ARITAKE-WILD

Joint European Level Social Partners'
Work Programme 2009 – 2010

Joint Study on Restructuring in the EU
Final Phase

National Dossier

Germany

Berlin

31st March – 1st April 2009

Edited by: Alan Wild, ARITAKE-WILD

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Project of the European Social Partners with the financial support of the European Commission

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Introduction and background – the purpose of the national dossier

This report on the role of the German social partners in restructuring was prepared following the discussion of an initial draft with the national social partners at a seminar held in Berlin on 31st March and 1st April 2009.

The German national seminar was the 22nd in a series of similar meetings to be held in the European Union member states in the framework of the Joint European Social Partners' Work-programme. The report was prepared by the selected external expert for Germany, Mr Antonio Dornelas, working with the expert coordinator for the project, Mr Alan Wild.

The document is presented as an "expert report". It represents the views of the consultants involved in its preparation and does not purport to represent the views, either individually or collectively, of the German social partners or the case study company representatives that contributed to it, or those of the European level social partner organisations that were responsible for its commissioning.

The prime purpose of the report is to contribute to the development of a synthesis paper that compares and contrasts the roles of the social partners in restructuring in the EU Member States with a view to drawing lessons for the future and to help shape the activities and priorities of the social partners at the European level in this area. It also informs readers on the role played by the German social partners in the process of economic restructuring at the national, sectoral and enterprise levels. By the end of the project, similar national reports will have been prepared and been discussed by the social partners in the EU member states. It is planned to develop an overall discussion document based on the role of the social partners in restructuring in every country in the European Union for consideration by social partner representatives from throughout the EU at a seminar in Brussels in early 2010.

The main body of the report is presented in three sections;

- ✧ Section one – a macroeconomic review and trends of restructuring in Germany;
- ✧ Section two – the role of the German social partners in restructuring;
- ✧ Section three – Case studies.

Each of the sections was briefly presented and discussed at the national seminar. The German social partners were asked to comment on the accuracy of the report; to suggest areas that might be "over" or "under" stated or omitted; and to assist in the drawing of overall conclusions on the effectiveness of Germany's social partners at all levels in the anticipation and

management of restructuring. This final national report takes into account the content of the meeting, but remains nonetheless an “independent expert report”.

Finally, it should be noted that the ultimate audience for this document is “non German” and the authors therefore apologise to the national seminar participants for providing elements of detail and background that may appear obvious or superfluous to the German reader. The inclusion of this material is essential however if the broader objectives of the project described above are to be accomplished.

Alan Wild
Expert Coordinator of the Project

Section One:

Macro-economic situation and restructuring in Germany

1. Macro-economic review and indicators

The fall of the Berlin wall, German reunification and the subsequent enlargement of the EU to the countries of Central and Eastern Europe have had an enormous influence on the structure and performance of the German economy

German unification brought with it a vast process of economic and social restructuring both in East and West *Länder*, with an extensive de-industrialisation in the East and a growing importance of the service sector to the economy as a whole. Notwithstanding this development, Germany remains today a country with a high level of employment and added value generated by its manufacturing sector.

According to the most recent OECD evaluation of Germany;

> *"[the] income gap vis-à-vis the best performing countries has widened since the mid-1990s. This reflects relative declines in labour productivity as well as in labour utilization, as the lower relative number of hours worked per employed person have more than offset the increase in overall employment"[1].*

In summary

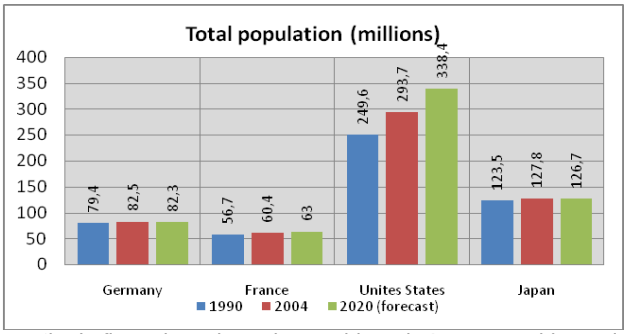
- Due to internal demographics and to the recent immigration trends, forecasts by the World Bank indicate that Germany's population will decline from 2020 onwards;
- During the last decade the growth rate of Germany's GDP has been less than the EU average and its GDP per capita (higher than EU average) has tended to converge with the European average. Estimates of the shadow economy indicate that its size in Germany is close to the European average but is declining at a slower pace;
- Employers' opinion on the ease of doing business ranks Germany 16th out of the 27 European countries. The Global Competitiveness Index of the World Economic Forum suggests that tax regulations, restrictive labour regulations, tax rates, inefficient government bureaucracy, inadequately educated workforce and access to finance are the most problematic factors for business improvement;
- Germany belongs to the group of European countries that allocates a high percentage of public resources to R&D, which allows a better than average number of high-technology patents per million inhabitants;
- Germany ranks 22nd out of 177 countries on the UNDP Human Development Index and 31st out of 156 countries on the gender-related development index. The inequality of income distribution decreased from 1996 to 2001 and subsequently. It is currently slightly higher than the EU average;
- From 1990 to 2004 the share of GDP generated by industry fell by 9%;
- In the manufacturing sector, four out of every five enterprises employ less than 20 workers but more than half of the workforce is employed by large companies with 250 or more employees;
- Employment and labour productivity rates grew less in Germany than the EU27 average during the current decade and the growth of labour compensation per employee (1995-2006) is the lowest of the OECD area. Nonetheless, hourly labour costs remain higher in Germany than the EU15 average. The gender pay gap is also higher than the European average;

[1] http://www.oecd.org/dataoecd/24/19/42222342.pdf

- ✧ Germany's total employment rate is higher than the EU average. Manufacturing, wholesale and retail trade and real estate, renting and business activities are the three sectors that employ the most people;
- ✧ The incidence of part-time and involuntary fixed-term contracts' rates rank Germany amongst the European countries with higher shares of so-called atypical employment. While the German unemployment rate is lower than the EU average it should be noted that Germany's structural unemployment rate is the fifth highest in EU27;
- ✧ Germany's total expenditure in education places the country on the EU average. Not surprisingly, German adult educational attainment is close to the European and OECD averages but not as good as the EU's best performer, Finland. The skills structure of workforce ranks Germany 7th out of 19 European countries of OECD;
- ✧ FDI investment is somewhat higher than the EU27 average but inferior to France and the UK. Since 2003 Germany's trade in goods and services has been higher than the EU15 average, confirming the country as strongly export-oriented economy;
- ✧ On restructuring trends, the available data shows that from 2002 to 2008 internal restructuring was the predominant type of adaptation to global competition. A recent German study shows that the proportion of both relocations and outsourcing increases with the size of the company and that these types of restructuring involve shifts within Germany rather than to other countries;
- ✧ Restructuring effects on employment vary across sectors and types of employment. In global terms, from 1995 to 2006 research shows a polarized pattern although skewed to the creation of highly skilled jobs. In the manufacturing sector, Germany witnessed a substantial loss of low-tech jobs and a substantial creation of high tech jobs over the same period;
- ✧ The prevalent organizational models and working time management, together with a high share of flexible forms of employment places Germany in the group whose employment patterns demonstrate a high level of internal flexibility, both for companies and for workers;
- ✧ The European Commission forecasts of 19th January 2009 suggest that the economic and financial crisis will result in a deeper reduction of GDP in Germany than in the EU as whole as a result of the country's export dependence. However, the expected effects on unemployment are expected to be less dramatic in Germany than those forecasts for both the EU as a whole and the Euro area. These estimates seem to be confirmed by the most recent data on unemployment from German sources (2009).

1.1. Population

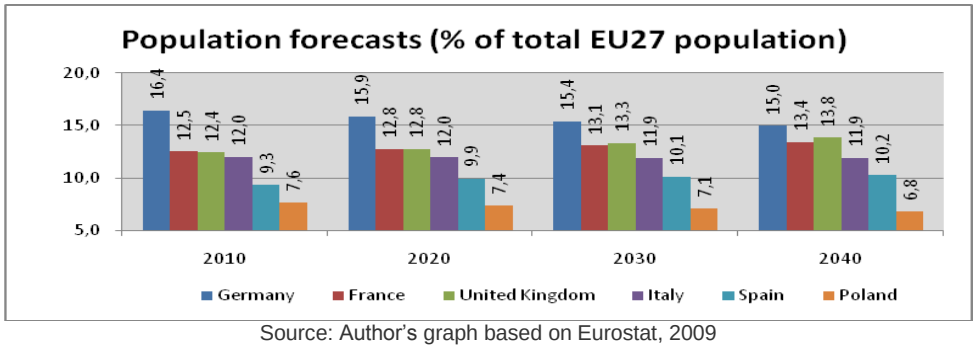
Germany is the most populated Member State of the European Union. Its population (82,2m in 2008) represents 16.5% of the EU27's total population and around a quarter of the Euro area's 15 country (EA15) population.



