sectoral agreement. Slaughterhouse workers in other factories of the same company went on strike and the employees at the Tulip plant rejected the deal in a ballot. Shortly after, the Ringsted plant was closed and production relocated to Germany (Jørgensen 2005).

It may have become obvious that clear-cut concession bargaining on wages or working time is highly controversial. It may be potentially successful in a situation where it is designed to be temporary in nature and to contribute to economic recovery of an industry or an individual firm (thus responding to the second driver for employment pacts indicated in chapter 2). Most importantly, there is a need to combine these wage cuts with measures aimed at improving the efficiency of the organisation. It is this combination which may make concessions tolerable for workers, but also for competitors within the same industry. Finally, as Sisson (2005) points out, management needs to obtain the

agreement of employee representatives in order to change the terms of existing collective agreements: “Intensifying competition requires management both to minimise costs and promote the cooperation of the workforce necessary for continuous improvement.” In a nutshell, the “low road” which fails to link employees’ concessions with product or process innovation and with employee voice will prove to be a dead end in most cases.

2.2.3 Working time redistribution/reorganisation/ short-time working

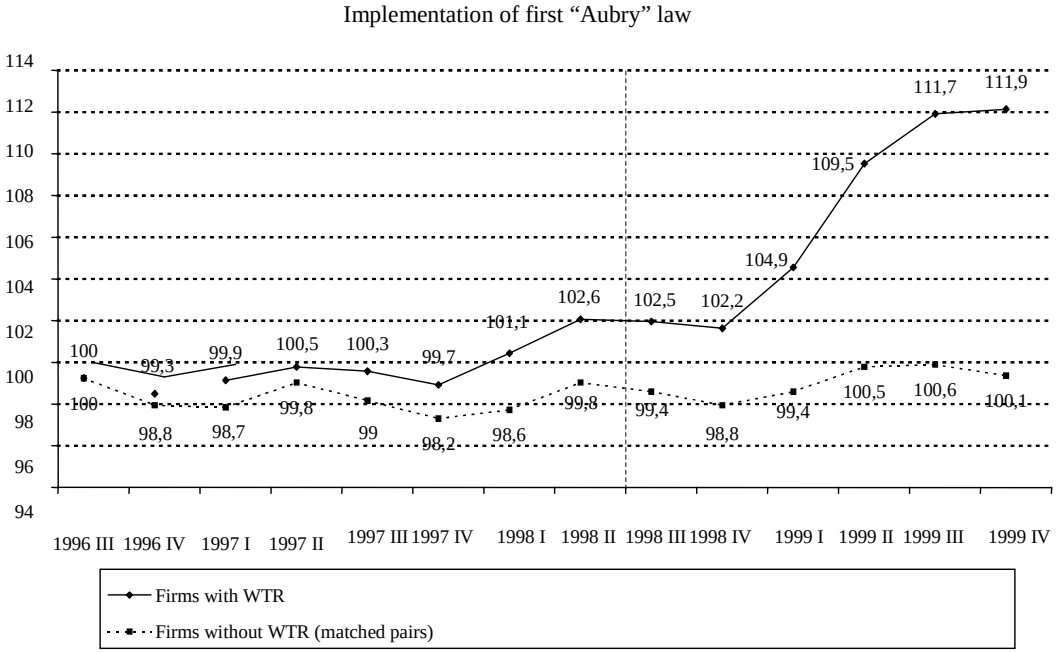
The following discussion focuses on collective agreements which utilise the reduction or reorganisation of working times for the purposes of curtailing employment insecurity. Collective bargaining on working time in general is a subject for a different study.

The outstanding, and arguably unique, series of working time agreements involving major moves to either safeguard or increase employment in recent years was triggered by the introduction of the 35-hour week in France. Without going into details of the complex provisions of the two “Aubry” acts on working time (for such details cf. Bilous 2000), what has to be understood is their basic framework: the statutory 35-hour week had to be implemented at establishment level by local agreements. As soon as these agreements stipulated certain provisions on the safeguarding or creation of jobs, the respective companies would receive exemptions from social security contributions (this linkage was given up in the second phase of the implementation).

Following these acts, the number of firm-level agreements soared, and so did working time as a subject of decentralised negotiations (Lehndorff 2000). The dynamics triggered by the first act also entailed major evaluations of employment effects. The arguably most sophisticated one established a matched-pairs comparison of establishments with and without working time reduction. It showed, first, that the economically most successful firms (i.e. higher rates of turnover growth) were the first to enter into negotiations and to implement the 35-hour week. Second, and controlled for these differences in turnover growth, it showed that employment growth in these firms continued to exceed that in firms of the same size in the same industry (Figure 1). The overall assessment accounted for an employment effect of roughly seven per cent triggered by a working time reduction of 12 per cent (Gubian 2000).[6] Evaluations of earlier local working time reductions in France had found that vulnerable groups of workers (temps, agency workers) had benefited most from these redistribution measures as their contracts were stabilised, or as their working hours were extended in the case of part-time workers (Bloch-London u.a. 1999). According to a survey commissioned by the Ministry of Labour, almost half of workers hired after these working time reductions had been unemployed before (Ministère de l’Emploi et de la Solidarité 1999).

[6] A different econometric computation by the OECD (1999: 126) boiled down to the assessment that within a period of five years, the working time reduction would boost the employment growth by a rate of 0.3 to 2 ppts.

Figure 1. Employment changes in establishments with and without working-time reduction in France (Sept. 1996 = 100)



Source: Gubian (2000: 18)

Next to the employment effects, the boost in working-time flexibility was a major outcome of the working-time reductions in France. In this respect, the French firms followed the track of firms in other countries or industries where in many cases, as is well documented in the case of Germany (Haipeter/Lehndorff 2004), firms had taken working-time reductions as an opportunity to review the local arrangement of working-time and operating hours.

It must be noted that the French case explicitly represented an 'offensive' approach to general working-time reductions and was introduced within an environment of economic growth, thus reinforcing employment growth in this period. The current economic crisis, however, gives rise to a different agenda setting. At present, as far as working-time related initiatives are concerned, it is the safeguarding of jobs on which all endeavours are focused. Earlier experience in working-time reductions geared to safeguarding employment may provide interesting lessons in this respect.

Over the past 15 years, the idea of safeguarding jobs by reducing and redistributing working hours ("work-sharing") was adopted many times in various ways. One particular and probably unique approach was the 'Collective Agreement for Promoting Employment' concluded in 1998 in one region of the German metal industry. This arrangement provided for the establishment of a joint association, run by the employers' federation and the trade union, to promote employment in the metalworking industry with a view to creating additional jobs, promoting more part-time work and continuing vocational training, and boosting the chances of employment of disadvantaged young people. At company level, management and works councils could negotiate the introduction of part-time work for the entire company or for parts of it. The workforce received a certain wage adjustment for a pre-specified period of time, financed out of a fund provided by the employers' federation with minor contributions from the workers. Employees could also voluntarily reduce their weekly working time from 35 hours to a minimum of 17.5 hours for a maximum period of two years. Formerly unemployed people were hired for this period to fill the working time vacated. If, for example, four employees reduced their working time from 35 to 28 hours per week for two years, one unemployed person could be hired for this period. When the two-year period of reduced working time was over, the continuing employment

opportunities for the people hired depended on company conditions. In effect, out of the roughly 80,000 employees in the metalworking industry in that region, more than 1,100 had reduced their working time and as a result about 275 unemployed persons had been employed (Di Pasquale 2002). The Achilles heel of the scheme, however, were the bonus payments for workers who reduced their working hours. For a short time, these payments were exempted from taxation and social security contributions. This practice was justified by the economies on unemployment benefits in the region. Given that many of the workers involved were women with low pay, the exemptions did matter and made the scheme an attractive choice. When this practice was stopped by Federal law in 2002, the collective bargaining parties decided to end the experiment.

Beyond this unique case, local pacts on working-time reduction and the redistribution of working hours usually include measures which enhance flexibility in working-time organisation. However, there are also examples of local agreements on employment and competitiveness which focus just on flexibility measures, without changing the average number of hours worked per week. Recent examples of this approach range from car manufacturers to financial organisations. The Belgian Fortis financial services group, for instance, struck a deal with the union in 2005 which swapped guarantees on employment for three years with provisions on Saturday opening (Lovens 2005). A recent high profile example in the motor industry was a deal struck at Nissan in Spain. In January 2008, the car manufacturer announced its plans for redundancies affecting 450 permanent workers out of a total 4,500 production workers at its Barcelona factory. The company's management took the decision in light of a 7.3 per cent reduction in planned production levels for 2008. However, a preliminary agreement concluded in February 2008 provides for more flexible working time schedules in exchange for a partial withdrawal of the redundancy measure (Arasanz Díaz 2008).

Given the current crisis, however, most initiatives will address the reduction of working hours, rather than just an increase in flexibility, in order to prevent or reduce mass redundancies. The arguably most famous European example of working-time reductions in a situation of economic downturn is the so-called 4-day-week agreement at Volkswagen in 1993 when this company was hit by its worst crisis thus far. The company-level collective agreement concluded by Volkswagen AG stipulated a 20 per cent working-time reduction for the company's entire workforce and triggered a broad range of activities aimed at greater flexibility of working-time organisation over the 1990s. It was also the starting point for various other agreements on efficiency enhancement measures in the work processes of the company. As such, it may still run as a flagship example of the close intertwinement of working-time reduction on the one hand, and working-time flexibilisation and reorganisation of the work process on the other. At the same time, it has been intertwined from the beginning and even more markedly so in recent years with indirect wage cuts which helped to adapt the wage levels at Volkswagen to the lower standards in the metalworking industry agreements (cf. above, chapter 2.2.2).

Irrespective of these particularities of Volkswagen, any working-time reduction without corresponding wage compensations helps to reduce labour costs. This is even more so when this working-time reduction entails flexibility measures in working-time organisation. Hence the exemplary character of the VW deal which continues to be a model case for "survival/recovery" agreements.

It should be noted, however, that in the case of Volkswagen, while cuts in hours and pay amounted to 20 per cent, monthly wages remained virtually stable. In the negotiations pay issues were crucial. The bargaining actors smoothed the problem by (1) a minor pay compensation conceded by the company, and (2) by a redistribution of annual premia, which had been part of earlier pay agreements, from annual to monthly payments. Thus, monthly wages remained roughly unchanged. It must be noted that the existence of this pay leeway may be expected in above-average flourishing companies or sectors of a given economy only. Even in the case of Germany the so-called wage drift, i.e. local pay agreements providing extra pay beyond industry standards, has been reduced substantially

over the past decade. It cannot be taken for granted that cuts in working hours by 20 or 30 per cent, or even more, accompanied by wage cuts in the same dimensions, can be accepted by a majority of the workers affected by the imminent threat of redundancy.

