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Managing restructuring in Germany

Innovation and learning after the financial crisis

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Molire

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THE IRENE NETWORK

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Preface

This report is one of 11 national reports in the MOLIERE project, (Monitoring Learning Innovation in European Restructuring), a project funded by the European Commission, DG Employment, Social affairs and Inclusion. The aim of the project is to analyse whether and how the practice of restructuring has changed in a selection of Member States, to assess the impact of the economic crisis on the national level and to monitor how the practice of restructuring changes in the longer term. Each national report assesses the impact of the economic crisis in 2008-2009 on the way restructuring is anticipated and managed. The results are summarised in a synthesis report including a comparison of the developments in Belgium, Bulgaria, Czech Republic, Germany, France, Netherlands, Portugal, Slovenia, Spain, Sweden and the United Kingdom. The aim is to provide updated and harmonized information for social partners and policy makers at national and European level to assist them in policy formation and the design of a European policy framework on anticipating and managing change and restructuring.

Section 1: Introduction

In previous literature, Germany's restructuring regime was characterized as a "negotiated", due to the crucial role of the industrial relations, both on company and on sector level (Knuth/Mühge 2008; Gazier 2008). The importance of the social partners appears from a legal framework of restructuring that focuses rather on prescribing procedures than outcomes (Knuth/Mühge 2008, 122). Many legal rights constitute standards that can be changed by collective agreements, which means that "custom and practice may and do develop above and beyond the legal provision" (ibid.). One of the focal institution of restructuring is the "Change of operation", which stands as a typical concept for the German framework, based on negotiations between the works council and employer. But, this negotiation again is embedded in different spheres of the labour law. Generally, due to its high legal complexity, "German labour law is difficult to operate" (Knuth/Mühge 2008, 136) – and may also difficult to explain.

Concerning the course and overcoming the financial and economic crises, for three reasons Germany can be considered as a particular case. First, compared to many other countries, German's flexibility schemes like Short time work and Working time accounts did a very good job in shock-absorbing and bridging the work force over excessive underemployment. Second, the German economy recovers very quick and stable after the crisis, and third, the crisis did not lead the governments to far-reaching reforms according to the restructuring regime. The most radical reforms of the labour market took place in 2002 and 2003, before the crisis. Therefore the typing of the German restructuring framework as "negotiated" and other characteristics developed before the crisis are still valid.

Section 2: Restructuring frameworks

In most of the cases the restructuring of companies fulfills the criteria of a 'Change of operations' according to the German Works Council Constitution Act (Betriebsverfassungsgesetz). 'Change of operations' is the pivotal legal concept, which comes very close to a comprehensive definition of restructuring. Characteristic for the German institutional set-up, this concept is based on the relationship between the works council and the employer and thus within the 'private' sphere of the establishment.

Following the Works Councils Constitution Act, a Change of operations appears by the criteria

- “the reduction of operations in or closure of the whole or important departments of the establishment;
- the transfer of the whole or important departments of the establishment;
- the amalgamation with other establishments or division of establishments;
- important changes in the organization, purpose or plant of the establishment;
- the introduction of entirely new work methods and production processes.”

The legal concept of ‘change of operations’ comes to bear only where a works council exists, which then has rights of information, consultation and negotiation in three arenas simultaneously:

- a) Collective negotiations over the ‘reconciliation of interests’ and a ‘social compensation plan’ with regard to the restructuring;
- b) Consultation before each individual dismissal is actually invoked, with the possibility for the works council of formally voicing an objection (which, however, has a potential effect only if the employee threatened by dismissal takes individual legal action);
- c) The provision of information within the framework of the European Directive on collective redundancies, incorporated in the German legislation on employment protection.

Wherever the employer envisages a ‘change of operations’, the works council has some legal leverage for intervention. The ‘operational’ framing of this concept defines the interests that have to be reconciled as the organisational requirements of the management, on the one side, and the social interests of the employees on the other. Unlike, for example, in France, the employer is not obliged to justify his/her decision to restructure in economic terms, nor is the regional impact of restructuring defined as a concern to be dealt with. In other words, the employer’s decision to abandon a product line, to automate a production process or to shut down a plant – to give only some examples of ‘changes of operations’ – are considered to be a management prerogative, even though there should be consultation with the works council regarding possible alternatives.

The principal problem for employers in the process of restructuring is to ensure that they engage in all three arenas – negotiating the social compensation plan, consulting the works council about individual dismissals, informing the public employment service about mass redundancies – simultaneously and with regard to the letter of the law. The potential penalty for non-compliance with due procedure is a strengthening of individual workers’ positions if they should contest their dismissal in court. The complexity of procedures and the possibility of legal action are powerful incentives at least for larger employers to negotiate alternative solutions that are less contingent and faster to implement. Individual rights of employees with regard to dismissals are very important and deeply rooted in the German legal culture. They constitute a baseline of protection even in the absence or dormancy of a works council. However, such rights will only be invoked if the individual concerned takes the case to court within three weeks. Legal periods of notice are laid down in the Civil Code (Bürgerliches Gesetzbuch – BGB), which contains the fundamental provisions of individual labour law. Depending on service, notice periods range between two weeks and seven months. These legal provisions apply only by default where there is no collective agreement. The length of notice periods laid down in collective agreements ranges from one week (before the weekend) for newly hired workers (in construction in general and in the metal industry and private transport in some regions) to six months before the end of a quarter (in public service) (Bispinck et al. 2003).

Employment protection legislation applies only to

- Workers with an open-ended contract who have been employed, without interruption, for at least six months by their current employer;
- Establishments with more than ten employees (the ‘SME threshold’), which excludes 80 per cent of establishments, but only 20 per cent of the national workforce from employment protection legislation.

Fixed-term contracts will end (if not renewed) when the term expires, not requiring dismissal and thus not triggering any protective mechanisms. On the other hand, dismissal is more difficult during the course of a fixed term compared to an open-ended contract. Full time or part time status makes no difference with regard to the applicability of employment protection. However, when counting employees in order to define the SME threshold, part-timers with less than 20 hours per week count only 0.5, and part-timers between 20 and below 30 hours count as 0.75 employees. Though ‘marginal’ part-time employment (defined as employment at wages of no more than 450 Euros per month) is in no way excluded from legal employment protection, these workers’ special status of exemption from social security contributions creates the wide-spread assumption that they are not protected, and they hardly defend their rights if dismissed. Generally, calculations carried out by the German Social Economic Panel (SOEP) show that employment protection legislation covers 58,5 % of the total workforce, including self-employed and civil servants (Eichhorst/Marx 2011).

