The modernization of industrial relations in Germany -
trends and perspectives

Peter Mayer/Erwin Schweisshelm

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Foreword

The practice of industrial relations in Germany is changing with the rapidly changing economic and social framework conditions. This booklet about the modernization of the industrial relations system in Germany is intended to describe the key features of the system, the public discourse in Germany about pros and cons of the key pillars of the system and the key trends for the modernization of the system.

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Seoul, November 2000
Dr. Peter Mayer, Erwin Schweisshelm
Executive Summary

The German industrial relations model is emphasizing cooperation between trade unions and employers' federations. The changing economic and social environment in Germany and elsewhere and political conditions in Germany in the eighties and nineties had exerted enormous pressure to reform the system. A consensus emerged that a reform of the system is needed. While the former government of Helmut Kohl in alliance with very articulate representatives of the employers favored radical changes of the system, the general orientation of the modernization debate has changed substantially with the assumption of power by the government of Gerhard Schroeder in 1998. Two of the key agents for change, i.e. the government and the trade unions favor a modification of the system of industrial relations while leaving the key pillars intact.

Central aspects of the on-going modernization of the industrial relations systems are: 1) the introduction of more flexible elements into the collective bargaining system. 2) The strengthening and adaptation of mechanisms of co-determination at the plant level. 3) The reestablishment of consensus building mechanisms at the national level through the formation of a so-called "alliance for job-creation and qualification" which brings together government representatives with trade union leaders and representatives of the employers' federations. This renewed emphasis on consensus and the recognition of trade unions and employers' federations as organizations which should play an important role in the German industrial relations system and society in general is the most significant policy change in recent years.

1. Introduction

The German industrial relations system can be characterized by the following elements: 1) For the majority of employees, collective bargaining takes place in autonomous negotiations between industrial unions and employers' federation on the level of an industry or on a branch level. Such negotiations produce collective bargaining agreements which are applicable for all companies in the region which are affiliated to the employers' federation and where workers are affiliated to the respective union. 2) At firms with more than four workers, works councils at the plant level form an important part of a system of co-determination. 3) In large companies with more than 500 employees a second and additional form of co-determination comes into play: the representation of workers representatives at the supervisory board. 4) Unions and
employers' federations are playing an important role in the design and revision of labor laws and in labor jurisdiction. 5) More recently the government has started high-level talks with trade unions and employers' federations under the umbrella of an "Alliance for Jobs and Qualification" in order to reestablish a basis of trust and consensus for creating job opportunities and for reducing structural unemployment.

The German industrial relations system has been called "social partnership model" because of the cooperative style and the strong consensus orientation. Because of the economic success of Germany in the post-war-period there has been considerable interest in the benefits and costs of the German industrial relations approach. With the low growth of the German economy and high unemployment rates in the eighties and nineties, there have been intense debates in the last years about the pros and cons of the German industrial relation system and the need for reforms. Proponents and opponents of the system both agree that the system faces serious challenges:

- **Globalization.** Globalization brings tremendous pressure to adjust national and local conditions to internationally agreed upon standards and procedures. Competitive pressure has increased dramatically.

- **European integration.** The integration process in Europe with its mechanisms to harmonize institutional arrangements and establish a large internal market without borders works in the same direction. The cross border investments of German companies in other European countries have increased dramatically, while collective bargaining is still confined in most cases to the national level.

- **Structural change.** There has been a continuing structural change towards more employment in the information technology-sector and the service industries, with more jobs in smaller companies, with a larger percentage of start-ups, with a higher rate of organizational change and the "informalisation" of employment conditions.

- **Organizational flexibility.** There has been an increasing need for higher flexibility in the corporate sectors' response to changes in the business environment, which has substantial implications for the practice of industrial relations.

- **Reunification of Germany.** The reunification process presented German actors in industrial relations with numerous challenges: Developing institutional bodies, introducing established
mechanisms into a new arena, finding appropriate solutions in a highly complex political and economic environment. Especially for the trade unions it had meant high financial inputs to build up organizational structures without corresponding income because of declining membership mainly due to growing unemployment.

- **Changing values.** There has been a profound transformation of values, preferences, attitudes and perspectives in recent years. There is a strong tendency in society, especially among the young generation towards an individualization of lifestyles. This brings about a growing distrust towards "mass organizations" like political parties, churches or trade unions. And unions do have difficulties to organize white-collar-workers, workers with high skill levels. Unions face problems with an increasing number of people who do not have continuous employment, who have so-called "patch-work careers".