Interestingly, it is in the UK where the "Volkswagen approach" has been revitalised recently. In late October 2008, members of the GMB general trade union at an international construction equipment manufacturer voted in favour of reducing their working hours and pay. The move will prevent 350 out of 500 job losses planned by the company in light of falling sales due to the global financial crisis. Negotiated – as distinct from imposed – short-time working arrangements are uncommon in the UK. However, it has been suggested by commentators that sacrificing pay to save jobs might become a more widespread response by trade unions and workers to the current deteriorating economic climate (Box 4). The British Trades Union Congress (TUC) and the Federation of Small Businesses (FSB) have gone further down this road by proposing to introduce short-term working subsidies for around 600,000 workers per year with a replacement rate of 60 per cent of the income lost (TUC 2009).

Box 4. Reductions in working hours and pay to save jobs –a UK case

JCB, headquartered in the UK, is the world's third-largest manufacturer of construction equipment. In 2008, the company has experienced a sharp decline in sales. JCB's products are used mostly in the construction sector, which has been badly affected by the global credit crunch and rising costs of raw material. Sales have fallen around the world because of reduced construction activity, mainly in the house building and commercial property sectors.

Against this background, in July 2008 JCB launched a redundancy programme to align employment levels to a 20% reduction in its forecast production schedule for the remainder of the year. This programme involved the loss of approximately 500 manufacturing jobs in JCB's UK factories, in addition to a proportional number of redundancies among white-collar staff. JCB and management opened discussions over these plans. The talks led to the union's members voting on a ballot which gave them the choice between:

- maintaining full working hours and accepting the loss of 500 manufacturing jobs; or
- cutting their weekly working time from 39 to 34 hours and thereby saving around 350 of the 500 threatened jobs.

The trade union recommendation to opt for a shorter weekly working time was accepted by a more than two to one majority of GMB members.

From the beginning of November 2008 for a minimum of six months, the manufacturing workforce at three sites will work 34 hours over four days a week, from Monday to Thursday. This amounts to a reduction in weekly hours of about 13%. The workers will lose an average of GBP 50 (€61 as at 10 November 2008) in weekly pay, although this will be partially compensated by statutory 'guarantee payments' for employees placed on short-time work.

Source: Carley (2008)

In the present situation, given the need for dramatic cuts both in working hours and pay (from the employers' perspective), companies and workers are obviously running into a dilemma. The more the pay cuts are in line with companies' needs regarding survival of the crisis, the less tolerable they become for workers. The only resource for a solution of this dilemma are public subsidies. This need is acknowledged, to a greater or lesser extent, in "short-time working" or "temporal unemployment" schemes existing in some European countries.[7] The German short-time working scheme which has been revised and flexibilised recently may serve as a flagship example here. It stipulates that working time for all or part of the workforce may be reduced by between 10 and 100 per cent. The hours not worked are compensated by the labour administration (short-time allowance) at 60 per cent (or 67 per cent for workers with children in the household). The social security contributions for the hours not worked are reduced to 80 per cent; the 50 per cent share of the worker is paid by the labour administration but the employer's part has to be paid by the employer. The latter payment will be borne by the labour administration, too, if the

[7] For recent "work sharing" or "short-time working" initiatives and the respective regulatory frameworks in selected European countries, cf. Glassner/Galgóczi (2009) and Eurofound (2009).

time slots of short-time working are used for training measures. Moreover, training measures will be subsidised. At present, the maximum duration of short-time working is 18 months. An extension up to 24 months and further cost reductions for employers are being discussed amongst employers' federations, trade unions and the Ministry of Labour.

This and other recent experiences gathered within the broad approach of work-sharing in the current crisis suggest three general lessons to be drawn so far.

First, as pay compensation issues are playing a crucial role, it is more likely for work-sharing to become a major policy issue in countries with dismissal protection and unemployment insurance systems than in countries with less developed systems of "decommodification" of labour. This is not to say that it is impossible to strike local deals on work-sharing in countries with – by European standards – lower levels of workers protection, as has been demonstrated by some recent work-sharing initiatives at company level in the UK. Yet, the level of wage compensation (short-time working allowances or work-sharing benefits) will most likely depend on the level of other public allowances such as unemployment benefits and on the costs to be borne by employers in the case of dismissals (to be regarded in a neoclassical perspective as opportunity costs for employers or public budgets, respectively). The less developed these provisions and opportunity costs are, the less pronounced could be the potential compensatory payment for workers linked with work-sharing agreements. The ultimate motivation for employers to agree on work-sharing deals will depend, apart from the power relationship at the local level, on the skill base of the workforce and the potential costs of retraining new staff in the recovery phase of the business.

Second, work-sharing in the current economic situation will in most cases be only feasible in combination with public subsidies. These subsidies will be crucial irrespective of the concrete organisation of work-sharing. It may be organised within a public scheme, as is the case in Germany; it may also be organised within the framework of multi-employer or single-employer bargaining. Thus in current work-sharing activities the borderlines between public schemes and schemes based on collective bargaining may become blurred. Whatever the actual scheme is based upon, however, it will not work without the interplay of collective bargaining actors and the state.

Third, it is fair to assume that employers will urge for a reduction of the remaining staff costs, including (as in the German case) the employers' social security contributions. The linkage with training makes sense but is not easy to implement in practice. Nevertheless, as a general rule, public subsidies to local or industry-wide work-sharing initiatives should be linked to training measures. Further training and the continuation of vocational training wherever existent should be regarded as indispensable elements of any work-sharing activity.

2.2.4 Stabilisation of the work force

Reviewing the experience with the boost in temporary and agency workers since the "labour market reforms" in many European countries, it is widely accepted today that these categories of workers experience, on the average, less favourable working conditions and compensation than employees with standard employment contracts (Nienhüser/Matiaske 2006). Most importantly, it has been found that, "jobs that score high in terms of the objective job insecurity indicator are also jobs that score poorly in terms of general employability, learning, training opportunities and task rotation" (Pacelli et al. 2008: 35). Hence the obvious need to put moves to curtail job insecurity amongst these categories of workers high on the bargaining agenda.

Basically, as has been established by recent data analyses in Germany and roughly in line with earlier findings (Freeman/Medoff 1984), there continues to exist a positive correlation between job stability and the incidence of collective bargaining (i.e. "the elapsed tenure is significantly longer in firms applying collective contracts than in

companies negotiating wages individually" (Gerlach/Stephan 2005)). Nevertheless, evidence on collective bargaining aimed at curtailing employment insecurity of temporary or agency workers is scarce, and sometimes paradoxical. In the course of the "flexibilisation" of labour markets which took place in many countries in the 1990s, there were examples of collective agreements, as in Italy, accompanying government initiatives which facilitated the employment of temporary workers as a means to foster employment growth. Similarly, following the labour market reforms of 2003 in Germany, much of the employment growth in the economic upswing phase in 2004 ff. resulted, in certain sectors such as the motor industry, in soaring temporary and agency employment rates (Dörre 2005). In the beginning of the current slump, these workers were the first to be sacked.

It is true that there were early examples of agreements, as in the Netherlands, which stipulated that after a certain period of time, temporary workers would be made permanent. However, agreements of this kind continue to be scarce. Interestingly, collective bargaining on this issue tends to benefit from facilitating political frameworks. This view is supported by recent moves towards a reduction of temporary employment in Spain, the country with the highest share of temporary workers in Europe. As part of a new legislative proposal, the Spanish government, employers' organisations and trade unions signed a preliminary agreement in April 2006. It proposed new legislation containing provisions enabling entrepreneurs to reduce their direct taxes on labour and transform some temporary contracts into permanent ones (CIREM Foundation 2006). It remains to be seen to what extent this general tripartite approach will suffer from the current dramatic slump in the Spanish labour market. The same applies to a recent national agreement for temporary agency workers in Italy (Box 5).

As has become obvious in this short overview (and assuming that the poor information available reflects scarcity in practice), the improvement of employment conditions of temporary and agency staff has not yet become an established collective bargaining issue. It remains to be seen whether recent experience in the current crisis will impact future approaches of collective bargaining parties.

Box 5. National collective agreement for temporary agency workers in Italy

An agreement covering temporary agency workers was signed in May 2008 by the National Association of Temporary Work Agencies and several trade unions. The agreement, which concerns approximately 600,000 workers from 98 temporary work agencies, introduces a considerable number of innovations – particularly regarding health and safety cover. Temporary agency workers will be eligible for the following benefits:

- sick pay when they are off work due to illness or injury;
- maternity pay for a period of 180 days;
- new opportunities to obtain loans without having to offer standard guarantees such as open-ended employment contracts, work seniority or accumulated end-of-service allowance;
- the option to extend their rights to health service reimbursement to their families.

Regarding the stabilisation of employment contracts, temporary work agencies have agreed to hire workers on open-ended employment contracts who have worked between 36 and 42 months with the same company or have 42 months of seniority in the same agency. Moreover, the agencies will receive state-funded incentives to encourage them to transform temporary employment contracts into open-ended contracts before reaching these limits.

Source: Rinolfi/Paparella (2008a)

2.2.5 Process or product innovation

Safeguarding of jobs is tightly intertwined with management decisions on investment, product lines, and organisation of the work process. Given that these decisions are at the heart of management prerogative in any capitalist environment, it cannot be taken for granted that these issues are being addressed by collective bargaining. Nevertheless, negotiations in a number of countries are moving in this direction.

High-profile examples of this move widely discussed in the media are often from the motor industry, such as a 'company-level alliance for jobs' agreed in 2006 at Ford Germany between management and the works council. The deal stipulates, in return for wage concessions (primarily made through industry-wide wage increases in the future being set off against company-specific payments), that dismissals will be banned at German sites until 2011. Three model ranges will continue to be produced at the two German sites, and the investment required for modernisation and adaptation of the production facilities are envisaged (Stettes 2006).