With the exception of employment guarantees to specific groups, general legal employment protection does not rule out dismissals as such but only ‘socially unjustified’ dismissals. Besides reasons of individual capacity and personal conduct at work, ‘urgent operational requirements preventing the continuation of employment’ are accepted as a social justification. As pointed out before, the employer’s ‘operational’ decision to restructure, to downsize or to abandon a product line as such is made without the need for justification. However, if only some out of a group of comparable workers are affected, the employer has to justify the selection for dismissal by social criteria. In order to have the dismissal qualify as ‘socially justified’, the employer must be prepared to prove in court that the following employee characteristics were duly considered:

- seniority
- age
- obligations to support dependents
- recognised disabilities.

The employer must be able to explain and justify the weighting of the criteria mentioned above or any additional criteria used to arrive at a specific decision. However, if the employer and the works council manage to agree on a list of the workers to be dismissed, then social justification is presupposed and can only be challenged in court on the grounds of gross misjudgment. Generally speaking, the implied social basis of the mechanism tends to protect more vulnerable workers. This can conflict with the aim of regaining economic viability through restructuring, a goal which may be shared by the works council in its endeavour to preserve jobs. This problem is most obvious when downsizing is massive so that the establishment would be left with mostly the vulnerable workers. Negotiations on restructuring are centered upon a compromise between social and economic perspectives, and on designing the legal mechanisms by which the agreed outcome can be achieved.

Individuals may challenge their dismissal in court on the grounds of (1) doubts about its operational necessity, (2) improper selection of the workers to be dismissed and (3) the absence of due involvement by the works council. If they succeed in court, their dismissal will be void, and in theory they will have to be reinstated. At any stage of the procedure, the employer may aim for a settlement by offering financial compensation in return for the termination of the contract and procedure. There is no uni-

versal legal provision for financial compensation, the individual has no legal entitlement to outplacement services, nor does the employer have any obligation to offer such. Such provisions can only be negotiated individually if the worker concerned has a legal position to waive in the bargain, or collectively within the framework of a social compensation plan if a works council exists.

The take-over of an enterprise, one of its establishments, part of an establishment, or the merger of the enterprise with another enterprise as such do not qualify as an 'urgent operational requirement' that would justify dismissal. The legal subject acquiring the enterprise will succeed the former owner in all rights and responsibilities regarding labour contracts. Some job transfer schemes are designed to circumvent, in collaboration with the works council and the trade union, the regulations on transfer of undertakings in order to facilitate a buyout that will save at least some of the jobs concerned.

Social compensation plans are the principal outcome of negotiations between employers and works councils on restructuring. They grant the individual workers covered non-forfeitable rights that are enforceable in court. Legally, social compensation plans hinge on the aforementioned definition of 'change of operations', not on unilateral dismissal in a technical sense. This is crucial for facilitating 'negotiated restructuring': By agreeing on a framework for voluntary solutions that will avoid dismissals, the works council does not forfeit its right to negotiate. The employer and the works council may thus co-operate in reducing procedural complexity and risk by creating a framework within which redundancies may be re-defined as voluntary annulments, as long as the individuals consent. In this way, the observance of notice periods can be shortened, and solutions may be arrived at that are not open to revision by lengthy and uncertain legal procedures. Large companies are prepared to spend considerable financial resources in order to achieve such solutions.

The practical importance of voluntary solutions compared to dismissals by the employer is an open issue. Legal literature attaches only low practical significance to dismissals by the employer compared to by cancellation agreements. Unfortunately, data about types of employment termination with regard to job destruction is rarely available. Large panel data set (IAB establishment panel) evaluations indicate that the share of voluntary cancellation agreements increases with the size of the company, but so do fixed-term contracts (figure 1). In companies with more than 250 employees, the share of voluntary solutions is approximately one fifth, the meaning of the ending of fixed-term contracts nearly 50 % (own calculation based on Bradtke/Pfarr 2005; see column V in figure 1). An empirical study limited to large companies or groups with in-house redeployment schemes indicates that the weight of dismissals by the employer is rather zero. In this particular segment job transitions in the internal labour market of the firm, followed by voluntary cancellation agreements are the most important types of job destruction (Mühge/Kirsch 2012, p. 72).

Fig. 1.: Termination of employment, selected types by company size

	1 to 10	11 to 19	20 to 99	100 to 249	250 and more	Only firms with in-house transition units Mühge and Kirsch 2012	All Bradtke and Pfarr 2005	All Eichhorst and Marx 2011
	I	II	III	IV	V	VI	VII	VIII
Forced dismissal	79,2	79,8	67,4	53,9	32,7	7,1	61,4	48,2
Termination of fixed-term contracts	10,3	8,6	21,8	31,7	48,0	29,4	25,2	33,9
Voluntary (dismissal or termination)	10,5	11,6	10,8	14,4	19,2	63,5	13,4	17,9
Total	100	100	100	100	100	100	100	100

Source: Bradtke/Pfarr, 2005; Eichhorst/Marx 2011; own calculation

Other studies based on more recent data do not include a differentiation according to the company size. Based on evaluations carried out by the German Social Economic Panel (SOEP) Eichhorst and Marx (2011) came to result that the importance of cancellation agreements with 18% in 2008 is relatively high (columns VII and VIII in figure 1). All-in-all the data leads to the cautious conclusion that the importance of dismissals is decreasing compared to the selected equivalent ways of employment termination.

Social compensation plans have become increasingly innovative in the way that provisions for re-training and outplacement services have complemented severance payments. Thus, individual voluntary redundancies ('buying the worker out of the contract') have been reframed as collective pathways into new employment, called 'job transfer schemes' (Maßnahmen des Beschäftigentransfers) in which so-called transfer companies play a crucial role (see chapter 6).