These issues are interrelated and very complex, and each issue is subject of intense debates. But all major actors observe and recognize the need for an adjustment of the current industrial relations system. The chairman of the German national trade union center DGB, Dieter Schulte describes the perspective: "In a time where values, social structures, work organization, production systems, management strategies and financial markets change so dramatically, the central regulations for work can not be unaffected"(Schulte 1999). One of the influential employers' federation chairmen states in this respect: "flexibility... is really a great opportunity, most probably the only one to protect our high standard of living in the future"(Stumpfe 1999). And the federal government, formed by the Social Democratic Party SPD and the Green Party/Buendnis 90 emphasized in their coalition agreement: "Trade unions and employers' federations are responsible for an employment-generation oriented collective bargaining policy and for the organization of work in such a way that the interests of business to have more flexibility and the interest of workers to have more flexibility concerning working time are met"(SPD/Gruene-Buendnis 90: Coalition Agreement 1998). While there is agreement on the need for change, the strategies suggested differ substantially. The following article briefly describes the various key elements of the system, tries to identify the main points of controversy and delineates the likely perspectives.

2. Reform of the collective bargaining system

2.1. Key dimensions of collective bargaining in Germany

For the majority of employees in German companies, collective bargaining takes place between trade unions, which are organized on an industrial or sectoral level, and employers' federations
which are organized in a similar manner. If an industry is characterized by widely differing economic and social conditions, collective bargaining takes place not on the industry level but rather based on a subgroup of the respective industry (for example: in the case of the metal industry, the metal workers union and the metal employers' federation build subgroups for "steel", "metal and electric", "small scale enterprises" etc). Agreements negotiated between the employers' federations and the union would apply then to enterprises belonging to these subgroupings, which to some extent are equivalent to branches. The autonomy of employers' federations and trade unions in the conclusion of collective agreements is constitutionally guaranteed, and especially excludes the state from intervening in the bargaining process.

Collective agreement (Flaechentarifvertrag)

Agreements negotiated by the regional association of employers and trade unions are applicable for regions or areas: Such agreements are called "Flaechentarifvertrag" or "association collective agreement" (in the case of the metal sector, Germany is separated into 7 such areas). While in principle this system allows for different agreements and working conditions in the different areas/regions, the agreements are virtually the same, with the only exception being East Germany. In the construction industry and the public sector, collective bargaining is conducted not at the regional but at the national level (Schnabel 1995, p.30).

Collective agreements include wage and salary agreements, general agreements and skeleton agreements. The agreements are applicable to all companies of the respective industry or branch in the respective region affiliated to the employers' federation and where workers are represented by the respective trade union which signed the collective bargaining
agreement. In practice, agreements apply not only to those workers belonging to the union but to non-union members as well. Currently there are more than 30,000 collective agreements in place, every year more than 9,000 collective agreements are negotiated.

There are basically two alternatives to the regionally applicable wage agreements or "association collective agreement (Flaechentarifvertrag)" signed between the employers' federation and the industrial union: Company-based agreements and individual employment contracts. The following table shows the percentage of employees covered by the three alternative forms of contract. The table differentiates for East and West Germany and for industries producing investment goods and consumption goods.

Table 1 shows that 74% of all employees in West Germany are covered by association collective agreements while the relevant figure for East Germany is 40%. The percentage of employees covered by company collective agreements is higher in the East than in the West.

Table 1: Comparison of coverage of collective bargaining agreements in % of all employees in %, 1998, for West and East Germany

<table>
<thead>
<tr>
<th></th>
<th>association collective agreement</th>
<th>company-based collective agreement</th>
<th>no collective agreement</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>West</td>
<td>East</td>
<td>West</td>
<td>East</td>
</tr>
<tr>
<td>investment goods</td>
<td>74,0</td>
<td>40,0</td>
<td>5,9</td>
<td>10,8</td>
</tr>
<tr>
<td>consumption goods</td>
<td>75,9</td>
<td>38,2</td>
<td>7,2</td>
<td>15,3</td>
</tr>
</tbody>
</table>

The table shows that almost half of East German employees are not covered by a collective agreement signed by a union. This contrasts sharply with only 17% of West German employees not having collective bargaining experience.

Another perspective sheds further light on the reality of collective bargaining in Germany. In the West, in less than 50% of all companies, association collective agreements or company-based collective agreements are applicable. While the ratio in 1995 was almost 52%, it declined in two years to 49%. And in East Germany even only one out of four firms applied such collective agreements. The following table 2 gives an overview of trends and situations in different industries.
Table 2: Ratio of companies where collective bargaining agreements are applicable

<table>
<thead>
<tr>
<th>branch</th>
<th>West Germany 1995</th>
<th>West Germany 1997</th>
<th>East Germany 1997</th>
</tr>
</thead>
<tbody>
<tr>
<td>agriculture</td>
<td>43,5</td>
<td>42,6</td>
<td>18,7</td>
</tr>
<tr>
<td>mining/energy</td>
<td>78,2</td>
<td>52,4</td>
<td>52,2</td>
</tr>
<tr>
<td>construction</td>
<td>79,3</td>
<td>70,2</td>
<td>40,6</td>
</tr>
<tr>
<td>banks/insurance</td>
<td>68,6</td>
<td>61,0</td>
<td>44,5</td>
</tr>
<tr>
<td>consumption goods</td>
<td>68,7</td>
<td>73,0</td>
<td>43,3</td>
</tr>
<tr>
<td>production</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>total</td>
<td>51,8</td>
<td>49,0</td>
<td>25,7</td>
</tr>
</tbody>
</table>

Source: IAB Kurzbericht, 19/98.