Given the fierce competition in the motor industry and its current deep crisis, this kind of agreement linking either the retrenchment or the safeguarding of jobs with restructuring and investment plans has become a frequent and periodic experience in Europe. These agreements may be particularly complex and include the whole array of measures highlighted earlier in the present chapter. That is, they may link employability-geared instruments or wage moderation and working-time reductions with job guarantees and investment plans, and they may even envisage new product lines. An example of a complex restructuring agreement is presented in Box 6. The Swedish-based electrical appliances company Electrolux and the metalworking industry unions agreed in 2008 on a restructuring plan for the Italian productions sites of the multinational. The deal includes a wide range of instruments, from state-supported short-time working schemes accompanying the sale of one of the plants, internal job pools, to a three-year investment plan for the remaining plant. A particularly interesting aspect here is that the investment fund which acquires one of the plants was involved in the negotiations, and that the product innovation prospects in that plant were addressed in these talks.

Box 6. Staff pools, investment plan, new products – Electrolux in Italy

In February 2008, the Electrolux Group announced that, due to the decline in sales of electrical appliances – particularly refrigerators – it had to close its plant at Scandicci in the northwestern province of Florence, resulting in 450 redundancies. Furthermore, the company was forced to downsize its plant at Susegana in the northeastern province of Treviso, reducing the number of workers by 330 persons. Following the announcements, the trade unions started negotiations and organised numerous protests in the Electrolux plants. On 20 September 2008, an agreement was signed between the management of Electrolux Italia, the national coordination of the unitary workplace union structure (RSU) of the plants in the Group, the three national metalworking trade union federations and their corresponding provincial structures.

The agreement concerns three aspects: the future of the plants at Scandicci and Susegana and the investment plan of the Group in Italy for the next three years, from 2009 to 2011. The factory at Scandicci will be sold to a company controlled by an Anglo-American investment fund. By 2010, the plant will change from the production of small refrigerators to the production of solar panels and wind vanes, and will hire at least 370 of the 450 employees currently working at the plant. From 5 January 2009, all of the workers at the plant will be placed in an Extraordinary Wages Guarantee Fund (Cassa Integrazione Guadagni Straordinaria, Cigs) for a period of 24 months, according to rotation criteria. The hiring arrangements and dates for these workers will be defined in an agreement which Mercatech has confirmed will be reached with the three signatory unions.

The agreement also anticipates the relaunch of production at the Susegana plant, by aiming to manufacture medium-high quality products. This new direction in production will result in a reduction in personnel of 324 workers, which will diminish to 299 job losses through the voluntary transformation of some employment relationships from full-time to part-time. The agreement envisages a rotation of the Cigs on a bimonthly basis, in order to equally distribute the effects between the workers in terms of reduced working hours and salary.

Electrolux has promised to invest about €53 million in its Italian plants in 2008 and a further €155 million in the following three years from 2009 to 2011. A total of 50% of this capital will be invested in product innovation and 30% in production processes.

In a ballot, 88% of the workers have accepted the proposal. The General Secretary of Fiom-Cgil, Maurizio Landini, has underlined that 'for the first time, a multinational has agreed to discuss a plan to relaunch a company rather than opt for delocalisation'.

Source: Rinolfi/Paparella (2008b)

While it is fair to assume that this kind of complex agreement will spread in the years to come in larger parts of the manufacturing industry, it is important to point to collective bargaining initiatives in the public sector aimed at boosting employment, rather than safeguarding jobs. A noteworthy initiative in this respect was recently developed by the Irish Municipal Public and Civil Trade Union (IMPACT) which launched a gradual and sustained campaign of industrial action against recruitment restrictions imposed by the Health Service Executive (HSE). As part of the action, trade union members employed by the HSE are refusing to cover posts left vacant by the recruitment freeze, as well as stopping non-emergency overtime and out-of-hours work. Meanwhile, IMPACT claims that it will develop its own proposals to "inform the union's approach to future negotiations on public service modernisation" (Box 7).

Box 7. Trade union launches campaign for public service modernisation in Ireland

Since the start of May 2008, the Irish Municipal Public and Civil Trade Union (IMPACT) has been resisting recruitment restrictions in the health service, which have resulted in 2,700 jobs not being filled. The union has instructed its 28,000 members employed by the Health Service Executive to refuse to cover posts left vacant by the recruitment freeze, which has been in place since 4 September 2007.

The full scope of the various 'non-cooperation' action will entail a range of measures whereby IMPACT members among HSE staff will refuse to undertake the tasks, functions or responsibilities of posts left vacant by the recruitment freeze; strictly adhere to the rules and procedures governing their post – in other words, stage a 'work to rule'; only operate agreed reporting relationships for their post; refuse to work overtime or outside of normal work hours, except in emergencies; refuse to engage with HSE advisors; refuse to participate in, or cooperate with, the HSE transformation programme; refuse to engage in 'partnership' activities.

The workers engaging in the action include health professionals, therapists, social care workers, administrative and managerial staff. As part of the action, they will be withholding cooperation with the HSE reforms and stopping non-emergency overtime and out-of-hours work.

The industrial action is part of a wider IMPACT campaign to defend and improve public health services. The union argues that most management initiatives have focused too much on internal organisation – a tendency which it says has resulted in little real change for customers trying to access public services. In view of this, IMPACT says it will be pushing for 'bargaining on the nature of modernisation programmes, rather than simply negotiating about the implementation of plans'. The trade union claims that this approach is not unique in Europe, citing the example of Norwegian trade unions, which, it states, put forward detailed proposals 'which have been largely adopted as official policy'.

Source: Sheehan (2008).

The dynamics involved in these approaches, either in the private sector or in the public services, lead collective bargaining parties to new territories. These initiatives may well be "retrenchment" or "survival" oriented. Some of the instruments, however, are taken from the "adaptation" toolbox. One advanced example of this innovative approach is a recent and ongoing initiative launched by the German metalworkers union IG Metall, flagged as a "better, not just cheaper" campaign (Wetzel 2007). It aims at turning the tables when it comes to relocation and undercutting of collective agreements by trying to set product and process innovation on the bargaining agenda within the respective firms. The initiative was born out of the experience of serious conflicts within the union over the future architecture of the collective bargaining system in Germany in the face of continuous breeches in industry-wide standards brought about by local employment pacts.

Before highlighting this linkage between contents and processes of collective bargaining on employment security in chapter 3, we will give a brief assessment on the outcomes of collective agreements on employment and competitiveness on which the present chapter has provided an overview.

2.3 Outcomes

The emphasis on each of the issues and contents of collective bargaining on employment insecurity described in the preceding chapter differs substantially across firms and countries. If we take the three types of agreements indicated in chapter 2.1 as a line of distinction, it is obvious that wage cuts will be most frequent in the "retrenchment" and the "survival" types of employment pacts. However, they may also play an important role in "adaptation" oriented agreements, if in a more sophisticated manner (as demonstrated by the example of Volkswagen). Employability-geared measures, as soon as they apply to measures within the respective companies rather than external job pools, will be most pertinent in "survival" and "adaptation" agreements. The same applies in principle to the other three contents described here, though emphases may differ in detail. The stabilisation of workforce measures in particular will depend very much on the political environment, as demonstrated by the example of agreements in Spain. The content least encountered in agreements so far appears to be stipulations on process and product innovations.

These different thematic emphases across collective agreements on employment and competitiveness have been summarised in earlier overviews as a prevalence of 'defensive' agreements. That is, most agreements "have been aimed principally at avoiding or limiting job losses or mass redundancies, in exchange for a lowering of labour costs and/or an increase in levels of flexibility and length of working time in the organisation. A minority of agreements, however, have been more innovative" (Freyssinet/Seifert 2001: 17).

Quite obviously the employment effects to be expected from pacts on employment and competitiveness depend very much on the type of the respective agreement. "Retrenchment" pacts may be at best protective, if temporary, in nature. The protective character of "survival" agreements may consider a slightly longer time horizon. At worst they may postpone layoffs, while at best they may contribute to the recovery of individual firms. At first sight, "adaptation" agreements appear to yield the most sustainable employment effects.

Unfortunately the assessments based on plausibility cannot be supported by sound evaluations. With the notable exception of the introduction of the 35-hour week in France (cf. chapter 2.2.3), there has been, to our knowledge and in accordance with earlier overviews (Zagelmeyer 2000), no technical evaluation of the outcomes of local employment pacts so far. What does exist are assessments of actors involved and individual case studies providing insights into the development of employment figures in establishments covered by PECs (Freyssinet/Seifert 2001: 61). While assessments of the actors are predominantly positive, the picture reflected in the numbers of workers is fuzzy (Büttner/Kirsch 2002). There are good reasons to believe that it will remain difficult to move to safer grounds for that matter.

To begin with, the numbers of staff before and after agreements on employment and competitiveness may reflect contrasting cases. Many PECs aiming at "survival" include both staff retrenchment and measures geared to avoid further layoffs. Other local deals were struck in firms in the black, but under the threat of relocation (the "adaptation" type). Since the drivers and backgrounds behind PECs can be very different, the scope for quantitative evaluations is quite limited.

Another, maybe more substantial reason for the problems of evaluation is the difficulty in assessing the side effects of local pacts on other firms competing in the same markets, or on the economy as a whole. Interestingly, these side effects may occur in all types of agreements, both the more 'defensive' and the more innovative or 'offensive' ones. Safeguarding of jobs based on wage cuts, but equally on innovations in one firm may be harmful for employment levels in competing firms – hence the possibility of zero-sum games. However, there is a substantial difference between these two kinds of side effects. 'Defensive' agreements drawing primarily on wage cuts may trigger a race-to-the-bottom in the respective market, whereas innovation-oriented agreements may push competitors

on the same 'high road'. The rationale behind the latter approach is an increase in international competitiveness of both individual firms and, on the average, on whole industries in a given country.[8] In theory, the latter rationale has been elaborated and tested within the "varieties of capitalism" approach (Hall/Gingerich 2004). The finding of Auer at al. (2005) in their cross-country computation on the positive relationship between productivity and stability of workforce would support this argument.

There are substantial implications for industrial relations and collective bargaining systems of the contrasting 'low' vs. 'high road' approaches to collective bargaining on employment insecurity. One fundamental effect of multi-employer bargaining systems is that certain attributes of human labour power, wages in particular, are taken out of the competition on the labour (and respective product) market. In doing so, competition will shift to other aspects, such as efficiency of the production process, or product quality. The more local employment and competitiveness pacts call into question this fundamental implication of collective bargaining, the less likely it will be for other employers in the same industry to go for the 'high road'. Thus, the crucial question is to what extent local pacts establish a combination of temporary concessions of employee representatives in terms of wages or working hours on the one hand, and of measures geared to processes and product innovations and to enhancing the employability of workers on the other.