Source: Author's figure based on The World Bank Group, *World Development Indicators*, 2006

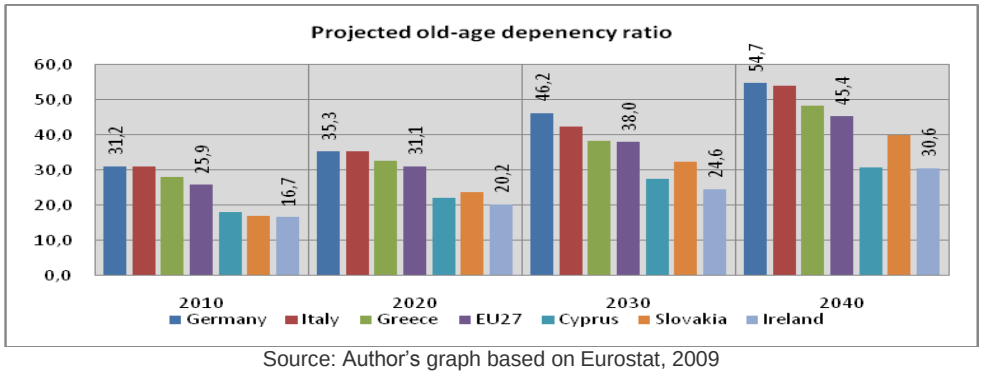
According to World Bank indicators, Germany's average annual population growth rate has been slightly lower than that of France's over the period from 1990 to 2004. Eurostat forecasts

that Germany's population will start to reduce by 2020. Nonetheless, these forecasts indicate that Germany will remain the most populated European Member State until 2040 when it is predicted to be overtaken by the United Kingdom.



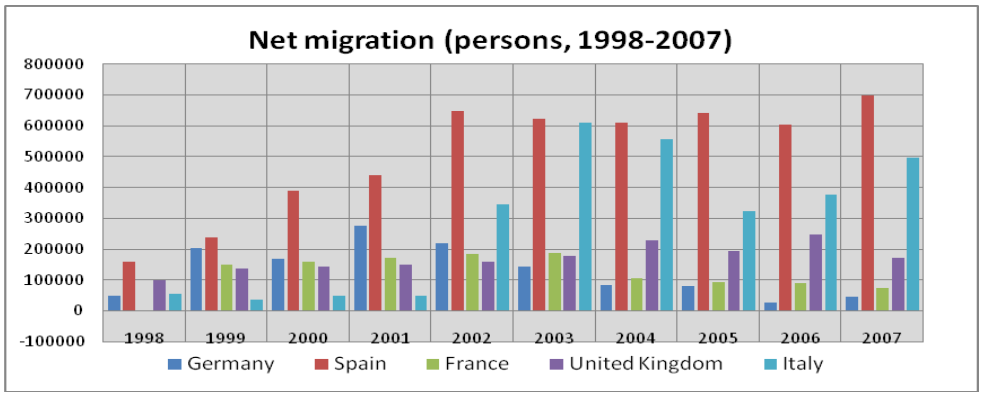
Source: Author's graph based on Eurostat, 2009

According to the same source, Germany's old-age dependency ratio – i.e., the number of people aged 65 and over expressed as a percentage of the projected number of persons aged between 15 and 64 – is at present the highest in the EU27 and will remain so until 2040. The following figure compares the three European countries with the lowest dependency ratio – Ireland, Slovakia and Cyprus – with the EU27 average and the three highest, Germany, Italy and Greece.



Source: Author's graph based on Eurostat, 2009

Immigration to Germany has been in decline since 2001 and the average annual percentage of immigrants – as a percentage of total population – into Germany ranks it in fifth place, after Spain, Italy, the United Kingdom and France.

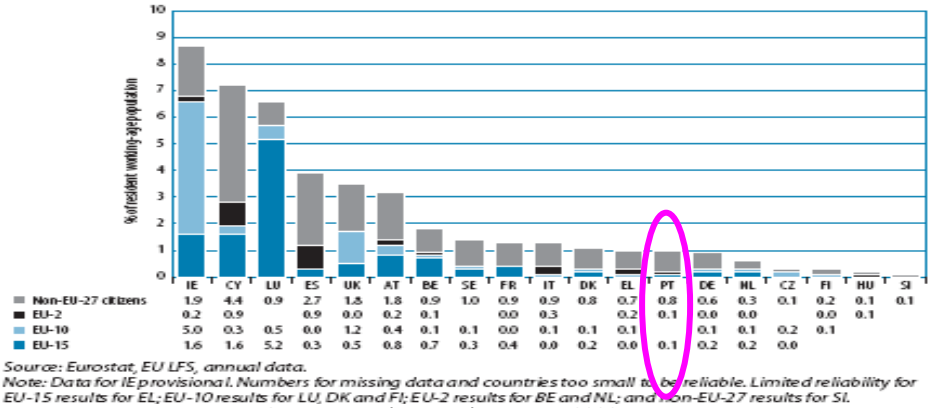


Source: Author's graph based on Eurostat, 2009

As a result of historic trends of immigration into Germany, the share of foreign nationals resident in the country in 2007 (8.8%) is higher than both the EU15 average (7.1%) and the average for the EU27 (5.9%). The recent decline in inward migration means that working-age foreign

nationals resident in Germany for four years or less – expressed as a percentage of total resident working-age population – is at present relatively modest.

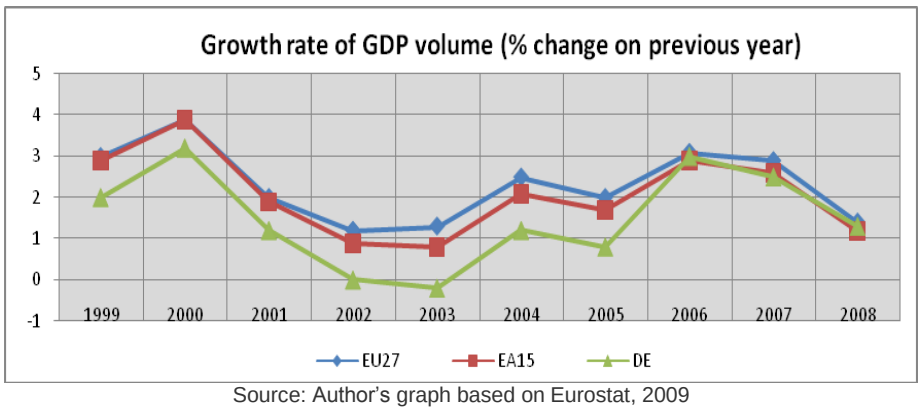
Working-age foreign nationals resident for four years or less in Members States (% of total resident working-age population, 2007)



Source: *Employment in Europe*, 2008: 117

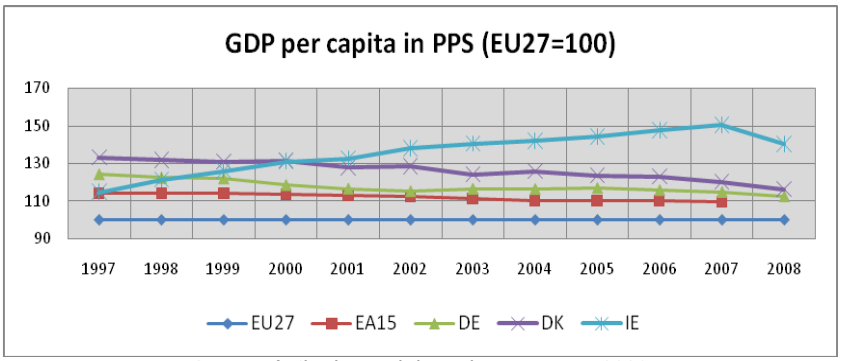
1.2. Gross Domestic Product development, wealth and social cohesion

During the last decade the German growth rate of Gross Domestic Product (GDP) expressed as a percentage on previous year has been lower than the average in both the UE27 and the EA15.