Restructuring in Germany is first and foremost considered as a legal issue. Unfortunately there is no significant discussion on the management of restructuring as a legitimated task for the company's human resource management. According to Seisl (1997) this lack is due to the pivotal position of the employment protection legislation from an HR perspective. Human resource managers perceive their room for manoeuvre by law, judgement and collective agreements smaller than it actually is (ibid, 90).

Section 3. Actors involved in Restructuring

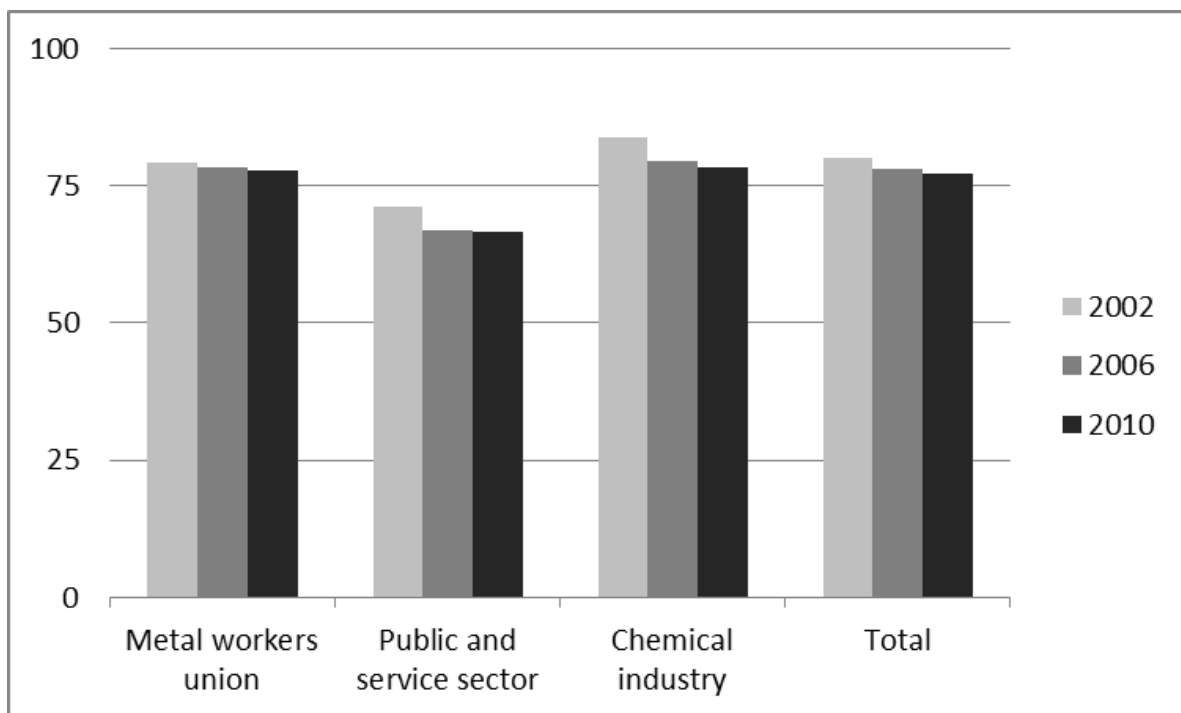
The German system of labour relations is highly legalistic, but wide areas of regulation relevant to work and restructuring are subject to negotiations between the social partners at the industry and enterprise level. The legal framework tends to prescribe procedures, not outcomes. In most cases, legally defined rights constitute a semi-dispositive minimum, which means that custom and practice may and does develop above and beyond the legal provisions. The predominant practices for managing redundancies are shaped by and compatible with the law, but much of this is nowhere explicitly laid down in

legal texts. The observance of rights and the enforcement of rules depend entirely on the initiative of the individual and collective actors concerned, backed by the possibility of recourse to the labour courts. With the exception of matters of health and safety, there is no such thing as a public labour inspectorate in Germany.

Works councils elected by the whole workforce (regardless of trade union membership) and acting on the basis of legally defined rights are the primary partners of employers in negotiating restructuring. However, in 89 per cent of establishments (predominantly the smaller ones), which employ a slight majority of the German workforce, no works council exists (Ellguth, Kohaut 2008), either because the establishment does not reach the legal threshold of five employees or because the workforce has not elected one. In the absence of a works council, there is little scope for a collective and pro-active approach to restructuring. In other words, works councils and not public authorities are the primary actors with regard to enterprise restructuring in Germany. Works councils may negotiate and conclude plant agreements, which are legally binding, for the whole workforce irrespective of trade union membership.

Industrial unions are organised by sector, rather than on the basis of political orientation or white/blue collar status. Following several mergers, only a few unions remain. They bargain over pay and working conditions (including, for example, notice periods and employment protection for employees with long service), and they may initiate the election of works councils. Their advice to and support for works councils are crucial when it comes to negotiations on restructuring. Trade union representation on works councils has declined slightly from a share of 79,9% (2002) of works council members organized in DGB trade unions among all works council members to 77,3% in 2010 (Greifenstein, Kibler, Lange 2010).

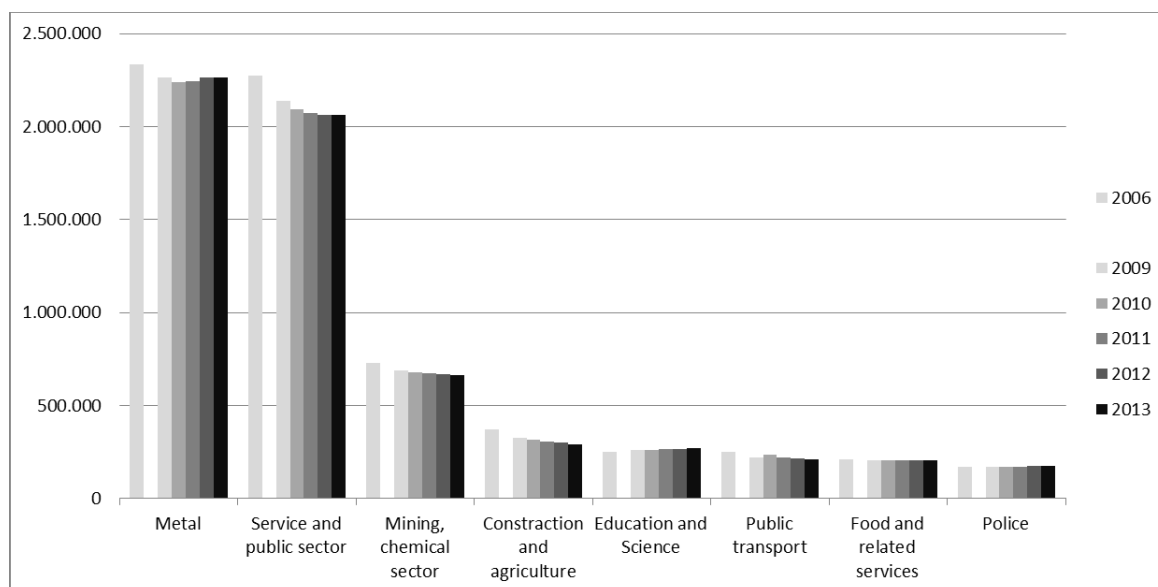
Fig. 2: Trade union membership of works councils concerning selected unions