2.2. Summary of the controversy

2.2.1. The critics of collective bargaining

Critics mainly from the business sector and academia argue that the system has produced excessively high wages which exceeded productivity growth and did not take into account the need for wage restraint which would have been necessary to reduce unemployment. They argue that many collective bargaining agreements do not allow for flexible responses to fast market developments. They complain that unions have managed to push through an egalitarian wage system which is considered to be counterproductive. From their perspective, especially the rise in the minimum remuneration in combination with social security benefits implies little incentives for unemployed to look for work, a consequence which unions supposedly did not take into account when devising their strategies.

Employers argue that strike laws and the increased ability to stop production as a consequence of concepts like just-in-time production enable unions to force employers into unreasonable agreements. Werner Stumpfe, the former President of the German Metal Producers Federation complains that since 1990 no collective agreement has been concluded in the metal industry on the basis of peaceful negotiations. He thus asks for a "..new partnership in collective bargaining." It is argued further that the regionally applicable collective bargaining agreements do not take sufficient account of intra- and interregional differences and differences between profitable and weak firms, between booming and ailing regions etc. Critics further argue that the German collective bargaining system gives undue power to unions which represent not more
than one-third of the work force, which have faced for many years a declining organization rate, and which have only insufficiently responded to structural changes.

2.2.2. Advocates of the system
Trade unions generally argue that the system has produced a highly qualified and highly motivated work force. While nominal wages are high, they are seen as moderate considering the high and continuously growing labor productivity. Advocates emphasize that the association collective bargaining agreement with applicability for regions and industries or branches moves competition away from wages and increases the focus of companies on developing new products and production technologies and hence increased research and development efforts. Indirectly the agreements have therefore a beneficial effect on the competitiveness of enterprises and the business sector in general. It is further argued that the system has a very positive effect on the relationship between workers and employers at the plant level because of keeping complex wage bargaining at the regional level and thereby allowing for peaceful relations at the firm level. Trade unionists insist that German unions have always prudently used the instrument of strikes as a "means of last resort" and that they observe a balance of power between unions and employers. With reference to an international comparison of strikes, working days and output lost it is indicated that other more confrontational systems bring much higher costs. The German system provides for "industrial peace". The same can be said for countries like Austria and Netherlands, both characterized by corporatist and consensus-oriented systems. (Table 3)

Table 3: Working days lost due to labor conflicts per 1000 employees, total number for the period 1990 - 1998

<table>
<thead>
<tr>
<th>Country</th>
<th>days lost</th>
<th>Country</th>
<th>days lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spain</td>
<td>344</td>
<td>Norway</td>
<td>90</td>
</tr>
<tr>
<td>Greece</td>
<td>329</td>
<td>Sweden</td>
<td>53</td>
</tr>
<tr>
<td>Canada</td>
<td>227</td>
<td>USA</td>
<td>43</td>
</tr>
<tr>
<td>Turkey</td>
<td>217</td>
<td>U.K.</td>
<td>32</td>
</tr>
<tr>
<td>Finland</td>
<td>185</td>
<td>Netherlands</td>
<td>23</td>
</tr>
<tr>
<td>Denmark</td>
<td>184</td>
<td>Germany</td>
<td>13</td>
</tr>
<tr>
<td>Italy</td>
<td>166</td>
<td>Austria</td>
<td>4</td>
</tr>
<tr>
<td>South Korea</td>
<td>146</td>
<td>Japan</td>
<td>2</td>
</tr>
</tbody>
</table>

Source: Frankfurter Allgemeine Zeitung, 17th of May 2000
It is further argued that collective bargaining at industrial or branch level reduces transaction costs both for employers and workers’ representatives: Agreements on the enterprise level or even more so between individuals and the enterprises involve much higher costs. Unions emphasize that they have increasingly responded positively to calls for differentiation and flexibility and did not pursue a course of stubbornly defending outdated institutional arrangements as some observers suggest. The more than 30,000 collective agreements in existence reflect the fact that the system does allow for substantial differentiation and flexibility.

The system of regionally applicable collective bargaining agreements provides for positive social and economic effects on the macro-level: It tends to provide for balanced wages and working conditions in the region and country and thus ensures equal living conditions and prevents too much labor migration into the industrial centers.

2.3. Trends for reforming the bargaining system

2.3.1. Changed perception of need for reform and increasing appreciation for flexibility

After many years of controversy and heated debate, there has been a growing awareness on all sides about the need to adjust the collective bargaining system to the changing industrial patterns. There is a consensus on both union and employers’ side that the specific German system of collective bargaining has important advantages. And social partners are well aware that alternative industrial relations systems do have costs as well.