Source: Author's graph based on Eurostat, 2009

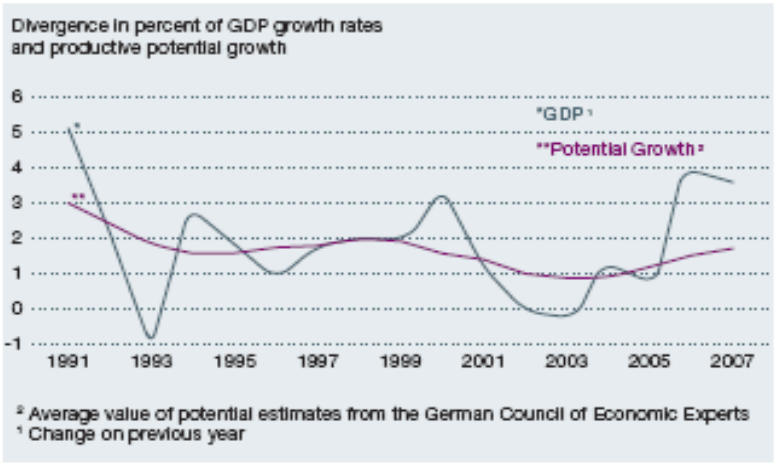
Germany's GDP per capita – expressed in Purchasing Power Parity and as a percentage of the EU27 average – began to converge with the European average over the last decade. With the exception of the Republic of Ireland, a similar evolution has been registered in a number of other EU Member States.



Source: Author's graph based on Eurostat, 2009

According to the BDI, Germany's productive potential, although growing since 2003, still remains below its 1991 score.

Productive potential too low



Source: BDI *Annual Report* 2007/08: 24

1.3. The ranking of Germany in global and European Indicators

The usual source to evaluate employers' opinions on the ease of carrying out entrepreneurial activity in a country is the Doing Business report published by the World Bank. The table below compares Germany with the OECD best performer (New Zealand); with the three EU best performers (Denmark, the UK and Ireland); and with the EU's worst performers (Italy, the Czech Republic and Greece).

Ease of Doing Business Ranking

	Ease of Doing Business Rank	Starting a Business	Dealing with Construction Permits	Employing Workers	Registering Property	Getting Credit	Protecting Investors	Paying Taxes	Trading Across Borders	Enforcing Contracts	Closing a Business
New Zealand	1	1	1	4	1	2	1	2	13	9	14
Denmark	3	8	2	3	14	5	9	3	1	16	6
United Kingdom	4	6	21	8	9	1	5	5	14	15	8
Ireland	5	4	10	10	23	5	2	1	10	20	5
Germany	**16**	**23**	**3**	**22**	**17**	**5**	**18**	**19**	**5**	**7**	**20**
Italy	25	19	23	14	19	24	11	27	24	27	19
Czech Republic	26	22	24	12	20	17	18	25	22	26	27
Greece	27	26	16	21	24	25	26	15	26	25	24

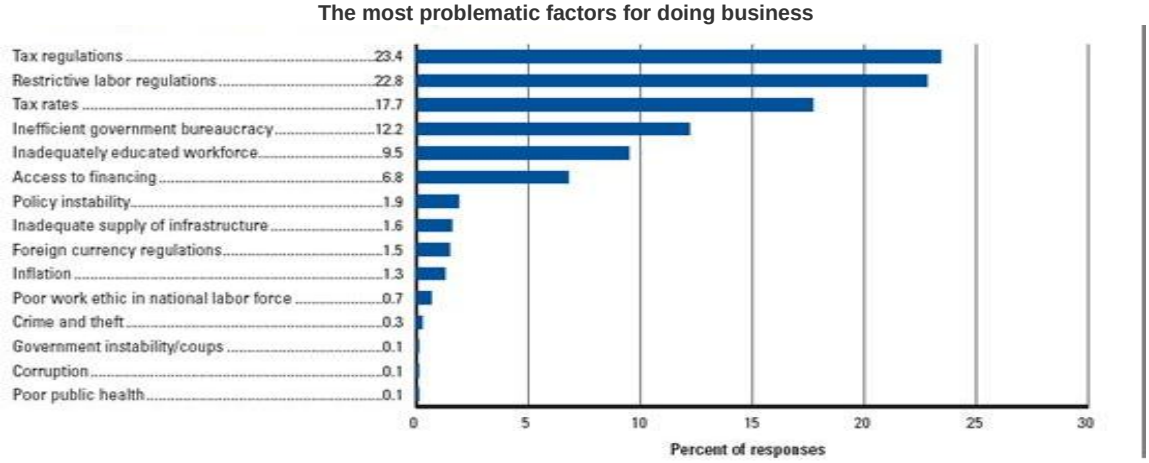
Source: World Bank, *Doing Business*, 2008

This evaluation ranks Germany 16th in the World Bank league table and suggests that "Dealing with Construction", "Getting Credit" and "Trading Across Borders" are key strengths, while "Starting a Business", "Employing Workers" and "Closing a Business" are the country's main weaknesses.

An alternative source of competitiveness data is the Global Competitiveness Index, published by the World Economic Forum, Germany ranked 6th in 2005, 8th in 2006, 5th in 2007 and 7th in 2008-2009. The results of the survey on the most problematic factors for doing business are presented in the following figure, suggesting that only six out of fifteen factors to be considered

problematic by respondents. These are tax regulations and rates; labour regulations; government bureaucracy; education of the workforce; and access to finance.

The most problematic factors for doing business



Source: World Economic Forum, *Global Competitiveness Report*, 2008-2009

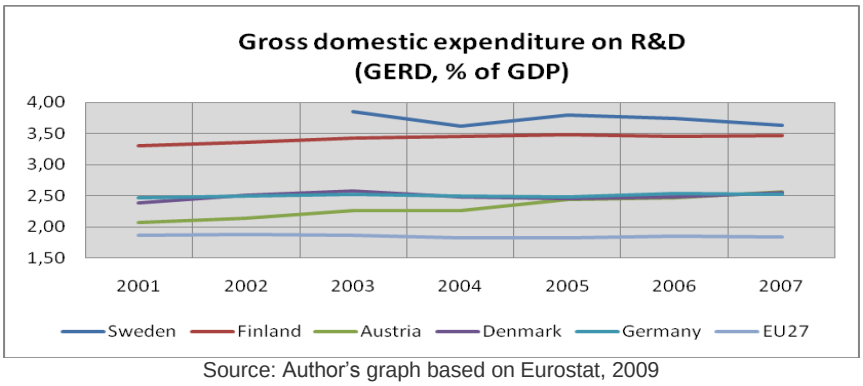
Perhaps a more balanced indicator in European terms is that showing progress on the Lisbon indicators for 2008, published by the World Economic Forum. It shows that the German economy score (5.34) is better than both the EU15 average (5.07) and the average for the EU27 (4.73).

Progress on Lisbon Indicators (2008)

	Final Index		Information Society	Innovation and R&D	Liberalization	Network Industries	Financial Services	Enterprise	Social Inclusion	Sustainable Development
	Rank	**Score**	**Rank**	**Rank**	**Rank**	**Rank**	**Rank**	**Rank**	**Rank**	**Rank**
Sweden	1	5,71	1	2	3	4	1	7	3	2
Denmark	2	5,64	3	3	4	2	2	6	1	4
Finland	3	5,64	7	1	6	6	4	1	2	1
Germany	**6**	**5,34**	**9**	**4**	**5**	**1**	**9**	**15**	**9**	**5**
Poland	26	3,76	26	22	25	26	25	25	26	24
Bulgaria	27	3,68	25	27	27	25	27	22	27	27

Source: World Economic Forum – *The Lisbon Review* 2008

The table above shows that, in the overall final index, Germany ranks 6th out of the 27 EU Member States. On the sub-indexes of Innovation and R&D, Liberalization, Network Industries and Sustainable Development Germany ranks higher than its global score and on Information Society, Financial Services, Enterprise and Social Inclusion ranks lower than its global ranking. Supporting this finding on R&D expenditure, Eurostat data shows that Germany belongs to the group of European countries that allocate a high percentage of their GDP to investment on R&D.



Source: Author's graph based on Eurostat, 2009

As a result of this investment in R&D, the number of high technology patents measured by applications per million inhabitants is significantly higher in Germany than the EU27 average, although, it is much lower than the EU's best in class – Finland.