Source: Greifenstein et. al. 2010

A general trend of decreasing membership in trade unions has stopped in recent years, most of the trade unions have got stable or even a slightly increasing number of members, particularly in the metal workers union IG Metall (see fig. 3).

Fig. 3: Development of union membership by trade unions



Source: Deutscher Gewerkschaftsbund DGB

Supervisory boards are mandatory only in corporations with more than 500 employees. Depending on legal statute and company size, they comprise employee representatives in varying proportions, but always in a minority voting position except for coal mining and steel companies. Restructuring will usually be the kind of business decision that has to be approved by the supervisory board. Through union and works council representation, the supervisory board can thus be an important source of early information on developments that might lead to restructuring. However, in multinational companies with strategic headquarters abroad, supervisory boards at national levels are often bypassed, and even local management may be taken by surprise by decisions on restructuring.

Public actors (municipalities, regional governments (Länder), the federal government, the public employment service, regional agencies) have no formal responsibility or right to intervene in a restructuring process on their own account. Politicians may nevertheless play some role if they are invited by the employer or by the works council and trade union to do so. The public employment service, in addition to being informed about collective dismissals in accordance with the respective European Directive, provides two closely related instruments with regard to restructuring which are available on the employer's request. Such a request will usually result from the request and negotiations of the works council, which in turn may be instigated by the trade union responsible for the sector.

Labour Courts form a separate and uniform branch of civil jurisdiction with their own organisation, procedures, career patterns, and court buildings. They are regionally based and are responsible for both individual and collective cases (employee vs. employer, works council vs. employer, trade union vs. employer).

Job-transition service providers play a key role when a social compensation plan includes job-to-job transitions schemes (see chapter 6). With their knowledge about the complex legal framework of employment promotion and financial support they can work as an external expert in the negotiation of the social compensation plan; they are the new and interim employer for the redundant workers con-

cerned, and finally they create and offer labour market policy measures: consultancy, qualification, job-search support for the workers concerned.

It should be emphasised that the three axes of negotiating about restructuring operate largely independently of each other, though they may be interconnected at certain points. The individual threatened by dismissal can sue the employer even in the absence of a works council and without being a trade union member. The employer may apply for labour market policy instruments even in the absence of a works council, although this rarely happens in practice.

Section 4: Measures for anticipating change

“Anticipation”, as used in the European discourse on restructuring, has no exact equivalent in German with regard to restructuring or other potentially challenging socio-economic events. In the way it is used on the European level it appears to carry a double meaning:

- (1) Foresight or prognosis
- (2) Readiness or preparedness.

With regard to (1), little attempts have been made in Germany. One reason is the lack of data, the second and related reason is that Germany has not really embraced restructuring as a key issue. The third reason ostensibly justifying this indifference lies in the country’s apparent ability to absorb a major external shock like the current financial and economic crisis without any dramatic acceleration of restructuring.

One potential source of data would be the IAB Establishment Panel, an annual representative survey of establishments (cf. Fischer et al. 2009). Though not exactly broaching the issue of restructuring, the questionnaire does contain items on expected downsizing or expansion of payrolls, and comparisons of payroll statistics between waves would allow assessing to what degree expressed expectations has become reality. However, since the early 1990s immediately after unification, the panel has not been used as a source of information on imminent restructuring. There are no recent publications based on the panel that would highlight this issue. With regard to (2) – preparedness – the availability of particular tools for the management of restructuring is discussed in section 6 as measures for managing change: These measures are short-time allowances, and job transfer schemes as well as job transitions schemes in the internal about market. In this report we focus on trade union initiatives to strengthen the company’s abilities in crisis intervention.

Forecasting skill gaps

The German discussion about impending skills shortages follows a peculiarly cyclical path: In each economic upturn, there are complaints by employers of some sectors that they have difficulties in filling vacancies; however, before this would actually become a political issue, the tide of the business cycle will turn and the discussion will subside. The issue must also be seen against the background of Germany’s high unemployment figures, partially caused, in international comparison, by the institutional propensity to ascribe unemployment status rather than incapacity status to workless people (Erlinghagen, Knuth 2009). Whenever, for example, complaints about a shortage of graduated engineers come up they will be countered by pointing to the large numbers of unemployed engineers. Consequently, there is no generally accepted definition of how to ascertain the existence of a skills gap, and there is no consensus on whether there is one, or when it might emerge, or how serious it will be

(Mesaros, Vanselow & Weinkopf 2009). Furthermore, Germany's success in exports does not exactly support the idea that its workforce is not properly prepared to do their jobs.

The dilution of the skills gaps issue is also related to the fragmentation of the German educational system in which the federal states are responsible (and keenly defend their responsibility) for general, including tertiary education. Vocational apprenticeship training, by contrast, is managed by the social partners under a broadly defined national framework, and the actual offering of apprenticeships is in the discretion of individual employers. The focus of the discourse about vocational training has always been on finding apprenticeship offers for all potential applicants, rather than on maintaining a proper supply of skills. So if there were such a thing as a skills gap, who would be responsible to react? Consequently, a skills gap cannot be politically recognized since there is no political actor who could embrace the issue and stand to benefit from offering a skills gap agenda. The chancellor's initiative to establish an 'education and skills summit' remained inconclusive due to tacit resistance from the federal states. Obviously, Germany's institutional inability to develop a coherent human resource agenda is a risk in the face of demographic change and restructuring.