The employers have pushed - and unions have after some reluctance accepted - the argument that there needs to be more flexibility built into the collective bargaining agreement, in terms of regional differences, in terms of firm-specific differences due to technological considerations, in terms of profitability, in terms of substantial subregional differences. In a joint statement on 6th of July 1999 the national center of trade unions (DGB) and the federal employers' federation (BDA) announced publicly their joint resolution to reform the collective bargaining system. They agreed to support more flexible arrangements by allowing for options, corridors, and more clauses in the collective agreements to deal with exceptional conditions ("Oeffnungsklausel"). There was as well agreement on using the instrument of collective bargaining for job creation.

While employers and workers prefer in some specific areas more decentralized mechanisms the majority remains interested in enjoying the benefits of regionally applicable collective agreements. Both social partners try to develop a new balance between conditions which are
applicable to all companies in the region and conditions which are specific to firms. The former are determined by the industrial union on the latter by workers' representatives at the plant level or workers themselves. Unions and employers' associations differ mainly concerning the degree and method of decentralization.

One way of decentralization is the negotiation of collective bargaining agreements between unions and federations which, however, specify only the framework conditions and leave room for specification of further details by different actors. On top of this basic agreement the employer and the union or the works council negotiate a plant level or "works agreement". "The relatively flexible instrument of plant level agreements between company management and the works council plays an increasingly important role in adjusting general, sectoral collective agreements to the specific situation in the plants" (Schnabel 1995, p.30). Especially the social partners in the chemical industry tend to go this way.

Another approach to adapt the collective bargaining agreement to company-specific conditions are the negotiation of so-called "hardship" or "emergency" clauses. These are specific clauses in the collective bargaining agreement which stipulate that companies can deviate from the industry standard in certain pre-specified ways in case of a serious threat to the viability of the company. There is an important difference between opening clauses and hardship clauses: "The collective bargaining parties, and not the works council and management, decide whether a 'hardship clause' can be applied. This contrasts with the 'opening clause' concerned with the flexibility of working hours that clearly was the prerogative of works council and management" (Koch 1995, p.152). Examples for hardship clauses in the past were in the metal industry or in the public service in East Germany, the lowering of the basic remuneration in order to secure employment and/or improve the competitiveness, the lowering of wages for the same reasons as stated above, the lowering of the working time per week without wage adjustments in order to secure jobs in day nurseries and similar working areas in the new states (Kuesters 1999, p.87).

Another request refers to a legal reform which allows for works agreements taking precedence over collective agreements which is currently not allowed. At the moment works agreements can only fill gaps left by collective agreements but have to remain inside the framework of the agreement. This request for reform was strongly made by the Federation of German Industries. However, the current government would not allow such a reform, given its implications for the trade unions.

2.3.2. Reforming unions and employers' federations
There is agreement as well that the two key institutions which build the basis of the system, the
industrial unions and the employers' federations, are under pressure to modernize their organizations. Unions in Germany recognize the need for restructuring. Greater individuality and diversity of interests on the side of members is well recognized by unions, and they try to manage the necessary change in the organizational culture and structure of trade unions. There have been a number of mergers of industrial unions in the recent past, the number of industrial unions already declined considerably.

A large restructuring through merging five service-oriented unions of the private and public sector into one large union is on the drawing board, known as the VERDI project. If successful it will result in an enhanced representation in the regions and districts where the increased flexibility requires unions' increased input. Unions expect increased power for collective bargaining.

Unions pursue new concepts to raise the attractiveness of unions for young workers where the organizational rate is just 12% as compared to around 30% on average. New strategies to organize white-collar-workers have been adopted. Concepts to bring workers in small companies into the fold of unions have been designed. Unions have adopted new strategies to communicate with members using modern forms of communication. Unions are aware that strength is directly related to the membership and do know that stopping the declining trend in membership is of utmost importance for their own future and the future of the system of industrial relations. And collective agreements for instance in the “New Economy” will be very different from the traditional patterns.
Industrial unions increasingly see the importance of works councils as partners for their own work. Works councils are necessary for filling out the new space for decentralized decision making. And they know that works councils become more important for their own campaign to recruit new members. On the other hand, an occasional conflict of interests between unions and works councils can not be denied. While collective bargaining by unions mainly aims at improving income and working conditions of union members, works councils often are forced to consider the security of jobs in their company as a priority objective, and thus tend to compromise on other issues.