High-technology patents (per million inhabitants)

	2000	2001	2002	2003	2004	2005
EU27 (average)	23574	23814	22072	18946	21274	12797
Finland	127854	12711	121134	106448	128198	62808
Germany	**48407**	**47244**	**44615**	**37544**	**41989**	**26868**

Source: Eurostat, 2009

As far as the size of Germany's shadow economy is concerned, data published by one source often quoted[2] on this issue suggests that, expressed as a percentage of GDP, Germany's position is very close to the OECD average. The indicators show however that the shadow economy is declining more slowly in Germany than the European average.

The Human Development Index published by UNDP provides a composite index of the overall quality of life in a country built on three indicators of human development: life expectancy; adult literacy and enrolment at the primary, secondary and tertiary level; income, expressed in purchasing power parity. Compared with simple GDP per capita data, the index provides a broader indication of human progress. In 2005, the last year with available data, Germany ranked 22nd out of 177 countries measured and shows weaker data on measures of education than on income and life expectancy.

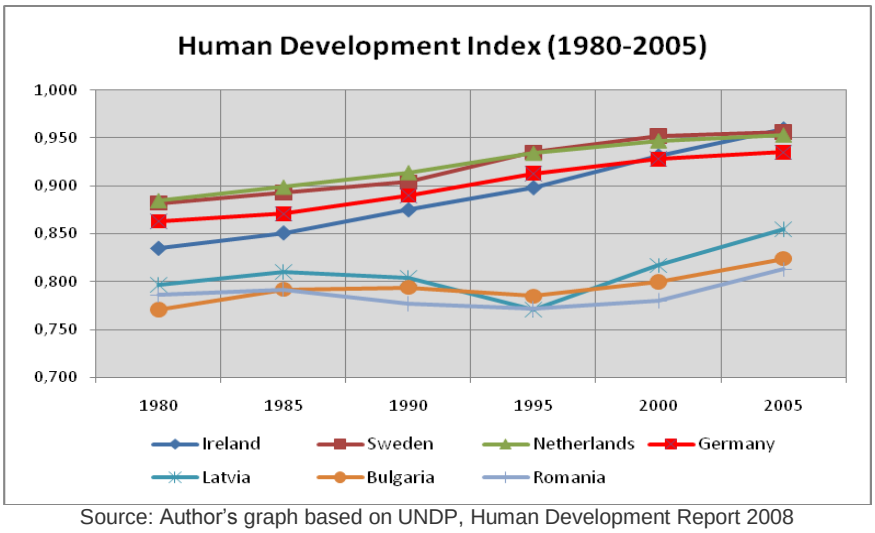
Germany's human development index (2005)

HDI value	Life expectancy at birth (years)	Combined primary, secondary and tertiary gross enrolment ratio (%)	GDP per capita (PPP US$)
1. Iceland (0.968)	1. Japan (82.3)	1. Australia (113.0)	1. Luxembourg (60,228)
20. Italy (0.941)	15. Austria (79.4)	32. Barbados (88.9)	18. France (30,386)
21. Hong Kong, China (0.937)	16. Netherlands (79.2)	33. Belarus (88.7)	19. Singapore (29,663)
22. Germany (0.935)	**17. Germany (79.1)**	**34. Germany (88.0)**	**20. Germany (29,461)**
23. Israel (0.932)	18. Malta (79.1)	35. Cuba (87.6)	21. Italy (28,529)
24. Greece (0.926)	19. Cyprus (79.0)	36. Brazil (87.5)	22. Brunei (28,161)
177. Sierra Leone (0.336)	177. Zambia (40.5)	172. Niger (22.7)	174. Malawi (667)

[2] Schneider, Friedrich: "Estimating the Size and Development of the Shadow Economy: Methods, Problems and Open Questions", University of Linz, Austria

Source: UNDP, *Human Development Report* 2008

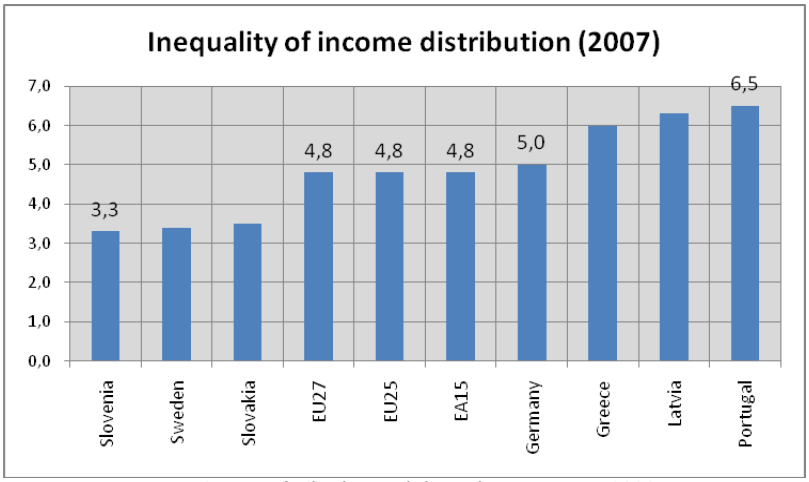
The indicators published by UNDP show that the gap between Germany and the USA is narrower on the HDI scale than on the GDP per capita – expressed in Purchasing Power Standards – ranking. Comparing with the EU's best and worst performers, the data shows that Germany has followed a pattern similar to Sweden, the Netherlands and Ireland in the years since 2000, improving at a quicker rate than the average of OECD member countries (below).



Source: Author's graph based on UNDP, Human Development Report 2008

The Human Development Report evaluates the extent of gender equality through the gender-related development index (GDI). GDI measures achievements in the same dimensions using the same indicators as the HDI but captures inequalities in achievement between women and men. Germany ranks 31st out of 156 countries with data. To further evaluate the role played by women in economic and political life, the Human Development Program tracks the share of seats in parliament held by women, of female legislators, of senior officials and of managers, of female professional and technical workers. Together with the gender disparity in earned income these parameters allow the construction of the Gender Empowerment Measure (GEM). Germany ranks very highly in 9th place out of 93 countries in the GEM.

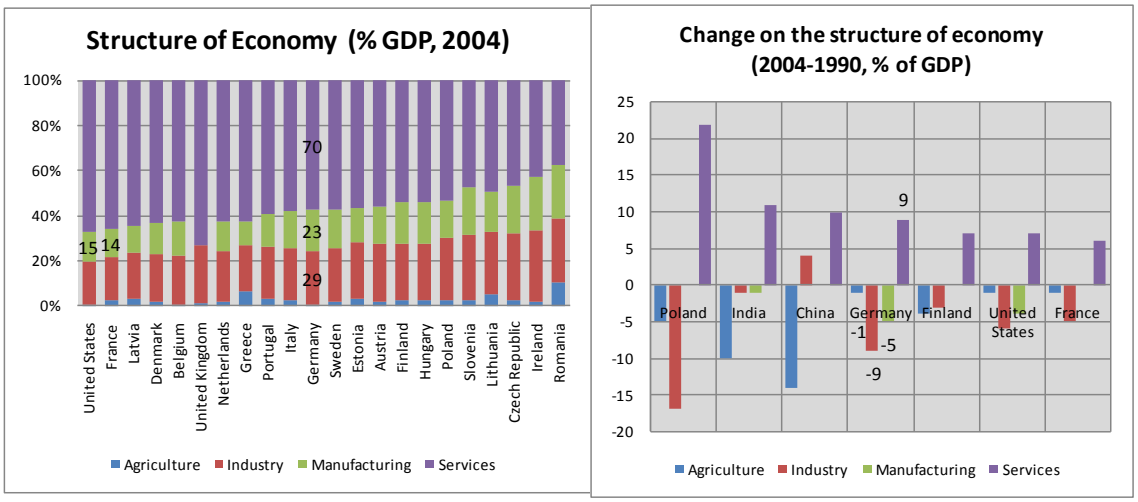
After a period of reduction (from 1996 to 2001) the inequality of income distribution expressed as the ratio of the top quintile to the lowest quintile has increased in Germany from 3.8 in 2005 to 5.0 in 2007. Nonetheless, Germany's inter-quintile ratio is only slightly higher than EU 15, 25 and 27 averages. The figure below compares Germany with the EU's most and least compressed countries in income terms.



Source: Author's graph based on Eurostat, 2009

1.4. The structure of the economy

German economic structure is increasingly dominated by a growing services sector.