In international comparison, matters are obscured further by the lack of internationally comparable concepts of skills levels. The OECD repeats criticising Germany for its comparatively low shares of tertiary level graduates in succeeding cohorts. However, in countries without an apprenticeship system, people will attend tertiary institutions in order to later perform occupations that in Germany are filled through the apprenticeship system. Therefore, international comparison does not help to identify a potential German skills gap. Though it may be true that Germany could use more labour market entrants with academic training, it would be inappropriate to emulate countries where academic training is nearly the only pathway to a skilled job. Thus, international comparisons of human resource reproduction are still institutionally biased and lack comparable measures of competencies and of functional substitutability.

Case Study: Supporting works councils in crisis management

In the beginning recovery of the economic and financial crisis in 2009, the metal workers trade union IG Metall set up a system for the support of works councils in companies in crisis situations. This initiative – the “Task Force Crisis Intervention” (*Task-Force Krisenintervention*) – offers help both for works councils that want to implement measures for the early recognition of risks and for works councils in current crisis situations. The basic idea of the project is that works councils need immediate and independent advice and expertise to deal with serious crisis situations. Its background is the so-called “better instead of cheaper” strategy of the IG Metall, aiming at the improvement of wage, working time systems and working density by product and process innovation.

The Task Force Crisis Intervention consists in project management team in the IG Metall headquarter and a network of experts and consultancies in the fields of labour law, business administration and human resource management. If support is required by works councils or IG Metall shop stewards, the project management selects appropriate experts, who are financed by the project up to five days of consultancy per case. The application process is quick and unbureaucratic; works councils can apply for the support at the IG Metall headquarter in Frankfurt/Main or in one of the trade union's regional branches.

The task force crisis intervention is funded by the ESF and the Federal Ministry of Labour and Social Affairs. Since its beginning the Task Force supported works councils in more than 400 companies. 90 % of the cases are related to company restructuring, the most important fields of support are employment security and wage security.

One of the successful cases of the Task Force is the intervention in the insolvency of Conergy, a producer of solar modules in Frankfurt/Oder, nearby the Polish border in Eastern Germany. Supported by the Task Force, the works council of Conergy Solar Modules was enabled to convince the insolvency administrator of the company to restart the production and to avert the liquidation of the company, which was later bought by a Chinese investor. 200 of 300 jobs remained.

The solar industry – the production of solar power products like solar modules – was one of the promising sectors in Eastern Germany in the years after 2000. With several fast growing start-ups and companies providing more than 10.000 jobs in eastern Germany the sector was counting as an industrial job machine in a region regarded as structurally weak. In 2011 the sector rapidly went from boom to burst, due to the globalization of the sector and the strong competition primarily to Chinese solar product providers, but also due to significant cuts in the national promotion of solar energy.

In 2011, Conergy employed 750 workers when it was also hardly hit by the crisis. The management reacted with a first mass dismissal, aiming at the prevention of the closure of the company. But even after this first restructuring the increasing competition led to an excessive indebtedness of the company despite full order books. As a final consequence, the Conergy management declared insolvency in 2013, and the production of solar modules was stopped immediately.

For the Conergy works council, despite his experience with restructuring and staff reduction during the last two years, the insolvency was a shock. At the same day that the insolvency was published by the management, the works council met the first representative of the regional IG Metall for discussing the necessary actions and developing an appropriate strategy of co-management for the current crisis. Already in the evening of the day, the IG Metall representative sent an application to the project management team of the Task Force Crisis Intervention. Just the day after established experts of the sector were found by the project team in the IG Metall headquarter, who started to support the works council immediately.

The consultants followed two fields of actions: Their first initiative aimed at convincing the insolvency administrator to restart the production of solar modules immediately. The running operation of the company was important to attract potential new investors. Second, they started a negotiation with the insolvency administrator concerning a reconciliation of interests and a social compensation plan, to provide room for manoeuvre for the works council. As a result of the negotiation between the works council and the employer, the company applied for means from the PES for short time working schemes. With support from the PES mass dismissal could be successfully avoided, in order to keep experienced workers and their company-related know how. Finally, end of 2013, the company was bought by a Chinese investor, 200 of 300 jobs could be saved.

As a result, the support by the Task Force Crisis Intervention enabled the works council to develop an effective strategy of co-determination in a current and serious crisis situation. Originally the insolvency administrator decided the liquidation of the company, which could be prevented by a quick restart of the production and keeping the company alive.

Section 5: Measures for managing change

Wage and labour cost reduction

Since the mid of the 1990ies the social partners in the metal workers sector concluded collective agreements for employment protection (Tarifvertrag Beschäftigungssicherung – TVBesch). These agreements allow a reduction of standard working time to bridge temporary lacks of work to prevent

dismissals. Their role model is the collective agreement of Volkswagen, signed 1993 (Bispinck 2009). The Volkswagen agreement gives the social partners the possibility to decrease standard working time up to 28.5 hours per week. Studies on the reduction of standard working time indicate that it is

- an established option in crisis management to prevent dismissals,
- it is primarily used when the company does not fulfill the preconditions of short time work (see section below) or if short time work was felt as too expensive or too time-consuming in the application process;
- the scope of the reduction of standard working time is limited; generally speaking the instrument provides time in crisis situations, for sustainably coping with crises it should be combined with other flexibility schemes.
- Both managers (73%) and works councils (61%) find their working time reduction scheme to have a positive impact on the company (Richter, Schnecking, Spitzley, 2001).