Employers' federations are equally involved in the process of modernization. However, the strategic orientation is - unlike on the union side - unclear. Some employers work towards strengthening the federations and their capacity to act as a counterpart to industrial unions. They mainly focus on the above mentioned increased flexibility of the "association collective agreement" to preserve the system. Other representatives of employers' federations are occasionally asking companies to leave the organization because they consider the collective bargaining agreement as too tight for some of the members. In other cases federation representatives called for the disregard of the agreements while formally remaining a member. This disrespect for legally binding agreements would have been unthinkable just a few years ago. And some employers' federations have introduced new organizational forms which allow the membership in the federation without necessarily being bound to accept the collective bargaining agreement negotiated between the federation and the industrial union.

The number of employers organized under the roof of employers' federations has decreased, and in East Germany the organization rate is very low. This trend is of concern for all those who favor the modernization of the system of collective bargaining. Unions have repeatedly articulated their interest in having strong counterparts, they can not have any interest in a
2.4. Way forward

The social partners have agreed on more flexibility and do work on specific institutional arrangements to preserve the advantages of the system while keeping the disadvantages at a minimum. Because of the interest of unions, because of the position of government, because of the sometimes only silent support for the system by many employers, it is most likely that the system will continue to be the guiding framework for industrial relations. The conditio sine qua non for the continued relevance of the collective bargaining system is clearly the support it enjoys from employers and workers. A further process of declining membership of employers' federations and industrial unions respectively would certainly imply considerable risks for the system. In order to creatively think about the future of the system it is no doubt helpful that the heated and quite often rather ideological arguments make way for a more rational discourse about fine-tuning the system.

3. Reform of co-determination at the plant level - the role of the works councils

3.1. Description of the system

The Works Constitution Act provides for a regulatory system which on the one hand enables both the workforce as a whole and the individual employees (regardless of being member of a union or not) to assert their legitimate interests and on the other hand secures the employer's fundamental freedom to decide on economic matters. It is very important to note and presumably fundamentally distinguishes the German model from the French, south-European or Anglo-Saxon models that "it is not the employer who is given sole discretion over the organization of the establishment and of the operations as well as the assignment and the composition of the staff. Thus the absolute managerial authority is restricted wherever it is required in the interests of both the work force as a whole and the personality and social and health protection of the individual employee" (Federal Ministry of Labor and Social Affairs 1994: p.343.)

The Works Constitution Act from 1972 gives legal rights of information, consultation and co-determination on economic, personnel and social matters to employees representatives who are elected by all employees of a company (except managerial staff) for a period of four years.
Related to this is the general obligation for the employees representatives to work together with management in a "spirit of mutual trust" for "the good of the employees and of the company" (Mueller-Jentsch/Sperling 1995, p.16). The plant level representation applies to all companies with more than four employees if employees decide to invoke their right. The works council plays a central role in that system of co-determination. The works councils are formally independent from trade unions though in practice there is a strong cooperation between works councils and union shop stewards. Members of the works council are not necessarily members of the union, however, 80% of all works council members belong to a union, which allows for substantial indirect influence. Financially salaries and other costs of the activities of the works council have to be covered by the management.

**Works Council Right in Social, Staff and Financial Matters**

- **Information/ Consultation**
  - Planning of Manpower
  - Vocational Training
  - Redundancy
  - Financial Situation of Company

- **Veto**
  - Individual Staff Movements
  - Hiring
  - Firing
  - Regrading, transfers

- **Co-determination**
  - Start and End of Working Hours
  - Principles of Remuneration
  - Administration of Social Services
  - Social Compensation Plan

Works councils have been established at around 35,000 firms, with currently around 200,000 works council members. Nine million workers in the private sector are working in companies with works councils. This is about 40% of all employees in the private sector. Works councils are particularly strong in large companies, being active in more than 90% of all large companies. But less than 1% of companies with 5 to 10 employees have works councils. Works council play a significant role in the primary and the secondary sector, while works councils are less common in the tertiary sector.

3.2. **Summary of the controversy**
3.2.1. Critics of the system
Critics of the system see the system as costly because of the output lost due to the manpower made available to the works council. They claim the system is overly bureaucratic because of the enormous information flow required by law and the unnecessary cumbersome procedures. They consider the system as anachronistic because of changed framework conditions for businesses in the age of globalization (Henkel 1999). Critics request the reduction of the size of works councils and the reduction of their fields of responsibilities, some even request the outright abolishment. They highlight the fact that the ratio of workers in companies with more than 4 employees which have no works council is increasing nationwide, this trend being most pronounced in young and dynamic companies. There employees do not seem to see an advantage in invoking their right to elect a works council. Critics highlight the equally weak interest in the Eastern part of Germany to form works councils.

Some economists argue that the German system of giving substantial rights to employees (stakeholders) will not face the competitive challenge coming from the American shareholder-value-model (Weizsaecker 1999). They argue that rights for workers representatives to influence factor allocation is necessarily leading to sub-optimal factor allocation. Germany should scrap the system in order to be internationally competitive.