In their analysis of firm level agreements on employment and competitiveness in Germany, Büttner and Kirsch (2002) observed a set of preconditions for this combination to actually happen. These include the extent to which agreements address:

- sources of sustainable cost reductions;
- potentials for a boost of internal flexibility and staff mobility,
- measures to safeguard and enhance human capital within the firm; and
- the involvement of local employee representatives.

Last but not least, these authors assert the need for "professional work structures" of employee representations.

These findings from a country which arguably is amongst those with the highest incidence of local agreements on employment and competitiveness underscore the importance of an integrated assessment of contents of agreements on the one hand, and their implications for the architectures and processes of collective bargaining on the other. It is to these implications that we now turn.

3. Local employment and competitiveness pacts and the architecture and process of collective bargaining

It is a widely shared view that PECs as part of the general trend towards decentralisation of collective bargaining can be regarded as an organised process controlled by the social partners (Ozaki 2003; Sisson 2005). Unfortunately, this statement is frequently made without analysing the *process* in detail. In this chapter we will try to show that the question of control is more open than it is supposed in the literature and that the answer to this question is of some importance for the assessment of PECs on collective bargaining in

[8] The same reasoning would apply to the enhancement of employability of workers in the face of redundancies. Beyond the absolutely useful – and in many cases desperately needed – support for the individuals, a positive sum game will only be assumable under the premises of competitiveness fostering pacts at a wider scale which would, on average, improve the employment prospects of workers in the respective industry in a given country within the global competitive environment.

general. It is particularly pertinent when it comes to find an answer to the guiding question of the present study, that is, how the capacity to engage in collective bargaining has enabled the social partners to address the issue of employment insecurity.

The problematic to be highlighted in what follows is the possible interaction between the capacity to negotiate, and repercussions of these negotiations on this very capacity. One would expect a process of decentralisation which is controlled or organised to be compatible with existing structures of collective bargaining and industrial relations by just adding a new level of bargaining to existing ones. In consequence, the architecture of industrial relations would possibly be changed and become more complex, but in the course of this change it would reinforce its unique mission, that is, *the setting of (national or industry) minimum employment standards*. It is the establishment of these very standards which is the historical achievement of collective bargaining (historically first as single-employer, later as multi-employer bargaining) insofar as minimum employment standards have been taken out of the competition on the respective product and labour markets. In contrast to this achievement, a process of uncontrolled decentralisation might destabilise the 'institutional architecture' of collective bargaining in a given country by undermining existing central or sectoral levels of collective bargaining, the capacities of their actors, and the norms and standards established at these levels. Thus, the process of decentralisation in general, and of local bargaining on employment and competitiveness in an environment of globalisation and shareholder value capitalism in particular, creates a tension between *standards* and the *pull of undercutting* of the same standards.

Quite obviously, these tensions will most visibly rise to the surface in countries whose collective bargaining systems include, or even rest on, multi-employer bargaining. In more decentralised systems, as in the U.S. or the UK, the gaps in employment standards within industries tend to be larger than in systems based on multi-employer bargaining (a classical example being the gap between UAW standards and employment conditions in non-union greenfield sites in the U.S. auto industry). Equally, the more an industrial relations system is based primarily on informal coordination, the more informal in nature will be the articulation between areas or levels of bargaining.[9] The manifestation of tensions between standards on the one hand, and the pull of their undercutting on the other, is manifold in nature and forms. In a trade union perspective, they may be experienced as a problem within the hierarchy of a trade union or as a problem between a trade union and works councils, it may be perceived as a problem between works councils or local trade union organisations in large firms in one industry or as a problem of competing trade unions, and it may be handled in a more informal or a more formal manner. However it is experienced, depending on industrial relations systems and practices, the nature of the underlying tension will always be the same.

Given the multitude of forms, we will focus next on the most visible varieties of these tensions which are to be expected in European countries with multi-employer bargaining. Under the conditions of these highly organised (by international standards) collective bargaining systems, two dimensions of control involved in the process of decentralisation can be distinguished. The first is the problem of articulation between collective bargaining actors at different levels (Crouch 1993). Decentralisation by PECs entails the emergence of new actors of collective bargaining on the local level, such as enterprise management and local union organisations and/or works councils; also,

[9] As Ozaki (2003: 23) points out for Japan, "apart from wage restraints conceded by Japanese unions in enterprises facing difficulties, collective bargaining normally does not deal explicitly with measures for enhancing competitiveness. Instead, Japanese unions contribute to the achievement of this objective through their willingness to cooperate with the management in the introduction of plans aimed at enhancing the company's competitiveness. This cooperation is extended to their day-to-day activities. As a consequence, it is quite natural that labour-management dialogue on these issues in Japan normally takes the form of joint consultation, a process which is more informal and flexible than collective bargaining, and tends to focus on problem-solving rather than standard-setting."

employees can become new actors. Organised decentralisation would mean that the new actors are well integrated in the bargaining strategies of higher organisational levels of collective bargaining associations. The second dimension is the relationship between the different levels of collective bargaining. Organised decentralisation would mean that lower level agreements are, at least to some extent, compatible with higher level ones in the sense that the higher level norms are respected. Is really the case?

These problems are gaining in importance because of the shift in the character of PECs in recent years. In the 1990s, PECs could convincingly – of course depending on their character as a high or low road agreement – be regarded as new forms of integrative bargaining combining new topics of collective bargaining and safeguarding the interests of both employers and employee representatives. Since the turn of the millennium, and even before, conditions changed at least in some of the countries where PECs are common practice. PECs are more and more based on legal or collective regulations allowing derogations or deviations from collective bargaining norms like (mostly temporary) hardship clauses or more general 'opening clauses'. Thus in many cases PECs can no longer be regarded primarily as a form of local adaptation and enrichment of employment conditions agreed at industry or national collective bargaining levels, or as mere temporary deviations from these standards. They are increasingly becoming instruments allowing for unspecified or restricted undercutting of standards agreed at industry or national levels. While little is known about the quantitative incidence of deviant agreements, we can present data for Germany and the German metalworking industry from our own (yet unpublished) analysis. The bottom line will be that there definitely is a problem of articulation and control in the bargaining process which has to be part of the overall assessment of the outcomes of collective agreements on employment and competitiveness.

3.1 New actors and the problem of articulation

Employment pacts at the enterprise level come along with new and local actors. Depending on the country and the respective industry practice, a PEC can be negotiated (a) by both local actors and actors from higher levels of collective bargaining associations, (b) by the local actors, but has to be also accepted by higher levels of unions or employers' associations, or (c) by the local actors alone. In all these cases local union organisation, works councils and employers become actors of collective bargaining, thus giving rise to the need for articulation of different levels of organisation.

The problem of articulation has at least three facets. One of them is the question of whether local actors are getting support from their organisations in negotiations, and how much. Support can be related to information the actors receive, advice from their organisation, or direct and helpful interventions in negotiations at higher levels. A second facet is, if and to what extent local actors are controlled by higher associational levels in the sense that the processes and results of local negotiations are registered at higher levels, whether there are guidelines developed for negotiations by higher levels or whether higher levels are making binding decisions for local actors to enter or not to enter into negotiation or to accept or not to accept the result of a negotiation. The third facet is related to the question of coordination. Coordination means that higher level actors are willing or able to coordinate different local negotiations in their organisational jurisdictions. The most important question concerning the coordination of negotiations is whether they are interdependent in the sense that one negotiation is stimulating actors in another company also to enter into negotiations on a PEC. In this situation coordination has the task of preventing a race to the bottom of labour standards between companies. The coordination problem can also become virulent within a company if interdependencies exist between different locations of the company. In this case, coordination – from the employee representatives' perspective – has to prevent inner-organisational competition between plants based on wage cuts. In both cases collective bargaining actors at higher levels have to make sure that local actors do not violate collectively agreed labour standards.

In the literature, the views expressed on the problem of articulation are far from unequivocal. While Sisson (2005) argues that decentralisation increases stresses and strains within trade unions and can pitch workplace against workplace, Freyssinet and Seifert (2001) claim that in the process of negotiations on PECs the ties between elected staff representatives and unions tend to be strengthened.

To begin with, it seems quite plausible to expect that the unions' interest in articulation is higher than that of the employers' associations. Whenever unions have been able to implement higher bargaining levels, they defend it as an achievement of struggles and as a public good. Employers' associations normally have an interest in higher level bargaining only if a single-employer bargaining strategy of the unions would yield higher labour costs in important parts of an industry than multi-employer bargaining. Concessions for employment are based on a situation of relative unions' weakness vis-à-vis single employers. Therefore in this situation a decentralisation of bargaining would be favourable at least for those companies that have difficulties in maintaining industry standards, either due to a lack of competitiveness or because the profitability of the firm falls short of the expectations. Of course the employers' associations could nevertheless opt for the preservation of central collective bargaining to maintain a strong role in wage determination. But doing this would mean opting against the interests of many of their members, and the associations would probably get into trouble because of membership losses (which could only be avoided if membership is obligatory). It would be much more reasonable for the employers' associations to arrange their strategies along the interests of their members and also to support decentralisation. Hence it is plausible to argue that employers' associations will, for the sake of their own interest in membership preservation, try to weaken centralised bargaining and the binding power of centralised labour standards. A strong control of actors and agreements to preserve the binding power of higher level agreements is not part of their interests. In this respect the employers' associations can be expected to become less corporatist and more pluralistic in style (Schmitter/Streeck 1981). The only advocates of strong centralised bargaining and labour standards that remain in this situation are the unions – and maybe the state, depending on its role in industrial relations and the respective cycles of political power.

For the unions the problem of articulation can become more difficult in dual-channel systems of industrial relations. These systems are characterised by the existence of works councils as shop-floor representations elected by all employees (whether or not they are union members) and that have certain legal entitlements, such as information or consultation rights. They are an institution in their own right, apart from the unions. The more independent they are from the unions, the more difficult it is to integrate them into a process of articulation between the organisational levels of the union. If concessions for employment are dealt with by the works councils, the unions have to try to coordinate them, although they are not part of the unions' organisations. However, the situation may be not too different in single-channel systems, as local union organisations will in practice focus on local employee interests in a similar way as works councils.

It has to be added that the problem of articulation can become virulent not only for unions but also for employee representatives within a company. A race to the bottom between two or more locations of the same company poses problems also for employee representatives at the national level of the company and, in the case of multinational companies, at the international level, at least if a European works council (EWC) exists. In the first case, coordination within the company has to consider the preservation of industry or national labour standards; in the second, local bargaining can foster a regime competition between locations in different countries with different employment standards. In an analysis of the EWC at GM we found that successful cooperation is based essentially on successful coordination and the development of rules for local negotiations (Banyuls et al. 2008).