Fig. 4. Possible decrease of standard working time by collective agreements in selected sectors

Sector	Regional range	Standard working time in h	Negotiated minimum working time in h
Banking industry	Germany	39	31
Printing	Germany	35	30
Iron and steel	Germany	35	28
Insurance	Germany	38	30
Metal, wood and plastics processing industry	Westphalia	35	32
Metal, wood and plastics processing industry	Saxony	38	30
Paper processing industry	Western Germany	35	30
Paper processing industry	Eastern Germany	37	32

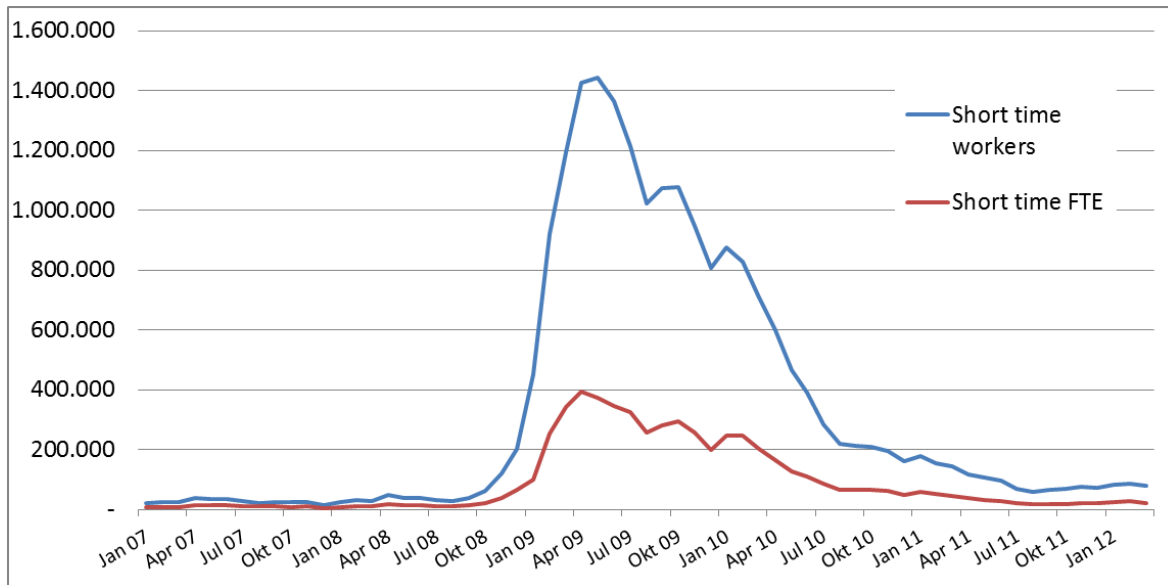
Source: Bispinck/WSI Tarifarchiv 2009

Short time work

Short time work funded by the PES serves the purpose to support a company in a temporary crisis, e.g. due to a loss of orders or for cyclical reasons. The instrument excessively uses during the 2009, hence it was counted as Germany's "silver bullet of employment policy" to cope with the financial and economic crisis (Schneider/Graef 2010), hence Short time work reached its peak with more than 1.5 Million workers concerned in 2009. Generally Short time work helps the company to save staff costs and the cost of re-recruiting workers for jobs which are only temporarily lost or reduced concerning the working time. The temporary character of the labour reduction marks one of the differences to partial unemployment, within which the income of a worker is reduced permanently. From the point of view of the PES and the workers short time work prevents dismissals and the costs and social risks of both unemployment.

The first conditions for the funding of Short time work is a reduction of work in a company for at least one third of the workers that is more than 10% in terms of their monthly wage. The reduction has to be for economic reasons, and it must be temporary and unavoidable. Job reduction counts as avoidable when it can be avoided by the granting of leave or flexible working time systems, also if it is due to organisational or seasonal reasons or if it is customary in the industry. Either the employer or the works council have to give notice to the PES in advance of the work reduction (§§ 95 and 96 SGB III).

Fig. 5. Short time work in Germany by number of workers and full time equivalents, 2007 to 2012



Source: Bundesagentur für Arbeit

During short time, workers concerned receive money from the PES for that amount of working time that is reduced by the temporary crisis. Similar to unemployment benefits, the PES pays either 60 or 67 per cent – the latter if a child is living in the household – of the net wage. Cost for social security and leave have to be paid by the employer.

In some industries the social partners agreed on collective agreements on an increase of the funding by the employer, to purpose a decrease the loss of income of the workers concerned. The subsidy secures an income during short time between 75% and 100%, depending on the sector (Bispinck 2010).

At the peak of the crisis in 2009 the funding of short time work was excessively extended by the government. The maximum duration of funding was prolonged from 6 to 24 month, also the costs for social security contributions were covered by the PES under specific conditions. Currently, the maximum funding of Short Time Work is 12 month till the end of 2014. If this exemption will not be prolonged, from 2015 the normal and previous duration of 6 months maximum will apply again.

Partial unemployment benefits

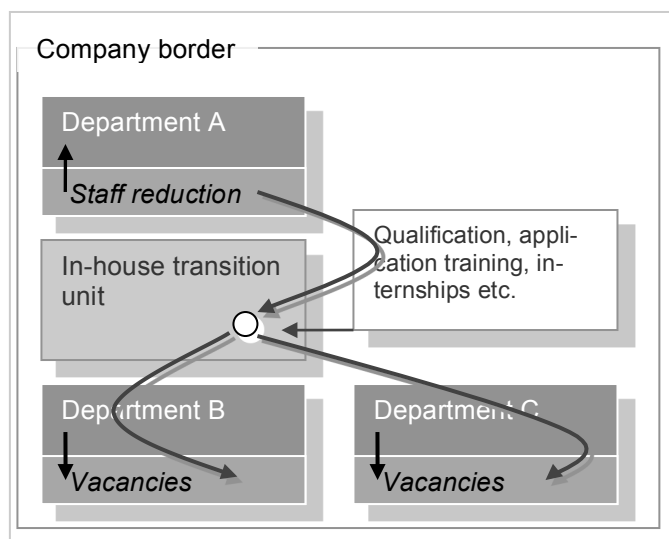
Partial unemployment benefit provides income security to workers employed from more than one employer if they lose one of their jobs (§162 (2) SGB III). It is not paid for a permanent reduction of working time at one single employer, i.e. for a reduction from full time to part time. Worker who lose a part time job among others receive Partial unemployment benefits for the lost income, similar to regular unemployment benefits for fully unemployed people, with on difference: The maximum entitlement and duration of partial unemployment benefit is six month.