3.2.2. Advocates of the system
Trade unions and other advocates of the co-determination system at the plant level emphasize the important output of the system: High productivity at the plant level, a highly motivated workforce, excellent training, which is at least partly the result of cooperative institutional arrangements like the works council. They reject the notion of a costly co-determination system because the alternative of not having works councils is not saving expenses but having expenses in different forms like larger personnel departments etc (Streeck 1999). Unions continue to place emphasis on works council and want to widen their relevance in such areas like training, personnel planning. They insist that this codified form of cooperation, information sharing and consensus seeking has not only been successful in the past but will proof to be competitive in the future as well. This because consensus, motivation of employees, corporate identity will be even more important in the future, and co-determination is clearly facilitating such attitudes.

And many German employers find it to be advantageous to deal with a responsible, democratically elected representation of the employees rather than having to deal with each employee individually.

It is clear that a more decentralized system for fixing working conditions will imply a further
strengthening of works councils which are needed to articulate the interests of the workers at
the plant level. The trade unions which had at the time of promulgation of the works constitution
act a rather ambiguous relationship with works councils increasingly appreciate the structures,
so certainly with some reluctance and reservation because indeed some gain of negotiating
power is at the expense of the industrial union.

Recently proponents of the system of co-determination have highlighted the positive impact of
codetermination for the efficient long-term allocation and productivity of resources. Arguments
which have played an important role in the past like co-determination being an appropriate
response to the inherent conflict between capital and labor, the need for institutionalizing the
countervailing power of unions, and the need for industrial democracy is currently less
emphasized.

3.3. Trends for reforming the system

The debate about the reform of co-determination at the plant level has been going on for a
number of years without sparking the same sort of controversy like the debate about collective
bargaining. This is due to the nature of the topic, which does not lend itself to simplifications
and rhetoric. But it as well reflects a more solid support for the system.

A major research project done by the Bertelsmann Foundation and the Hans-Boeckler-
Foundation helped to structure the recent debate and showed the direction for future changes
which will most likely involve a number of small reforms but no fundamental reorientation
(Bertelsmann-Stiftung/Hans-Boeckler-Stiftung 1998). A very comprehensive study into the need
to reform the "works constitution act" is given in a study by Dr. Wolfram Wassermann which
was published by Friedrich-Ebert-Stiftung in February 2000 (Wassermann 2000).

Works councils will become more important in the future because of the corporate sector's
interest in more decentralization and flexibility. But works councils will not become formal
negotiating bodies for collective bargaining agreements, which is forbidden by the works
constitution act and the Collective Agreements Act of 1949 (only unions and employers' 
association or individual employers can enter into a collective bargaining agreement). If this
deliberate and widely accepted allocation of tasks to industrial unions and works councils were
changed, there would be fundamental changes affecting the relationship between works
councils and employers. While works councils might negotiate specific regulations and
procedures, the right to negotiate wages will remain with bodies where workers can approve or
disapprove through joining or not-joining the union (Streeck 1999), and thereby keeping the tensions surrounding these negotiations out of the work of the works council. Only a small minority of critics like Hans-Olaf Henkel from the German Federation of Industries request the full transfer of wage bargaining to the firm level, which would not then be a reform of the current system but would amount to an abolishment of it.

A major task for the future, especially from the union perspective, will be the establishment of works councils in small and medium sized enterprises which account for more than 70% of industrial jobs in Germany. And if the process of decentralization of agreeing on working conditions should take an orderly form there need to be works councils which are able to fill the gap which arises at the local level. And if the alliance for job-concept promoted by the government is to bring results as well at the local level, there need to be representative organs for workers at the company level.

According to the influential Bertelsmann-study there is a need to carefully develop and adjust the system of co-determination at the plant level through cooperative attitudes at the firm level, through innovativeness and without too much references to new legal stipulations.

Since the change in government in 1998, unions are requesting for overhauling the almost 30 year old co-determination law to widen the tasks and obligations for the works councils, to increase the number of firms covered by the law, and to modernize the regulations. The majority of employers seem to reject the call for a revision of the law. The federal government sees a need to reform and modernize the "works constitution act" The red-green coalition agreement from October 29th, 1998 stipulates: "The new federal government will strengthen the co-determination at the work-site, in the companies and public service in the interest of participation and motivation of the employees and will adjust it to changes in the world of work. First and foremost this means a basic overhaul of the works constitution act (like definition of company and employee, tele-work, simplification of electoral procedures for works councils etc.)...". In the second half of 2000, the Ministry of Labor announced to draft a new law.

On the European level a system of European works councils has been introduced in 1994. In companies with more than 1000 employees with at least 150 employees in two European countries each, workers representatives meet at least once a year at company expense to deliberate on corporate developments. The works council has a right to information concerning corporate planning, planned dismissals, major structural reforms etc. Which is of course still far below the standards of the "works constitution act" in Germany. The evaluation of this European approach towards empowering workers is mixed. While it has been important to start the process, critics claim that employees representatives have not been given enough power to
really develop the system in a meaningful way.