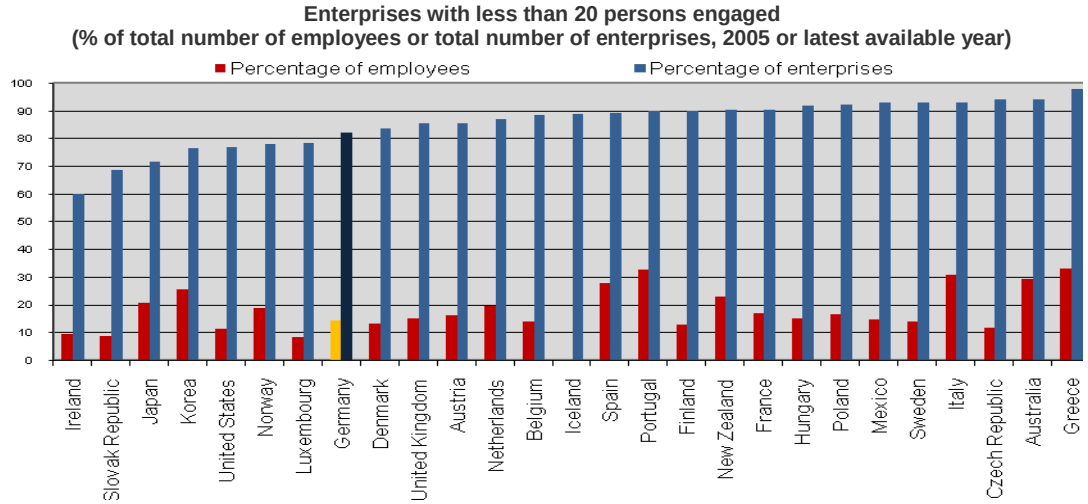


Source: Author's graphs based on Eurostat, 2009

From 1990 to 2004, the sectoral distribution of GDP declined in agriculture, industry and manufacturing and increased in the service sector, in a process whose main drivers have been German reunification and the search for international competitiveness. Nonetheless, it must be noted that the share in wealth generated by the German manufacturing sector is greater than the USA's and seven other EU Member States. This feature has important consequences for the approach of Germany to economic and social development and, as consequence, on public authorities and social partners' attitudes and preferences *vis-à-vis* restructuring. As has been noted[3], German public debate on restructuring gives more room to the "Standort" – Germany's competitiveness as a country with a significant productive structure - than in some other European countries. The reduction of 5% in the share of the manufacturing sector that took place during the 1990's and early 2000's cannot be considered to amount to a major change in the overall structure of the German economy.

1.5. The position of small and medium sized companies

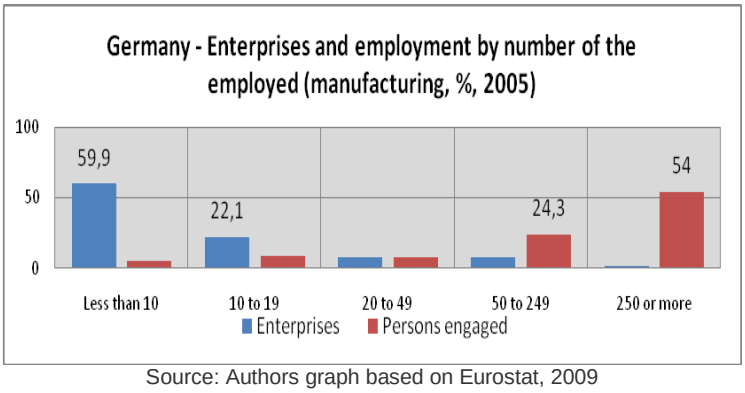
Germany ranks 20th out of 27 OECD member countries on the share of enterprises with less than 20 employees.



[3] See, for instance, MIRE, *Germany: Negotiating Restructuring, http://mire-restructuring.eu/*

Source: OECD Factbook, 2008

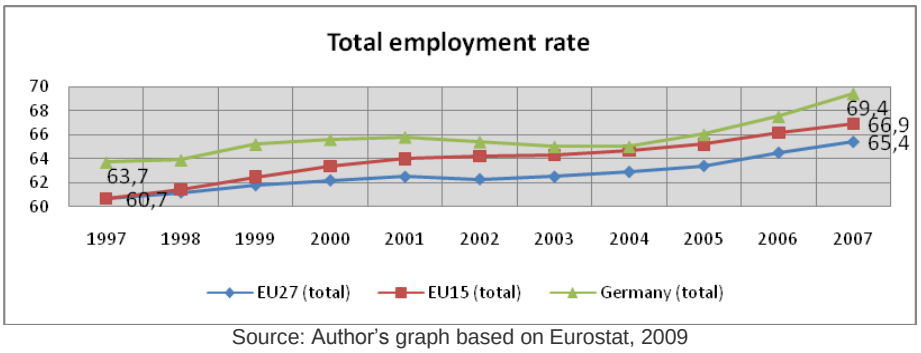
Notwithstanding this, in the manufacturing sector four out of five enterprises have less than 20 employees although the employment share of companies with 250 or more employees is more than a half of total employment.



Source: Authors graph based on Eurostat, 2009

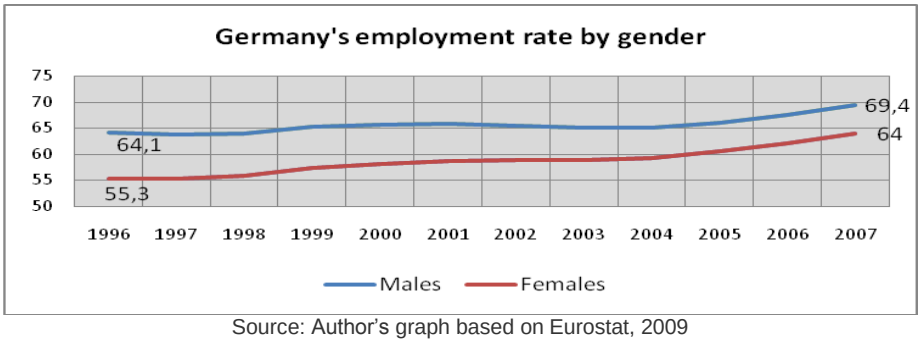
1.6. Employment and unemployment

Germany ranks fourth out of the 27 EU member states as far the country's activity rate is concerned according to 2007 data. German activity rates increased over the period from 2000 to 2007, remaining above both the EU15 and EU27 averages. The total employment rate improved 5.7% during the last decade - one point more than EU15 average. Germany's overall employment rate in 2007 (69.7%) was very close to the Lisbon target for 2010 (70%). Female and older workers employment rates in Germany are already higher than the respective Lisbon target for 2010 (60% and 50% respectively).



Source: Author's graph based on Eurostat, 2009

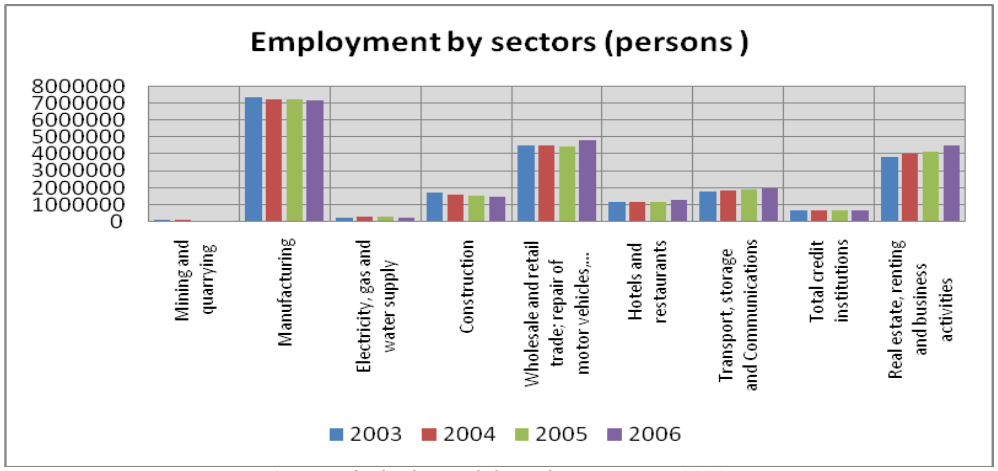
From this data it is clear that the German female employment rate is higher than the EU average and the male's rate correspondingly lower.