Finally, the need for articulation may be even greater once the employees enter the scene as a third group of new actors besides local employee representatives and enterprise

management. Local unions or works councils can involve employees as relevant actors by information, mobilisation and participation. In the case of information, employee representatives try to inform the employees more or less continuously about the reasons for negotiations of a PEC, the development of the negotiations, and the results. In the case of mobilisation, local unions try to mobilise the employees or groups of employees in the form of strikes or other forms of resistance as part of their bargaining strategies. Finally, in the case of participation, ballots may be held on the results of negotiations, as in some of the cases highlighted in chapter 2. There are also other forms of participation where employees are actively involved in bargaining commissions and the like.

Employee involvement can have ambiguous implications for articulation. On the one hand, employee involvement can be expected to increase the legitimisation of local unions bargaining with management and thereby to increase their bargaining power. As well, the union can benefit as a whole if employee involvement brings new members and an increase in union density. We will show later that these effects can be observed in the case of the German metalworking industry. On the other hand, rank and file involvement can also result in a decline of central control, especially if it includes mobilisation and participation. In the case of mobilisation, it is far from clear that the mobilised can be restricted on the role designated to them by their representatives. In the case of participation, the central actors have to accept the votes of the employees even if it contradicts their own choice (cf. above the case of Danish Crown, chapter 2.2.2). However, it is fair to assume that in most cases local employee representatives are in close contact with both higher union levels and with employees and will actively try to prevent problems of articulation.

Against this background, it appears all the more useful to focus the following discussion of the ambiguities in the deviations from industry standards in collective bargaining on Europe. It is in this region where the levels of organisation in industrial relations systems are well developed, and hence the problems regarding the blurred lines between decentralisation and derogation will be most obvious here.

3.2 Decentralisation and derogation

3.2.1 The thin line between decentralisation and deregulation

Until the end of the 1990s, the assessment of PECs used to be quite positive amongst actors and observers. Although, or because, PECs contributed to the decentralisation of collective bargaining, they were widely regarded as a positive sum game for both employers and unions. The widening of the bargaining agenda and the promotion of a partnership approach by strengthening the role of employee representatives in companies were regarded as the most important advantages for unions besides employee protection. In this respect the dangers for the structures of collective bargaining systems seemed not to be fundamental, and as long as PECs were in line with the labour standards of higher level agreements this assessment could hardly be disputed. Even if a local agreement is not widening the agenda very much and is mainly characterised by employee concessions, the dangers of undermining higher level collective bargaining standards is quite low if the concessions made do not affect these standards, e.g. if they only reduce the wage drift.

Over the past few years, however, the situation has changed. As Ozaki (2003: 32) argues, while "decentralization may bring some benefits to workers, (…) the arguments put forward by its proponents share many common elements with the neo-liberal economic arguments about macro-economic management. There is often a thin line separating decentralization and deregulation." In fact, the distinction between decentralisation and deviations from collective agreements has become blurred. To begin with, informal agreements have developed in some countries as a result of "wildcat cooperation" between

local actors which violate standards agreed at higher levels. Once wildcat cooperation gains importance, it may entail an erosion of collective bargaining. While the actual spread of wildcat bargaining is not clear, an arguably more important doorway to deviation of collective agreements in a number of European countries are the so-called hardship or opening clauses. They allow for local deviations from industry standards in specified cases. In this case deviation becomes formalised, which opens the chance for the unions to organise articulation and control. We will call these agreements deviant collective bargaining agreements (DCBA) and will concentrate our analysis in the following sections on these formal agreements.

The derogation or opting out clauses on which DCBAs are based can have different forms. Firstly, these clauses can define certain procedures and competencies. They can describe obligatory steps to be taken in negotiations, such as the need for employers to consult the local union or to give a detailed analysis of the economic situation of the company. Furthermore, they can specify who is entitled to negotiate an agreement. It may be shifted to the local actors, and/or it may need to be accepted at higher levels of the collective bargaining system. Secondly, these clauses can define the conditions or the scope of local shortfalls of collective bargaining norms. Deviations can be restricted to cases of economic hardship or to cases of securing employment. They can also be confined to certain types of enterprises – like small and medium-sized enterprises – or to certain groups of the workforce like newly hired employees.

DCBAs are a specific product of what can be called micro-corporatist arrangements. There are three features of DCBAs that justify their classification as corporatist: they are negotiated by collective actors – unions or works councils on one side, and the companies, maybe supported by employer's associations, on the other; the collective actors are strong enough to legitimise them with regard to third parties like the employees, higher union levels or the employers' association; and the actors are able to guarantee the transformation of norms into social action. The weaker the local actors dealing with DCBA are, the less they are corporatist and the less useful they are with respect to the outcomes expected.

The power asymmetry on which DCBAs are based implies an obvious problem for micro-corporatist arrangements. On the one hand, the fact that DCBAs exist indicate a power shift in favour of the enterprises. On the other, the union still has to be strong enough at the local level to negotiate, legitimise and guarantee concessions from employers. If the unions are too strong, either centralised bargaining will dominate, or decentralised bargaining will, at worst, deal with temporary deviations from industry standards. In turn, if the unions are too weak, either employers impose concessions unilaterally or the agreements cannot be legitimised and guaranteed.

As argued with respect to PECs in general (cf. chapter 2.1), DCBAs may be fostered by tripartite social pacts at national level either directly by respective regulations or indirectly by creating a climate for cooperation and/or wage moderation (cf. for overviews on social pacts Fajertag/Pochet 2000; Hassel 2006). At the same time, however, there are countries like Belgium with a strong tradition of social pacts but without DCBAs, and there are countries like France where concessions for employment exist without a social pact or even a corporatist tradition. Maybe it is possible to argue that micro-corporatism developed in some economies with social pacts and then spread to other countries. The mechanism responsible for this development could be an increasing competitive advantage of companies or locations within companies with DCBAs. In this respect, the spread of DCBAs to other countries could be explained by the need of firms or locations to react to the competitive advantage of others and to increase their own competitiveness. We know from recent studies that there are cases in the chemical industry where DCBAs in German locations of multinational companies have forced local actors in French sites of the same companies also to make similar agreements, because otherwise the locations would have run the risk of losing investments or even being shut down in the long run. Raess & Burgoon (2006) make the same point for the Netherlands.

3.2.2 The probability of derogation in different institutional environments

The following is a short literature overview on countries with derogation clauses and/or DCBAs. It will be shown that the range of respective countries in Europe is quite big, but that detailed evidence about the spread of DCBAs is scarce.

In the Austrian corporatist system of industrial relations, wages and working times are negotiated at industry level by the unions of the umbrella association ÖGB and the sectoral units of the Economic Chambers (which are outstanding in international comparison because membership for employers is compulsory). In a small number of industries like the metalworking industry (1993) and the energy suppliers industry (1999), derogation clauses were agreed which allow the local postponement or reduction of sectoral wage increases in return for employment security. For the metalworking industry it is known that almost no case of local application exists (Flecker/Blum/Herrmann 2000). This fact can be explained by the relative strength of workers' representation and by the encompassing coverage of collective bargaining agreements that do not allow the companies to pressure unions by the threat to leave the employers' associations and therefore the norms of the collective bargaining agreements.

In the Danish case, local union representatives are allowed for some years to conclude local agreements with employers that deviate either above or beneath the minimum conditions stipulated in the sectoral collective bargaining agreements. The bargaining parties at higher level have to be informed about the agreement. DCBAs are only possible in companies with union-elected employee representatives. Hence an impulse for the local union representations can be expected (Visser 2004), although unions are already rather strong in Denmark because of a high union density. Information does not exist concerning the spread of these agreements, nor concerning the employment concessions by enterprises. As the Danish Crown case reported in chapter 2.2.2 indicates, these agreements are highly controversial in Denmark.

In France, the Robien Law of 1996 provided the opportunity to negotiate local "employment agreements" at company level. The significance of company bargaining is high in the French system of industrial relations because many topics are dealt with only at company level. Nevertheless, norms of higher level agreements usually have to be respected. In the employment agreements it is possible to exchange reductions in hours, partial losses of pay or more flexible working time agreements for avoiding redundancies or for increasing employment levels (Goetschy 1998). In 1998, around eight per cent of the company agreements were of this kind, but there is no topical data and it is not known how many agreements actually deviate from industry standards. While the persisting high unemployment and the weakness of unions may have forced local union representatives or works councils to agree on deviations, unions representing a majority of employees have the right to veto such agreements. A further problem is that in many smaller companies unions are not present at all (Daley 1999).

The Irish system of collective bargaining was strongly affected by the social pacts created by the Irish governments from the end of the 1980s onwards. In this context the formerly disparate system which was characterised by a parallelism of centralised and decentralised bargaining, voluntarism and antagonistic relationships between employers and unions changed (Prondzynski 1998). From the late 1980s onwards, targets for wage increases were agreed in tripartite social pacts aiming for competitiveness and economic growth. The targets were regarded as ceilings for local wage bargaining. The third agreement of this kind from 1996, called Partnership 2000, tried to establish a framework for social partnership at the workplace promoting the implementation of works councils and HRM approaches (Teague/Donaghey 2004). In this frame of reference it is allowed to fall short of the wage increases agreed at national level. There is no information about the spread of shortfalls in Ireland.

Similar to the Irish case, in Italy the system of collective bargaining changed markedly in the course of tripartite social pacts. At the beginning of the 1990s, industrial relations were re-centralised – after a period of centralisation in the 1970s and a period of decentralisation in the 1980s – by abolishing the indexation of wages to the rate of inflation (the "scala mobile"), and by defining a new structure of collective bargaining. Employers' associations and unions committed themselves to bargaining wage increases within the limits of inflation. Furthermore, a dual structure of collective bargaining with industry-level bargaining on the one hand and company-level bargaining on the other was established. Whereas wage increases according to the rate of inflation and the development of productivity are to be negotiated at the industry level, additional wage increases and other topics are addressed at company level. Also a new system of workplace representation was agreed on at the national level, combining union influence with the unions' priority in nominating candidates and a renewed interest of employers in workplace representations to have a trusted and competent partner in decentralised bargaining (Regalia/Regini 1998). Clauses for deviations of collective bargaining norms were installed in the "pact for employment" of 1996 and in form of hardship clauses in some sectoral agreements. Territorial pacts – agreed between unions, employers' associations and local government and maybe other important local actors – were defined to promote economic growth in underdeveloped regions. Here concessions are made on industry standards concerning pay, job classifications, working hours or employment contracts in exchange for assurances for the creation of jobs by projects and investments. There is no data on the distribution of territorial pacts available, but their usage seems to be quite limited (Regalia/Regini 2004).