4. Reform of co-determination at the managerial level - the representation at the supervisory board

4.1. Key features of the system

In addition to the plant level representation, there is a system of co-determination at the managerial level which ensures the representation of workers at the supervisory board of large companies. This co-determination is governed by various laws. Initially the coal and steel sector saw the first codification of co-determination at the board level, the Act on Employee Co-determination in the Supervisory and Managing Boards of Companies in the Coal and Iron and Steel Industries, 1951: workers are represented by a director of Industrial Relations at the board of management. And according to this law the supervisory board must contain equal numbers of employer and worker representatives, the latter being appointed by the respective industrial union and the works council. For companies with 500 to 2000 employees the Works Constitution Act of 1952 stipulates to give one-third of the supervisory board seats to worker representatives (dito). And the Employee Co-Determination Act of 1976 gives parity representation at the supervisory board of companies with more than 2000 employees.

Example: Composition of the Supervisory Board according to WCA 1976 for companies with more than 2,000 employees

10 Shareholders’ representatives

Chairman

7 Staff representatives

3 Union representatives

10 Employees’ representatives

However, when a decision has to be made and there is parity of votes of management and employees representatives, the vote of the Chairman of the Supervisory Board who always comes from the management side, counts double. Thus it means only theoretical but not
practical parity.

The number of companies being co-determined at the managerial level is currently around 700, an estimated four million employees work in such companies. At the moment around 5,000 worker representatives serve as board members. While the number of co-determined companies has increased in the last years due to privatization and new legal structures of large companies the ratio of workers in co-determined firms as compared to the total has declined.

4.2. The controversy

4.2.1. Critics of the system
Opponents of the current system argue that the system of having large supervisory boards and "even" union members involves high costs. Some critics of the system of co-determination at the board level argue, that the system is outdated, an Anglo-American style-system should be introduced in order to allow for international comparability and for more flexibility. With an increasing number of cross-border investments the German system is supposed to be an increasing burden.

Others appreciate the German two-tier-model but request the abolishment of the co-determination part. They argue that the participation of workers representatives brings no added value, and actually inhibits free and open discussion at board meetings about challenges ahead. More reform-oriented critics argue that the total number of supervisory board members should be reduced.

There seems to be some consensus that the rules for electing supervisory board members should be revised.

From the union side there is of course the criticism that "real parity" has not yet been achieved. However, some unionists approach this matter from a totally different angle: They see the participation in management as problematic. They claim that workers' boards can be misused by management to make decisions about the closing of companies and downsizing.

4.2.2. Advocates of the system
Advocates of the system insist that the consensus-orientation is an asset of the German system, they pinpoint to the positive impact this consensus has had on employees' readiness for innovation and their corporate identity. Co-determination encourages cooperative leadership styles which are increasingly seen as supporting profit-maximizing. With reference to the few
litigation processes concerning decision making at supervisory boards, advocates reject the notion of supervisory boards being a bureaucratic hurdle. Instead, they argue that the important flow of information to the unions makes them extremely well informed and enables them to constructively work towards successful business development which is in the interest of owners of capital, management and employees. The success of German companies in Germany and worldwide is cited as proof for the obvious functionality of the system.

4.3. Trends for a reform of the system

At the moment there is little likelihood for a change of the legal framework. There are few if any instances where a strong argument for the dysfunctional effect of unions’ representation can be brought forward. The failure of supervisory board members on the management side who are quite often members at a considerable number of supervisory boards are in fact more likely to spark a debate. While small reforms might be possible, it is difficult to envisage major reforms given the political economy of such a reform and the current political landscape.

5. Reestablishment of consensus building mechanism on the national level

5.1. New political direction through new government since 1998

The debate about the German industrial relations system had been advanced in the nineties by conservative and liberal politicians who strongly attacked consensus-building and partnership as outdated approaches. After the election of a social-democratic-green government in autumn 1998 the appreciation for the consensus-oriented system has resurfaced. While the search for new solutions and institutional arrangements continues, the controversy has lost its less than productive ideological component. The new government of Gerhard Schroeder does try to promote flexibility, openness, change and tries to advance the application of such concepts and principles on industrial relations practices. However, this request for change is coupled with a clear commitment to a strong role for unions and employers’ federations and the need for finding consensual arrangements. Very often the “Dutch job miracle” was quoted as an example for this.

5.2. Alliance for jobs

The “Alliance for Job-creation and Qualification” (Buendnis fuer Arbeit und Ausbildung), an
Institutional structure for dialogue between government, unions and employers' federations has been organized in order to reestablish consensus and trust between social partners, to mediate between different interest groups, to move Germany forward in terms of reforming the economic and social system. The alliance for jobs brings these groups together in order to debate on vocational training, social security matters, tax policy, working time, severance pay and developments in East Germany. Most important is the alliance for job at the national level, but the system is supposed to include similar alliances at the regional, local and firm level.