Source: Author's graph based on Eurostat, 2009

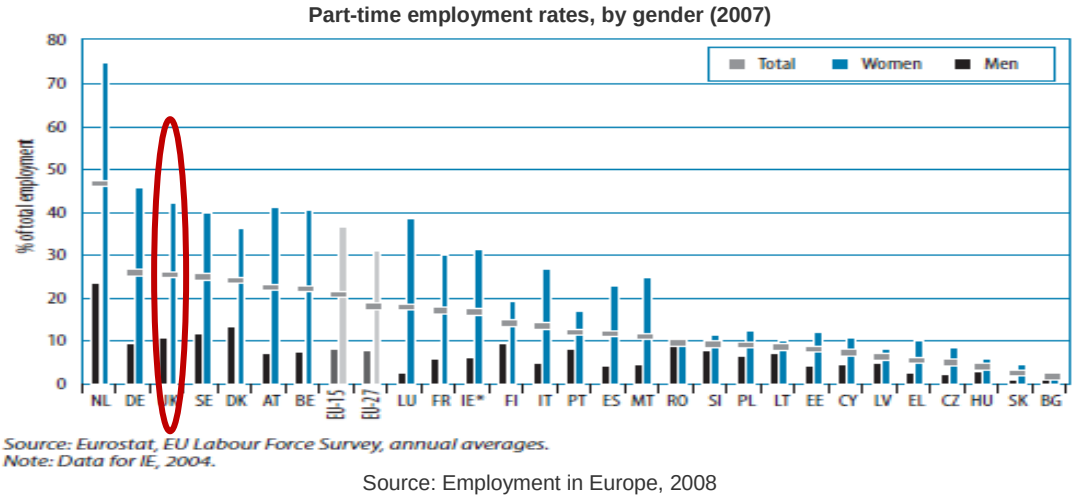
The three main sectors where German employment is concentrated are "manufacturing"; "wholesale and retail trade"; and "real estate, renting and business activities". During the last

four years with available information, Eurostat has registered a small decline in employment in "manufacturing" and small increases on the other two sectors. Consequently, a comparison of the development of GDP and of employment by sectors illustrates the relevance of the debate on "*Standort*" mentioned above.



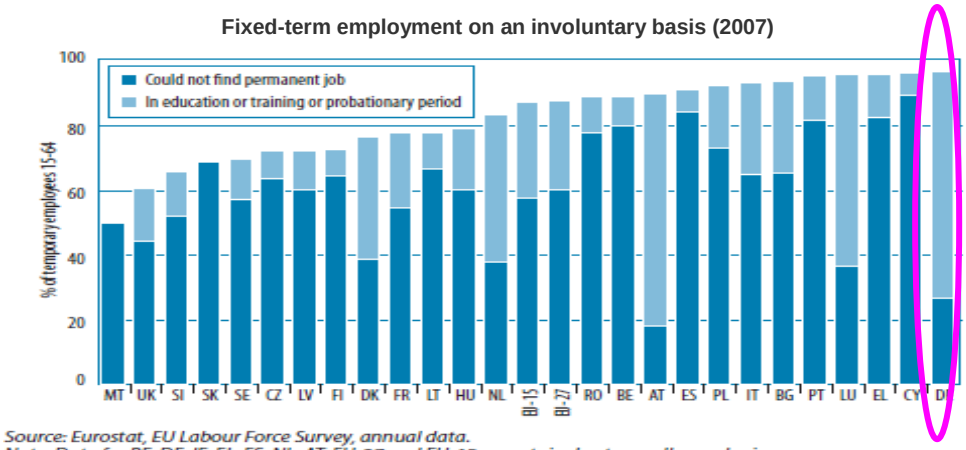
Source: Author's graph based on Eurostat, 2009

The German part-time share of total employment is the second highest in Europe, immediately after the Netherlands. The incidence of part-time working grew from 2001 to 2007 for both male and female workers, although the performance of part-time work still remains highly gender-biased. In 2007 the share of part-time on the male total rate was 9.5%, while the corresponding female rate was 46.2%. Although Germany's change in the share of part-time on total employment since 2000 has made it the second highest in the EU 27, the proportion of Germans who work part-time on an "involuntary" basis is only slightly higher than the EU27 average.



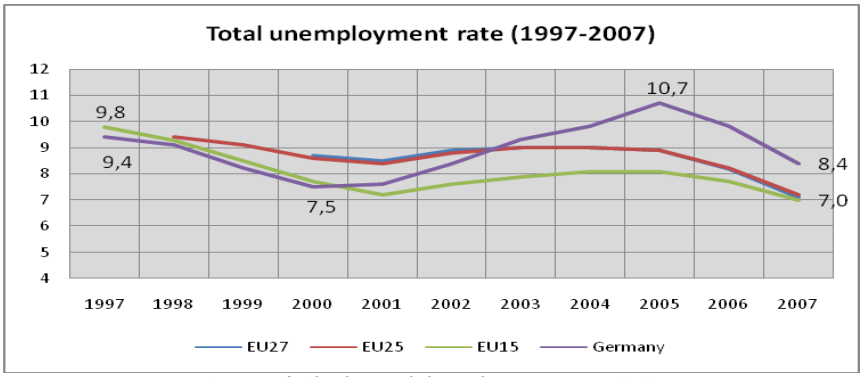
Source: Employment in Europe, 2008

Germany's rate of fixed-term contract on an "involuntary" basis was the highest of EU27 in 2007. However, two important national characteristics must be considered. First, the number of involuntary fixed-term contracts due to participation in education or training or to probationary periods is the second highest on EU27, immediately after neighbouring Austria. Second, Germany's change in the share of fixed-term contracts on an involuntary basis sits comfortably between the EU15 and EU27 averages. As a result, data on the figure below must be interpreted in the context of the changing landscape of Germany's employment and unemployment.



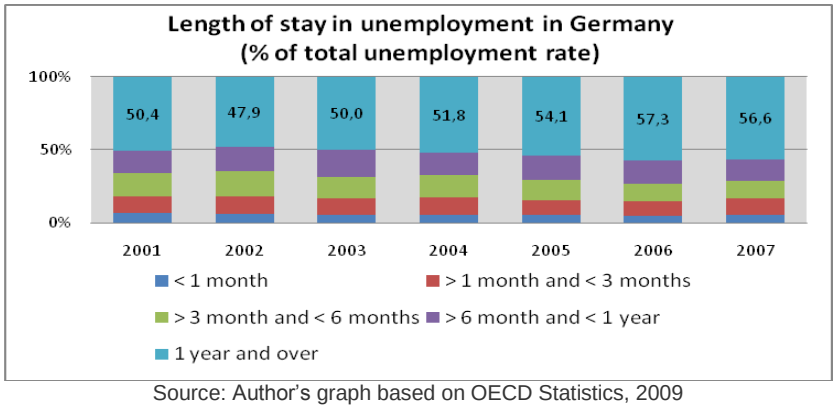
Source: *Employment in Europe*, 2008

Unemployment in Germany declined from 1997 to 2000, increased from 2000 to 2005 and declined again until 2007. According to Eurostat data, in September 2009, Germany's total unemployment rate stands stable at 7.6%, below the EU27 average (8.7%) and the EU15 average (8.8%)



Source: Author's graph based on Eurostat, 2009

According to European Commission estimates[4], Germany's structural unemployment rate is the fifth highest in EU27. OECD data seem to confirm this evaluation as those unemployed and unable to find employment after one year or more is rising.



Source: Author's graph based on OECD Statistics, 2009

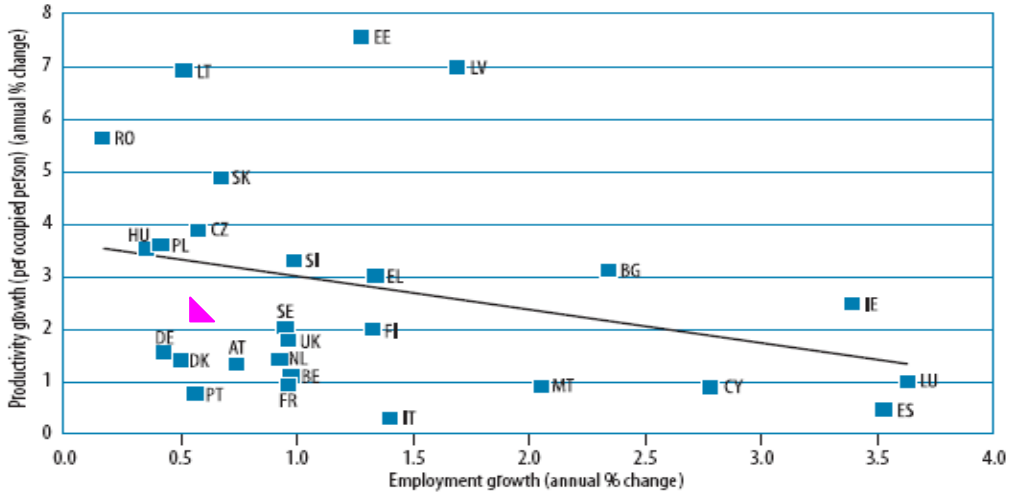
[4] See *Employment in Europe, 2008*: 37.