Job transition schemes in the internal labour market

The economic and financial crisis in 2008 and 2009 was a striking demonstration that internal labour markets (ILM) in Germany are capable to manage critical surplus staff situations without compulsory redundancy. The discussion focussed primarily on short time working schemes and flexible working hours as buffer during the crisis, or, marginally, on the temporary reduction of working hours on a collective agreement basis. Just little attention is paid to job-to-job transitions schemes in the internal labour market, which are a sufficient tool for balancing job security and flexibility demands in decreasing companies (Kirsch/Mühge 2012). Quite well-established examples of internal employment services are *Vivento* (Hüning/Stodt 1999), the internal job market of Deutsche Telekom or *Deutsche Bahn JobService*, the placement office of the former state owned German railway company.

The objective of in-house transition units is the transfer of redundant workers to vacant jobs in the internal labour market. A definition of this units is given by Herrwig and her view on internal labour markets: She describes that “an internal labour market consists [...] not only in the company internal announcement of vacancies [...]. Internal labour markets have the function of promoting information and establishing contacts between supply and demand” (2001: 115; translation: GM). Figure 6 illustrates the tasks and work of these units in detail.

Fig. 6. Job-to-job transitions by in-house transition units



The internal job transition process begins with the staff reduction and selection of workers in a decreasing department. After that decision is made, the in-house transition unit bears the responsibility to match the workers concerned to open jobs in the firm. In practice the internal transition works very similar to the outplacement services on the external labour market; consequently in-house transition units typically access the “normal” means of labour market politics like qualification, application training or the initiation of internships. Another possibility consists in providing incentives to the recruiting managers for participants from the transition unit, i.e. covering personnel costs temporarily when the recruitment was successful. Due to some similarities between internal replacement and outplacement activities it’s not surprising that some of the –house transition units aim at placement both on the internal and external labour market. This specific type fulfils as well the requirements of the definition in case the internal reallocation of personnel is prevalent.

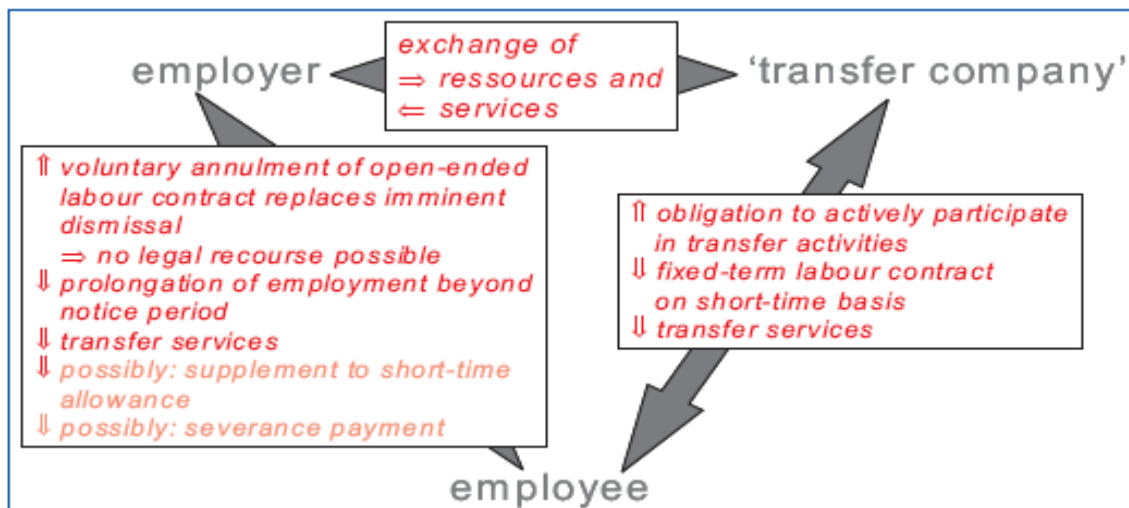
The effectiveness of company internal redeployment schemes is influenced by tangible power interests and also cultural factors of the company. Both quantitative (Niewerth/Mühge 2012) and qualitative

data (Mühge/Kirsch 2012) indicate that the effectiveness of company-internal job-transitions depends on the distribution of power resources concerning the actors concerned; the more powerful the human resource department, the more effective are the job transitions in the internal labour market.

Job-to-job transitions by transfer companies

The massive restructuring that followed German unification, first in East and later in West Germany, triggered the development of so-called job transfer schemes. From a worker's perspective, their attractiveness lies in the avoidance or postponement of unemployment plus the availability of immediate and more effective services than the public employment service would be prepared to deliver. By implementing a job transfer scheme, the employer may circumvent the restrictions of social justification for dismissal and thus avoid the procedural risks inherent in legal actions to be expected from the side of affected workers. Job transfer schemes may also serve to shorten individual notice periods in order to speed up restructuring, to report favourable headcounts to international headquarters in order to counteract pressures for downsizing, or to enhance the attractiveness of a company to potential buyers.