In Spain, most of the collective bargaining agreements have "drop out" clauses defining situations in which employers may not be able to fulfil the wage norms defined in collective bargaining agreements. These clauses are reported to affect about 70 per cent of the total workforce (Visser 2004). They are based on the labour market reform of 1994 which prescribed the possibility to opt out of sectoral wage settlements in company-level pacts if the stability of a firm is in danger (Fraile 1999). The conditions and processes of opting out have to be regulated in sectoral agreements. Given the parallel structure of collective bargaining in Spain with single-employer bargaining in the big firms on the one hand and multi-employer bargaining – both sectoral and regional – for smaller companies on the other, opting out can be regarded as an option designed for the smaller companies. Working conditions fixed in single-employer agreements usually are higher than those negotiated in multiple-employer agreements. Although there is no data about the spread of company pacts at hand, it can be supposed that it is quite limited up to now. One reason for this is that Spanish management still is following a traditional and paternalistic style and is hostile to local negotiations with unions, fearing that unions will gain in status or that it has to make concessions concerning training programs or an innovative work practice. Also, the subsidiaries of foreign-owned companies often showed little interest in workers' involvement or skill formation (Lucio 1998). Furthermore, companies in Spain do rely strongly on external flexibility so that they have few incentives for negotiating company pacts for increasing internal flexibility. Finally, because of the limited power of Spanish unions on the shop floor, companies can easily shift from the collective agreement of one industry to that of another with more favourable labour standards.

Opting out clauses are also known in some of the new Member States of the EU. The structure of collective bargaining systems is decentralised in most of the new Member States, with the company as the dominant level of collective regulation of labour standards (Kohl 2004). But despite the general weakness of collective bargaining and of its actors, there are three countries with an important role of industry or even national-level bargaining (Bulgaria, Slovakia and Slovenia), and in two of them derogation clauses exist. In Bulgaria sectoral agreements often include hardship clauses, allowing companies to fall short of the minimum wage levels defined in national or sectoral agreements. In Slovenia the current tripartite pay agreement allows companies with economic difficulties to

postpone wage increases under defined conditions. In both countries there is no data available concerning the spread of local agreements.

3.2.3 Shortcomings of findings

To sum up, derogation or opt-out clauses opening the door to local employment pacts based on an undercutting of industry standards are quite common in countries with a developed multi-level structure of collective bargaining. To a certain degree such a structure is a reflection of trade union strength or at least the active role of the state in preserving it. Without the persisting institutional and/or organisational power of the unions (or the intervention of the state as a functional equivalent, as in France), employers clearly would have opted for more decentralised systems. At the same time, in these countries unions have become weaker such that they had to accept derogation clauses, whether in the course of social pacts (as in Spain, Ireland or Italy) or in form of sectoral collective bargaining agreements (as in Austria or Denmark). The only developed economies less affected by the co-development of persisting power and simultaneous weakening of the unions are countries like Belgium, Norway or Sweden with special institutional backups like the Ghent-system (c.f. Western 1997), or countries with already decentralised bargaining structures without reference points for deviations on company level (like the U.S. or the UK). In a nutshell, in order for deals on local breeches into industry standards to be struck, trade unions have to be strong enough to require a collective agreement, but weak enough to be forced to give in.

Although there is some information about the countries with collective regulations favouring local employment pacts based on concessions, we know very little about the actual spread of their usage within the countries or the respective concessions that are made by the bargaining parties or the processes of articulation between agreements and levels of organisation. In the case of Germany, however, we are able to present recent findings from ongoing research into derogation clauses and DCBAs in the German metalworking industry. The metalworking industry is the traditional lead sector of industrial relations in Germany, and it is also a vanguard in implementing derogation clauses. The so-called "Pforzheim Agreement" of 2004 has become famous for its broad scope for deviations, allowing them in case they are contributing to employment security or growth on the one hand and to the improvement of competitiveness, investment conditions and innovation capacity of the firms on the other. We have analysed in detail all the DCBAs negotiated in the industry from 2004 to 2006 and made interviews with experts from the union and the employers' associations to acquire information about the processes of articulation.

Focusing on Germany may serve as a pointer for what may also become visible in other countries with less entrenched works councils and union organisation patterns. As Raess and Burgoon (2006) argue, taking Germany as a 'role model' for analysis can find empirical justification by the example of other countries like the Netherlands. In their judgement, the tensions caused by globalisation on the ties between local and industry bargaining levels which can be studied in Germany are "a general and important part of contemporary industrial relations in developed economies."

3.3 On the tightrope: Case study on Germany

3.3.1 From hardship clauses to deviant agreements

Deviations from collective agreements, i.e. the undercutting of collectively agreed standards by individual firms in order to safeguard jobs have developed in the German metalworking industry since the 1980s. They were used to deal with crises in individual

firms but were not part of a more general trend towards the widespread use of such derogations or increased concession bargaining. This changed with the profound cyclical and structural crisis into which the metalworking industry was not alone in plunging at the end of the reunification boom in the late 1990s (Jürgens & Naschold 1994). Since then, the use of derogations has become widespread. The crisis saw the emergence of two 'launching pads' for the practice: hardship clauses in the East German collective bargaining areas and the negotiation of restructuring agreements in West German collective bargaining areas.

The hardship provision negotiated for East Germany in 1993 constituted the first collectively agreed instance of derogation from the industry-wide agreement in the metalworking industry and one of the first arrangements of this kind in the German collective bargaining system as a whole. The provision was part of a compromise that the negotiating parties agreed to in order to resolve the dispute surrounding the amendment of the East German step-by-step equalisation agreement, which provided for the gradual harmonisation of wages and working times with those in West Germany (see Schröder 2000). The hardship provision stipulated that the parties to collective bargaining should negotiate the substantive content of any derogation as members of a joint commission. At the same time, derogations from the collective agreement were restricted to a certain type of firm, namely those experiencing acute economic difficulties. Firms were initially slow to make use of hardship clauses, but the speed of adoption quickened subsequently. By mid-1996, 91 clauses had been negotiated, with a total of 181 applications having been submitted (Hickel & Kurzke 1997). Thus hardship provisions have not only become an important part of the reality of collective bargaining in East Germany. Their importance also lies in the fact that the negotiating parties, and the trade union in particular, developed a great deal of expertise in negotiations and decisions on derogations which they were able subsequently to fall back on.

No provision equivalent to the hardship clauses was introduced in West Germany. Yet during the same period, a separate practice of undercutting collectively agreed standards emerged. This undercutting took two forms. The first, which also existed of course in East Germany, was informal undercutting by the negotiating parties at firm level (so-called 'wildcat' derogations). The second was the negotiation of restructuring agreements by the parties (the trade union at least) in firms experiencing economic difficulties. From the mid-1990s onwards, this practice resulted in the negotiating parties in most collective bargaining areas reaching agreement on so-called restructuring clauses, which expressly permitted the parties to derogate from the industry-wide agreement when firms were experiencing economic difficulties. In contrast to the East German hardship provisions, these restructuring clauses contained no procedural standards for negotiations and no stipulations regarding the quality of the substantive provisions. Not least for these reasons, little more is known about their incidence than that they have increased in number more or less continuously over the years and that they have become an established practice in all collective bargaining areas. The restructuring clauses, combined with the 'wildcat' derogations, led to the creation of a 'grey area' in which collectively agreed standards were undercut but which lacked both transparency and central control by the associations, despite the fact that the negotiating parties had given it their blessing in the restructuring clauses that had been incorporated into the industry-wide collective agreements.

This situation changed with the signature under the Pforzheim Agreement by the negotiating parties in 2004. The negotiation of this agreement was to a certain degree a reaction to the political pressure that the then federal government had built up by threatening to introduce statutory 'opening' or derogation clauses (see above, chapter 2.1). This created the impression within IG Metall that it would be impossible to prevent the spread of derogations and that the union could at best be involved in determining the form they would take. From the outset, however, the trade union advocates of such derogation clauses hoped that their introduction would provide them with an instrument they could use to control the undercutting of collectively agreed standards, whether through formal or

informal arrangements. For the employers' associations, on the other hand, the demand for derogation clauses was from the very beginning of the bargaining round linked to the notion of an increase in working time without a compensatory pay increase.

Both of these objectives were reflected in the 'Agreement between the parties to collective bargaining on the safeguarding of existing and the creation of new jobs', which was eventually signed on 12 February 2004 in the small town of Pforzheim in the south-western region of Baden-Württemberg. The agreement specified that derogation agreements were possible provided that jobs would be safeguarded or created as a result, and that they would help to improve competitiveness, the ability to innovate, as well as investment conditions. In contrast to the restructuring agreements, the Pforzheim Agreement contained a number of provisions stipulating, among other things, that the measures should be scrutinised and negotiated by the bargaining parties at firm and industry levels, that companies should make comprehensive information available and that the negotiating parties at industry level should be empowered to conclude derogation agreements.

3.3.2 The problem of control

The procedural arrangements laid down in the Pforzheim Agreement quickly proved unsuited to controlling collective agreements. It soon became evident that the employers' associations themselves had no interest in controlling derogations and in many cases were merely acting as advisers to companies engaged in negotiations. Consequently, it fell to the trade union to exercise control. However, IG Metall's faith in its own ability to control derogations had already received a bitter blow shortly after the conclusion of the Pforzheim Agreement, as a result of high-profile cases such as the Siemens mobile phone division. At Siemens – and in several other cases – the works council had already agreed to management's demand for a working time increase without a compensatory pay increase as the price for keeping production in Germany before the union had been even asked for its opinion or taken any part in the negotiations. However, the union could do very little as a negotiating party to counter the votes of the works council and the workforce. This was a classic case of wildcat cooperation between the parties at firm level.

The union executives concluded from this experience that effective control required tighter procedural standards than those laid down in the collective agreement. Consequently, coordination guidelines were drawn up in 2005 which specified the duties to inform, procedural arrangements and decision-making competences linked to the negotiation of undercutting agreements. The guidelines included the following points. Firstly, applications to negotiate undercutting agreements were to be submitted to the union's area headquarters (which is the organisational equivalent of the regional employers' associations) and to be decided on by officials at that level on the basis of extensive information about the company in question. Secondly, officials at area headquarters could give local union branches the power to conduct negotiations. Thirdly, negotiations were to be supported by firm-level collective bargaining committees whose role was to ensure that union members took part in the negotiations. Finally, the outcome of the negotiations was to be communicated to the union executive, which had to authorise and take responsibility for the agreement.