5.2.1. Critics of the "Alliance for jobs"
Critics claim that such tripartite structures are unnecessary and an unfortunate continuation of corporatist and consensus-oriented policies. Germany should opt for a more radical reform, instead of discussing in depth and detail all major reform needs between all social partners and finally arriving at unsatisfactory piece-meal changes. It is further argued that this approach gives undue power to employers' federations and unions.

5.2.2. Advocates
Advocates of this approach on the other hand highlight the considerable success some countries in Europe like the Netherlands, Austria and Denmark have had with consensus-oriented policies. They insist that consensus building has been deliberately and ideologically damaged by the former conservative cum liberal government but still has a bright future. Germany needs to do what the neighboring countries have done in the last decade: modernize the consensus-oriented institutional arrangements.

The positive impact of the "Alliance process" on the collective bargaining movements of the year 2000 in terms of settling on collective bargaining agreements without strikes and with longer than usual time-spans seem to confirm the optimism of the advocates.

5.3. "Liberalization" of labor markets
The protection of employees from the loss of jobs was always considered an important task of labor law. Dismissals have to follow certain procedures, the employer is not totally free "to hire and fire". It is recognized that employers need some flexibility in order to respond to market forces in an appropriate and timely manner. At the same time the German protection of employees is based on a recognition of some obligation employers have towards the employees, in accordance with constitutional provisions which say: "ownership obliges".
5.3.1. Critics of the "overly-protected" labor markets
Critics of the German system of protecting employees insist that increased pressure on companies to flexibly respond to international trends and competition does not allow the continuation of the old-style protection. Liberalization of labor markets is seen as the order of the day and as necessary to preserve international competitiveness. International investors, they argue, shun Germany because of the tight employment rules, international organizations and the international media harshly criticize Germany for its inability to reform.

5.3.2. Advocates of protection
Advocates argue that the protection of employees is a key factor for their willingness to accept change, new production methods, high productivity and high corporate identity. It is further argued that the system is already sufficiently flexible, and has been adjusted in the last years in a considerable manner. Long-term employment and a lower level of fluctuation increases as well the interest of companies to invest into the skills of employees since they can be virtually assured to reap the benefit of this investment.

The former government of Helmut Kohl started to "liberalize" the labor markets and revised some of the protective clauses of labor law, especially making it easier in smaller firms to dismiss workers. But it did not result in a significant increase of employment. Fulfilling the election campaign pledges, the new government of Gerhard Schroeder revised some of these former reforms, especially concerning rules for dismissals, and strengthened the protection of vulnerable groups.

5.4. Active participation of unions and employers' federations in legal affairs
Unions and employers' federation are an integral part of the norm setting machinery through active participation in formulating new laws. They are regular contributors to parliamentary hearings on labor law reforms. They contribute through participation in working groups in ministries and governmental agencies. They have developed powerful machineries to influence the public debate. They are as well active participants in the labor law jurisdiction. They have an important role in the implementation of the labor law jurisdiction by nominating persons for being honorary judges in the labor courts. Furthermore, they play an important role in the running of the unemployment benefit scheme, and they have established roles in the various pillars of social security. Consensus seeking is therefore taking place at all these levels on a permanent basis. On top of that the "Alliance for Job Creation and Qualification" has opened another informal but effective channel for the social partners to participate in financial,
economic and social policy making.

6. Conclusion

In the nineties Germany has seen a heated debate about its industrial relations system. Business groups and some academics were quite vocal in attacking the German industrial relations system as being responsible for high unemployment and low growth. This debate has become less heated with the government of Gerhard Schroeder, which has been in power since 1998. A fresh attempt to reinvigorate consensus, social partnership and trust has been started. The government actively supports the German cooperative, decentralized, co-determination-oriented, and information-intensive industrial relations system.

A modernization of the industrial relations model is proposed, not the dismantling. This implies and requires that the two key actors, namely trade unions and employers federations, manage to reform themselves and tackle the institutional fine-tuning of collective bargaining and co-determination. Some change has taken place already and further change will continue to take place. Actors who steer, manage or influence that process of change have to consider the change of framework conditions, they have to base their concepts on changed aspirations and values of people like individuality, solidarity, flexibility.

If the key actors manage to flexibly respond to the challenges, there is little reason to assume that the system which is based on the readiness for cooperation and acceptance for the codification of social relationships will face decline. The key challenge lies in managing to bring down unemployment and ensure solid growth rates. The figures for 1999 and 2000 have shown some considerable improvements. The national unemployment rate peaked with 12,7% in 1997, and has come down to less than 9% in the year 2000. Economic growth has accelerated to around 3% in 2000.

Other consensus-oriented countries in Europe like the Netherlands, Denmark, Austria have shown the continued relevance and strength of European models of industrial relations. The social conditions in Germany and the economic costs of an alternative system would not justify changing the system, and the political economy in Germany would not allow to do so.

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