Germany's long-term structural unemployment rate ranks second out 31 OECD member countries and unemployment of workers aged 55-64 in Germany (15.9%) is almost the double the OECD European average (8.3%).

1.7. Labour productivity, labour costs and compensation

Germany ranked 19th out of 27 EU member states on productivity growth per person employed in 2007, albeit from a very high productivity base.

Employment and labour productivity rates
(Average annual growth rates, 2000-07)

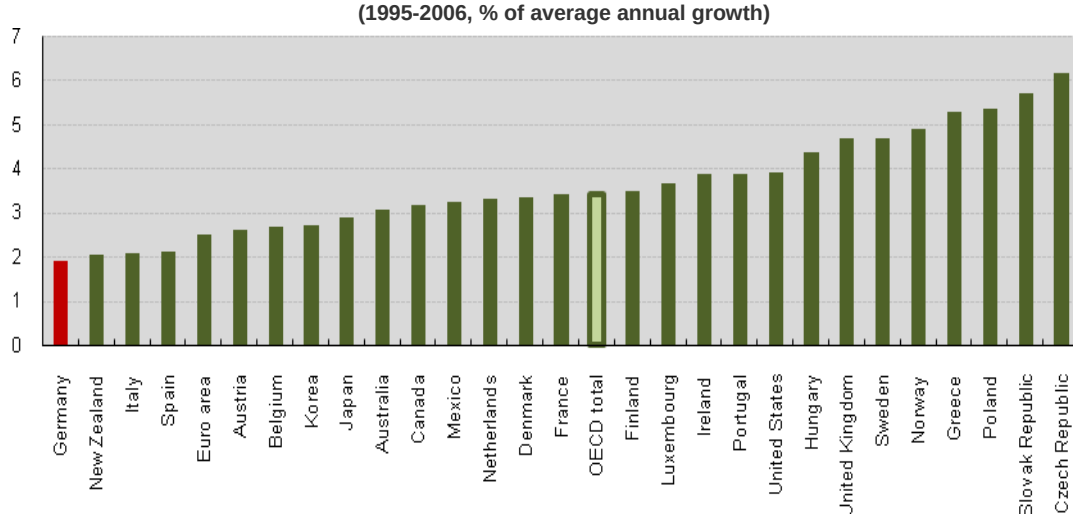


Source: DG EMPL calculations based on Eurostat and AMECO database, Commission Services.
Source: *Employment in Europe*, 2008: 39

As the above figure shows, the development of both employment and productivity in Germany has recently been lower than the European average.

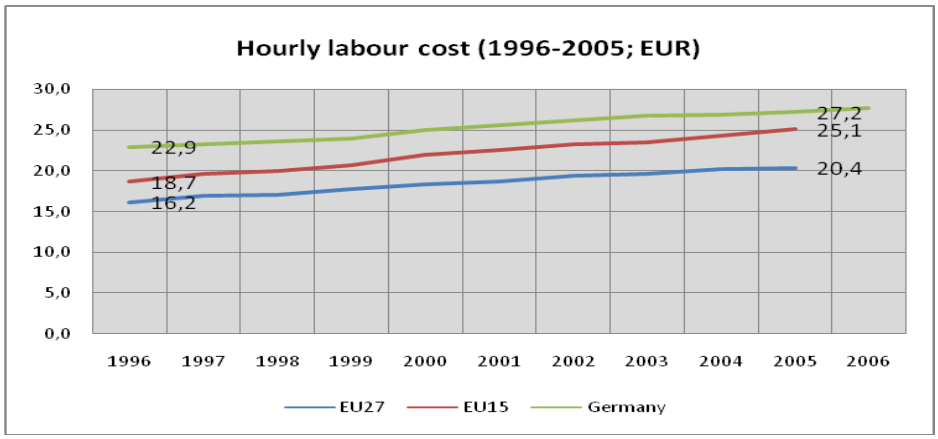
Over the period from 1995 to 2006 the annual growth in labour compensation per employee in the total economy was the lowest in the OECD area.

Labour compensation per employee on total economy
(1995-2006, % of average annual growth)



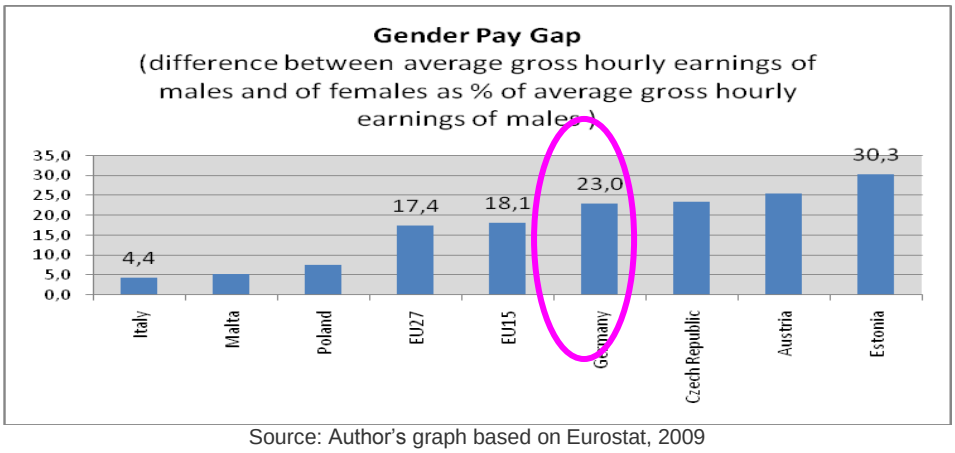
Source: OECD *Factbook*, 2008

Although hourly labour costs in Germany remain higher than the EU 15 and 27 averages, the gap has narrowed substantially over the last decade.



Source: Author's graph based on Eurostat, 2008

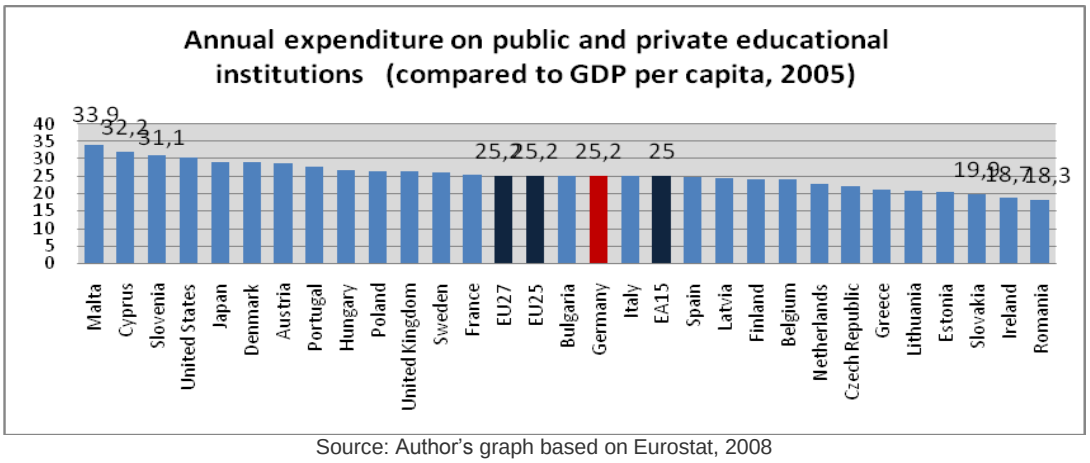
The unadjusted Gender Pay Gap (GPG) represents the difference between average gross hourly earnings of male paid employees and of female paid employees as a percentage of average gross hourly earnings of male paid employees. GPG in Germany is wider than the European average. The illustration below compares Germany's unadjusted GPG to the the European average and to the best and worse European performers.