According to collective bargaining experts on both sides, the union executive's coordination guidelines actually did lead to extensive standardisation of procedures between and within the unions' collective bargaining areas, which are largely coextensive with the spheres of application of the industry-wide collective agreements. The requirements regarding information flows and decision-making competences have now become part of established collective bargaining practice. This applies to agreements based on the Pforzheim Agreement as well as to other agreements, among which the restructuring agreements play a prominent role. All derogations are now negotiated according to the same procedures (which does, however, make the formal allocation of

cases to the relevant derogation clauses more difficult). Thus the coordination guidelines drawn up subsequent to the Pforzheim Agreement formed the basis for a new way of dealing with derogations from the industry-wide collective agreement, which is now accepted by the employers' associations as well.

According to the experts on collective bargaining, standardisation has also led to a professionalisation of the bargaining procedures, which has moderated disputes and enabled the two sides to engage in businesslike discussions. At the same time, a new form of transparency can be observed with regard to the extent and contents of derogations. The union executive now has a comprehensive database on the derogation agreements and their contents, in which scanned copies of the actual derogation clauses are stored. This database constitutes an internal memory bank on derogations that is retrievable at any time, which has been of benefit not least to the present study.

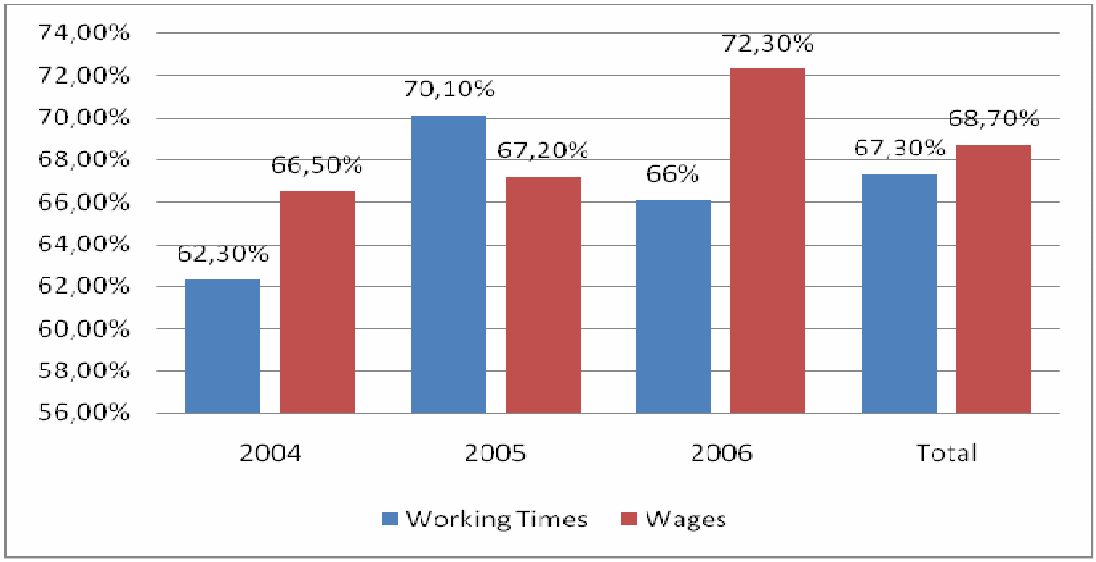
From the control point of view, however, what should perhaps be regarded as of greater significance is that, in this way, it has been possible significantly to increase control over derogations. Firstly, the newly acquired transparency applies to restructuring agreements as well, which had previously been concluded without any discernible central control. Moreover, according to the experts of union and employers' associations, even wildcat decentralisation, which had been increasing up to 2004 but could not be quantified because of its informal nature, has been curtailed as derogations have increased and procedures have been standardised. It can at least be said that informal derogations from the industry-wide collective agreements are now virtually a thing of the past.

Thus undeniable successes have been achieved in exerting procedural controls. However, little has so far been said about the actual substance of the derogations that have been negotiated. Analysis of the content of derogation agreements can provide important information, and it is to this that we now turn.

3.3.3 Deviant agreements: concessions and counter-concessions

Between the signing of the Pforzheim Agreement and the end of 2006, a total of 850 derogation agreements were concluded in the metalworking industry. Of these, 412 or almost 48.5 per cent were concluded in 2005, 271 (32 per cent) in 2006 and 167 (about 20 per cent) in 2004. In 2006, excluding the agreements that had expired by then, a good 10 per cent of firms in the sector bound by collective agreements had negotiated a valid derogation from the relevant agreement. The real substance of the derogation agreements lies in the *material concessions* they provide for. Without them, there would be no derogation from the collective agreement, and they provide the most important indicators for determining the extent of derogations from the standards laid down in the industry-wide collective agreements. The material concessions are clearly dominated by two topics or issues, namely working time and wages. Over the entire observation period, well over 60 per cent of the derogation agreements contained provisions on these two issues (Figure 2).

Figure 2. Issues addressed in deviant agreements 2004-2006



Source: Haipeter (2009).

For the union, the most sensitive issue related to working time and the derogations in general is undoubtedly the extension of working time. Contrary to the expectation of strong union control of this issue, it can be observed that the extension of working time is by far the most important single issue in the derogations. Of all derogation agreements, 58.5 per cent (and 86.9 per cent of those concerning working time) contain provisions on the extension of working time. Other working time issues, such as working time flexibilisation (in 19 per cent of all derogations from working time norms), working time scheduling and working time reduction (both under six per cent), lag significantly behind. Among the various forms of working time extension, increases in weekly working time, which account for almost 65 per cent of all derogations involving extensions of working time, are by far the most important parameter, followed by working time budgets containing a certain number of extra hours to be worked by employees (26 per cent) and additional training periods to be used for further and advanced training (about 12 per cent). In 2006, however, the share of agreements on the extension of weekly working time declined to 53.5 per cent, which suggests that trade union control of the substance of derogations has improved. Further evidence pointing in this direction is the decline in the average length of weekly working time extensions (as a weighted arithmetic mean based on the upper cut-off point of the hour intervals) from 3.7 hours in 2004 to 3.3 hours in 2005 and 2006. In the overwhelming majority of cases, working time was extended without any compensatory pay increase. In an increasing number of cases, however, provision has been made for the working time increases to be reduced – usually in stages – while the derogation remains in force. In 2006, 28.6 per cent of all weekly working time extensions contained provisions of this kind. This too suggests that control of weekly working time increases has improved.

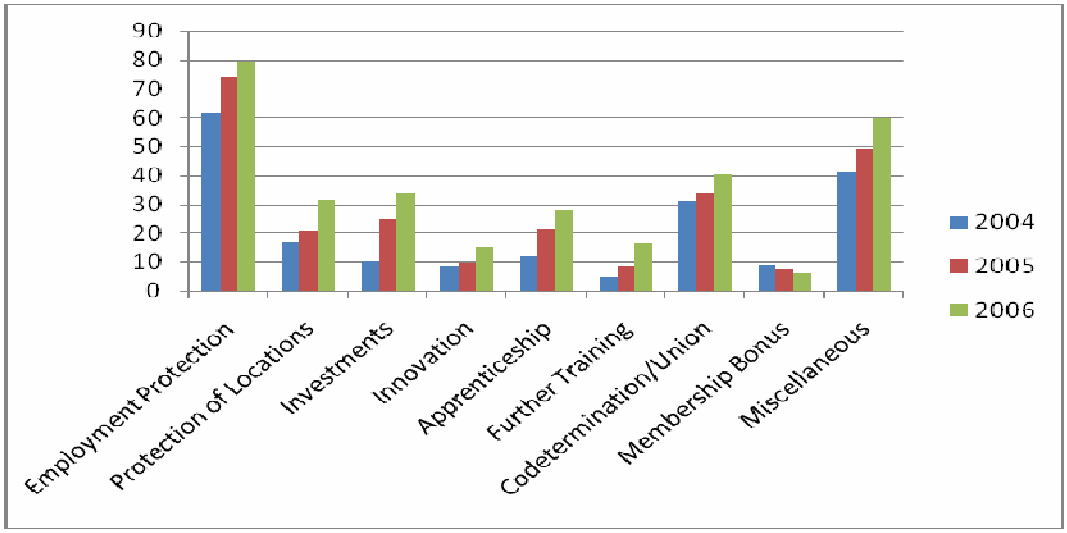
In contrast to working time, the contents of the agreements on undercutting collectively agreed pay norms are more evenly distributed among a number of issues. The three most important are the Christmas bonus, holiday pay and wage increases. As far as control of derogations is concerned, the most important of these three major issues is the undercutting of collectively agreed wage increases, because this can result in a sustained reduction in current income. This issue crops up in precisely 32 per cent of the collective agreements, with a slight increase in the shares over the observation period to 34.3 per cent in 2006. The commonest provisions in the derogations concern the postponement or cancellation of wage increases, with postponements clearly gaining in relative importance over complete cancellations over the course of the observation period. Between 2005 and 2006, the share of postponements in agreements on wage increases rose from 27.2 per cent

to 37.8 per cent. This development, and the decrease of cancellations of wage increases, can be interpreted as an improvement in control of the contents of derogations. Another indicator pointing in the same direction is the increase in the share of agreements containing provisions on reducing the cut in the wage increase while the derogation remains in force. Christmas bonuses and holiday pay account for the highest shares of derogations from the collectively agreed pay norms. Provisions on these two pay elements are found in 45.4 per cent (Christmas bonus) and 36 per cent (holiday pay) of all the collective agreements examined. As far as Christmas bonuses are concerned, by far the commonest form of derogation is a reduction (44.8 per cent), followed by complete cancellation (33.7 per cent). All other variants lag a long way behind these two. The picture for holiday pay is similar. Here too, reductions (50.7 per cent) predominate over complete non-payment (29.7 per cent), while the other forms of derogation are of less importance. As with working time increases, the derogation agreements on pay also provide for reducing the cuts; these provisions take the form of reduction curves. Such curves are included in 16 per cent of derogation agreements on wage increases and in 8.5 per cent and 9 per cent respectively of agreements on bonuses and holiday pay. Taken together, these provisions constitute a clearly upward trend, albeit from a modest level.