Figure 7: The trilateral transfer deal



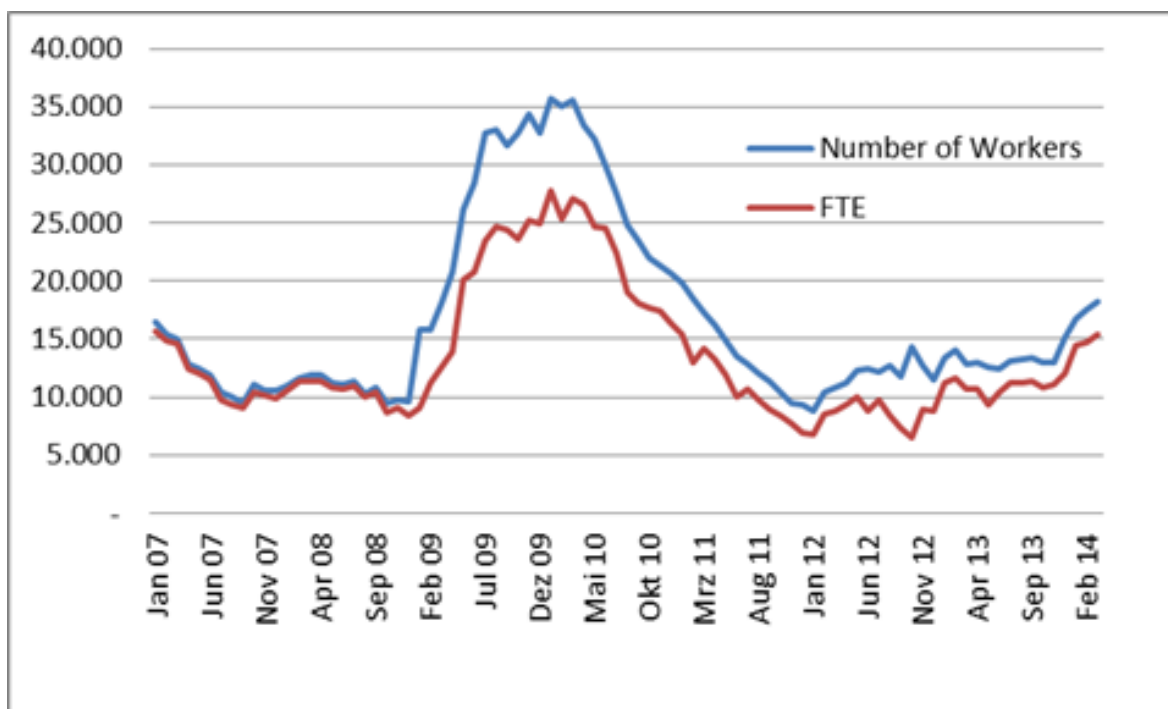
Source: Knuth/Mühge 2009

Under a job transfer scheme, the employer will offer the workers the annulment of their existing open-ended contract in exchange for a fixed-term contract with a third party specifically created for such purposes, a so-called *transfer company*. In return for giving up legal employment protection by voluntarily entering into a fixed-term contract, the worker will receive a temporal extension of his or her employment beyond the notice period, plus outplacement-related services generally delivered by the transfer company. If the worker should later become unemployed, this will be regarded as the automatic result of the fixed-term contract expiring. Sanctions against entering unemployment 'voluntarily' or 'prematurely' (before the end of the notice period) will not apply – workers may keep whatever they receive in terms of redundancy payments or compensation, which would not be the case if they would enter unemployment directly and voluntarily.

As a rule, transfer schemes are negotiated by works councils within the framework of social compensation plans. Traditional redundancy payments will thus be supplemented by outplacement services, and financial subsidies may work as an incentive for labour market transitions. There may be premiums for opting for the transfer company instead of awaiting dismissal, for taking part in training and other active measures, and for taking up a new job as early as possible. Guarantees that workers may return

to the transfer company in the event that a new job does not work out as expected will facilitate transitions, as will subsidies to initially lower wages in a new job. Occasionally, there may also be provisions for the capitalisation of severance payments and the possibility of cheap loans for those who want to set up their own business. Unfortunately, these examples of ‘propelling’ rules/provision are not the standard practice but only found in advanced transfer schemes.

Figure 8: Number of workers and FTE in transfer companies, 2007 to 2014



Source: Bundesagentur für Arbeit

Figure 8 shows the development of workers in transfer companies. The figure reflects the cyclical development before, during and after the crises, including an immense growth of the business in 2009, and a similar decline afterwards. The figure also shows the limited relevance of transfer companies, which have an estimated share of less than 1% of all workers made redundant (Mühge/Schmidt 2014). Data on the service market according to transfer companies is rarely available. A current research project on job-to-job transitions estimates a market of somewhat more than 100 service providers in Germany (report forthcoming).

Section 6: Concluding remarks

Since 2007, the restructuring regime has retained its main characteristics and still appears as “negotiated restructuring”, due to only minor reforms and changes in the institutional framework. Restructuring in Germany is essentially based on industrial relations and intra-firm negotiations between the works council and the employer. On the other hand, that means that management and negotiation practices appear more in large companies than in small ones. Workers in SMEs, particular in such where is no works council, enjoy less legal and practical employment protection and measures of support, like job transitions schemes in the internal or concerning the external labour market. This latter issue has been often discussed in Germany, but due to the legal complexity of the restructuring regime and the nu-

merous actors involved, the problem of supporting SME restructuring i.e. with job transition schemes is hard to solve.

Segmentation can help to understand the different practices, culture and social consequences for the workers in large companies and SMEs in Germany. Roughly spoken, large companies belong to the type of internal labour markets (ILM), as described by Doeringer and Piore (1971). In this segment, which is qualified by defined points of entry and exit and live long tenure, flexibility is provided internally by qualification and internal career schemes. Restructuring and dismissals are perceived as an exception from the model, bearing serious social risks for the workers concerned. The labour market of SMEs is different: SMEs constitute the segment of professional labour markets (Sengenberger 1987), within which the external labour market provides the flexibility needed from the companies. The German system of professional training offers standardized, formal qualification that corresponds with the job requirements and tasks at work. Under these circumstances the hazard of unemployment and social insecurity on the external labour market is relatively low, compared to large companies.

A key aspect of the European Quality framework on restructuring is the triad of anticipation, preparation and management (Cercas 2012). According to the “forecast character” of anticipation, an intensive debate on early warning systems has been taken place end of the 1990s. Some practical approaches – regional networks of early warning systems – have been tested during these times but failed. Additionally many restructurings – like the economic crises itself, too – appear as surprising and unpredictable. These reasons and a lack of data (see section 5) mean that only little attention is paid to the concept of anticipation in Germany as a whole.

Concerning the European Quality Framework, some strengths of the German restructuring regime can be pointed out. First, the internal flexibility of German companies is highly developed. It's based on a complex of different internal flexibility measures like working time accounts, internal job transitions, reduction of standard working time, short time work. These measures and their complementary combination have proved the capability to bridge a large part of overemployment in crisis situations. Additionally they are an expression of the deep involvement of social partners in overcoming crisis situations. Second, the role of social partners in the management process can count as strength of the German framework itself. But even is the involvement of social partners appears as positive, according to the job transitions schemes, the German framework suffers over complexity by numerous collective and legal regulations and too many actors involved with their particular interests. Changes and reforms that may reduce complexity appear necessary to improve the effectiveness of job transition schemes but are difficult to implement.

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