To what extent are the material concessions made by employees matched by counter-concessions offered by employers, and what are the issues addressed by such reciprocal considerations? Counter-concessions feature explicitly in no fewer than 83 per cent of all derogation agreements. However, this tells us little about the quality of the swaps. The share of agreements containing counter-concessions rose sharply between 2004 (70.7 per cent) and 2005 (86.9 per cent), before stabilising in 2006 at 84.5 per cent. The dominant issue addressed in these counter-concessions is employment security (Figure 3). Lagging far behind are counter-concessions on issues such as co-determination/trade union activity, investment, protection of production sites or training. The high share of the 'Miscellaneous' category can be explained primarily by the material concessions negotiated by employees not covered by collective agreements and management, on the one hand, and provisions on company bonuses, on the other. The most prominent trend as far as the counter-concessions are concerned is the continuous rise in the shares of the individual issues addressed. Except for the question of membership bonuses (special payments for members of IG Metall, which can range from one-off annual payments to extended employment protection), the counter-concession rate has increased considerably for all issues. This can be interpreted as an important indicator of improved union control over the substance of the counter-concessions.

Even within the individual issues, the quality of the provisions has in some cases been considerably improved. This can be demonstrated by taking the example of four of the issues addressed in the counter-concessions. The first of these is employment security, which in the view of the trade union experts is now almost a necessary condition for the conclusion of a derogation agreement. The forms of employment security that have increased in importance are those that either totally exclude redundancies for business operations reasons or at least make such redundancies subject to the agreement of the trade union and the works council. Conversely, the share of agreements in which (a) the exclusion of such redundancies is linked to economic criteria, (b) codetermination arrangements come into play only after a certain threshold number of redundancies has been reached, (c) other HR policy measures are linked to operational redundancies, or (d) there are no criteria at all for limiting operational redundancies, has declined. The share of such agreements has fallen from just about 30 per cent to 22 per cent.

Figure 3. Share of counter-concessions by issue in all derogation agreements from 2004 to 2006



Source: Haipeter (2009)

The second of these issues is investment. The number of promises of investment has risen sharply. Investment is of particular significance among the counter-concessions because it is likely to have long-term consequences for job security. Investment not only means that firms have commitments in terms of production and employment, in the medium term at least, but it is also very likely to increase firms' competitiveness, as well as that of the individual plants in question. It has to be acknowledged, of course, that investment can also reduce labour requirements if the resultant productivity gains exceed the growth in production. By far the largest share of the commitments to invest – 72 per cent – specifies a concrete sum. The total sum promised in these commitments to invest is a good 3 billion Euros; following a steep increase, the largest sum committed was 1.57 billion Euros in 2005, followed by the 1.35 billion committed in 2006. This equates to a volume of investment per commitment of around 21.5 million Euros in 2005 and 20.5 million Euros in 2006. Thus compared with the volume per commitment of 8.79 million Euros in 2004, the sums committed per agreement more than doubled. The sums committed in 2005 accounted for about 6.5 per cent of total investment in the industry.

Undertakings on innovation appear much less frequently in the derogation agreements, it is true, but they can be a means of achieving significant improvements. Such undertakings given by firms as counter-concessions make an important contribution to improving control of derogation agreements because they nourish the hope that the firms in question will strive to improve their competitiveness and thus make themselves strong enough to adhere to the standards laid down in the industry-wide collective agreement. By far the commonest subject of the commitments on innovation are programmes designed to optimise productivity, competitiveness and rationalisation. The number of such commitments declined overall over the observation period, in favour in particular of R&D and work organisation, which suggests that the focus of innovation efforts is shifting away from short-term towards longer-term goals.

Co-determination and trade union activities, fourthly, are also topics that play an important role in the agreements. They reflect the rights of control and co-determination that have been negotiated for employee representatives. As a result, they determine to a large extent the scope those representatives enjoy to control the content of derogation agreements. The commitments that feature most commonly relate to improvements in the information provided to works councils and the inclusion of the trade union and/or the collective bargaining committee among the recipients of that information (31.4 per cent of all derogations). These commitments are to be distinguished from those of active control, which feature in a good eight per cent of all derogation agreements. Such control involves

not only the provision of specific information but also joint supervision of the implementation of the industry-wide collective agreement, usually by the parties of negotiation at firm level in committees or other bodies specially set up for the purpose. Such an arrangement offers a far higher level of control, since employee representatives and management not only have the same information available to them but also have to work together to resolve control problems. Consequently, it is highly significant that the share of such arrangements is increasing.

3.3.4 Local bargaining and trade union revitalisation

The importance of the consequences of derogations for the union's collective bargaining policy and its role as an actor in the collective bargaining system can hardly be overstated. The accelerating decline in trade union density, particularly since the beginning of this century, makes derogations from the industry-wide collective agreement appear at first sight to be a defensive reaction on the part of trade unions. Derogations have been accepted by trade unions and negotiated with the aim of preventing the worst outcomes and halting the erosion of collective agreements through wildcat decentralisation, which is made possible by the unions' dwindling power at firm level. However, the defensive interpretation accounts for only one aspect of the derogations which, against the background of declining union density, can also be viewed from another angle, namely as a launch pad for a *membership offensive* aimed at strengthening union density. This question is being discussed in IG Metall with increasing intensity and increasing approval (cf. Huber et al. 2006). The crucial link between derogations from collective agreements and membership acquisition is turning local bargaining into a *trade union policy of collective bargaining at firm or establishment level*. Local collective bargaining is increasingly being seen as an opportunity to make a virtue of the necessity for derogations by turning it into a membership offensive (cf. also Schmidt 2007).

The basic idea behind collective bargaining at firm level is to use company agreements to involve members in local labour disputes and bargaining to a greater extent than they have hitherto been involved in centralised collective bargaining, and thus make the trade union more attractive to current and potential members and increase union density in the workplace. Thus collective bargaining at firm level has some of the characteristics of a participatory organising strategy (Dörre 2007). The associated increase in the union's legitimacy (Rehder 2006) through the 'discovery of members' (Dörre 2007) can manifest itself in various forms. These include individual members' involvement in collective bargaining committees, the continuous provision of information to members (contrary to non-members) through meetings and, above all, voting by members on whether to accept the outcomes of local bargaining. The experts note that where these participatory practices have been introduced, the union has been successful in recruiting new members and, more generally, in consolidating its organisational power. The more attractive the union becomes as a result of local collective bargaining, the greater its capacity to act as a party to collective bargaining. As a result, it will be better able to control the undercutting of collectively agreed norms and to prevent firms withdrawing from the industry-wide collective agreement (or at least to negotiate a company agreement in the firms in question).

The membership offensive in collective bargaining at the firm or establishment level can be regarded as a form of union revitalisation or strategic unionism in accordance with with the institutional features of the German system of collective bargaining (Frege & Kelly 2003). Unlike the organising campaigns of unions in Britain or the U.S. that are appropriate if unions' recognition is weak or if unions have to fight for local representation, membership offensives in local conflicts on derogations seem to be an adequate form of union revitalisation if the institutional power of the unions is still high (albeit already eroding) and local representation is institutionally backed by works

councils. In this situation the main choice for union strategy can be to increase local organisational power, and membership participation in local conflicts is a promising instrument for this.

4. Conclusions

To conclude very briefly from what has been outlined in the present study, we suggest three policy lessons to be drawn from recent experience with collective agreements on employment and competitiveness.

The first lesson is about the contents of agreements. It is not just that the contents are manifold, and collective bargaining actors at both industry and local levels have conquered a wide area of expertise in issues relevant for the curtailing of employment insecurity. The most important lesson is about the potential dynamics in bargaining on these contents. The more collective bargaining actors are engaged in this process, the more they will be confronted with the need to go beyond short-term "survival" oriented measures. Talking about the need is close to talk about shortcomings. True, there do exist interesting and groundbreaking "offensive" agreements aimed at the "adaptation", rather than mere "survival", let alone "retrenchment", of businesses. However, collective bargaining practices geared to strengthen the skills base of the workforce ("training, not redundancy") and to pave the way to process or product innovations ("better, not just cheaper") continue to be scarce. The 'high road' is not too busy.

It has been argued that in the era of 'financial market capitalism' local concession bargaining will prove to be a dead end road (Detje et al. 2008), as survival has become an everyday challenge for the healthy and not just for the sick. Hence the urgent need for innovative and offensive type agreements. While this view continues to be quite realistic, it may be overtaken by the current crisis of the same financial market capitalism. The sickness may spread rapidly, and if it turns epidemic it may infect many of the healthy and wealthy as well. Hence the probability of a maelstrom of local bargaining on concessions which involve an undercutting of national or sectoral employment standards.

This reasoning leads us to the second policy lesson. Collective bargaining heading towards innovative and offensive agreements on employment and competitiveness requires the capacity of local actors to tackle this wider set of issues, and of local union organisations and employee representations in particular to acquire both the expertise and the support of their constituency needed for the attempt at walking on the new grounds. At the same time, however, their capacity to bargain continues to dwell to a large extent on their capacity to safeguard minimum employment standards. The more they engage in local bargaining involving concessions regarding these standards, the more fragile this general platform of standards may get. The diversification of collective bargaining actors and levels may damage the architecture, if it brings about a permanent violation of employment standards. Thus, the link between the contents and processes of collective bargaining on employment and competitiveness is close, and the dilemma for the trade unions in particular is obvious. Innovative bargaining agendas may prove to be the way out of the dilemma, but for the time being in many cases the maelstrom goes in the opposite direction.

The third policy lesson is about the link between this necessary build-up of capacities on the one hand, and the practical and democratic involvement and voice of local actors on the other. More recent examples of innovative bargaining agendas confirm Sisson's (2005: 7) conclusion that, "if PECs are to be a key ingredient in the modernisation process", a "prerequisite for the successful negotiation of PECs is support for involvement of employees and their representatives." The paradoxical lesson for unions in particular is that their engagement in bargaining on employment and competitiveness at local level may either cut their legs or force them to revitalise their membership basis. If they succeed in

revitalizing their base, then the 'articulation' between the different levels of negotiation will be crucial. If, however, they are too weak to engage with the 'conflict partnership' (Müller-Jentsch 1991) at the local level, they might end up as providing the *raison d'etre* for unpopular retrenchment measures.

Most probably, the present crisis will set a bargaining agenda which includes the full set of issues presented in the present study. The handling of this agenda requires the actors' full capacities to bargain at the local level.

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