Source: Author's graph based on Eurostat, 2009

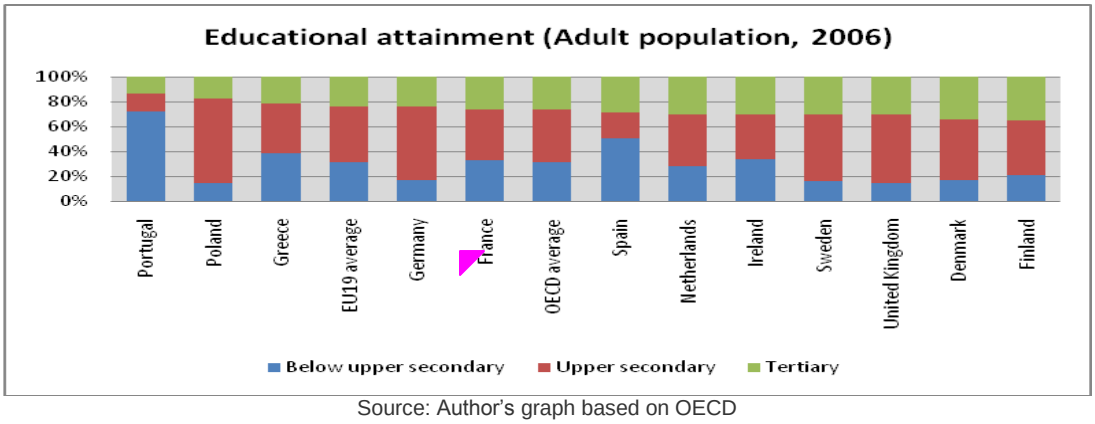
1.8. Educational attainment and qualification

Although Germany's private investment in education ranks 3rd out of 27 EU Member States, the country's overall investment in education is equal to the European average.



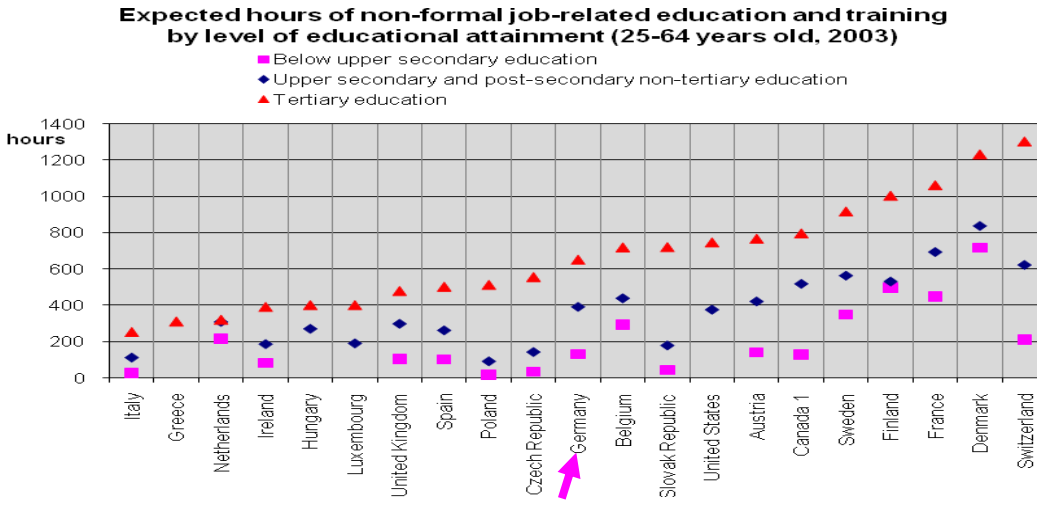
Source: Author's graph based on Eurostat, 2008

Germany has relatively low proportions of the population in tertiary education and below upper secondary and a very high proportion with upper secondary education. These indicators seem consistent with the sectoral distribution of employment and the relatively high proportion of employment in the manufacturing sector.

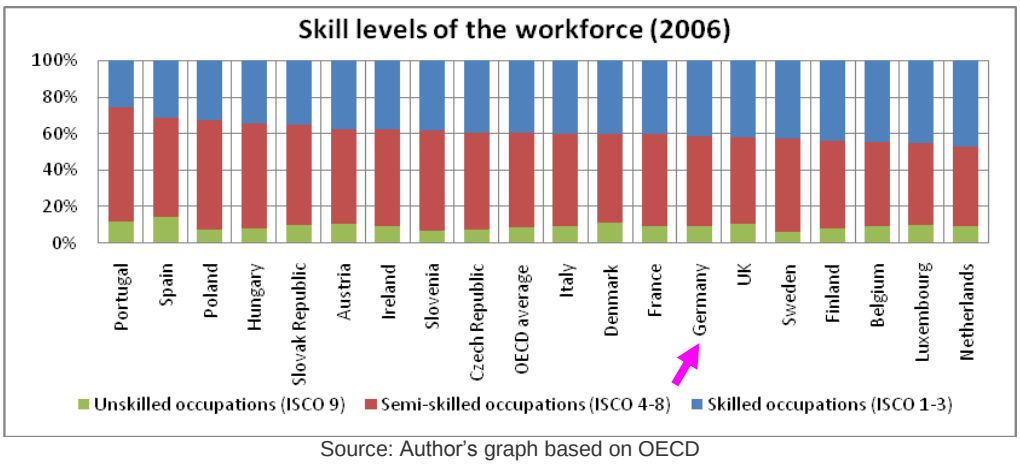


Source: Author's graph based on OECD

The analysis of German levels of access to job-related education and training gives similar results, with the country palced in a median position.



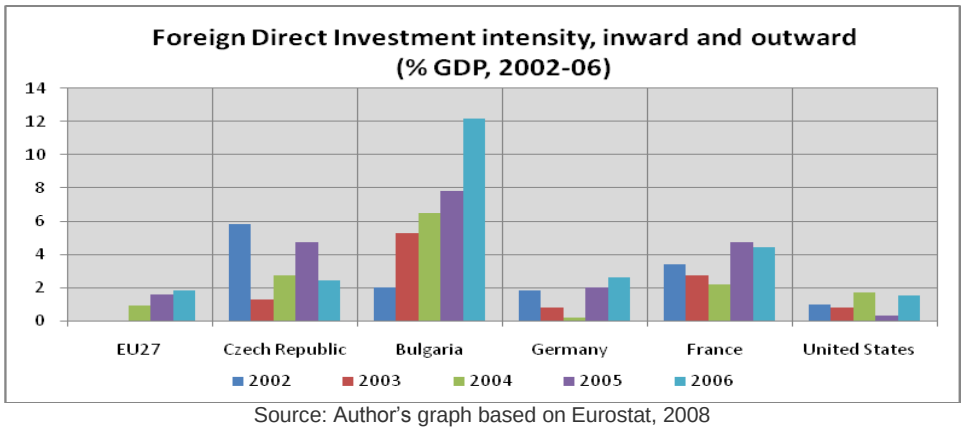
Germany's position on the ranking of skill levels of the workforce is also consistent with the data above with the country ranking between the OECD average and its best performers.



Source: Author's graph based on OECD

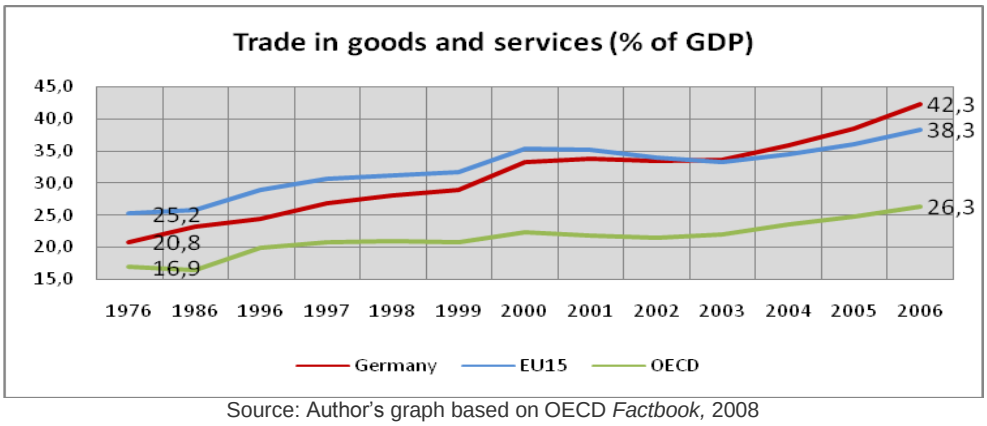
1.9. The development of foreign trade and direct investment.

Foreign Direct Investment (FDI) in Germany's economy expressed as a percentage of GDP has increased during recent years at a greater rate than both the EU27 average and USA scores, but below the level of France.



Source: Author's graph based on Eurostat, 2008

Germany remains one of the world's most successful exporters and its external trade in goods and services has more than doubled during the last three decades. The country's external trade profile has outperforming the both the EU15 and OECD averages since 2003.



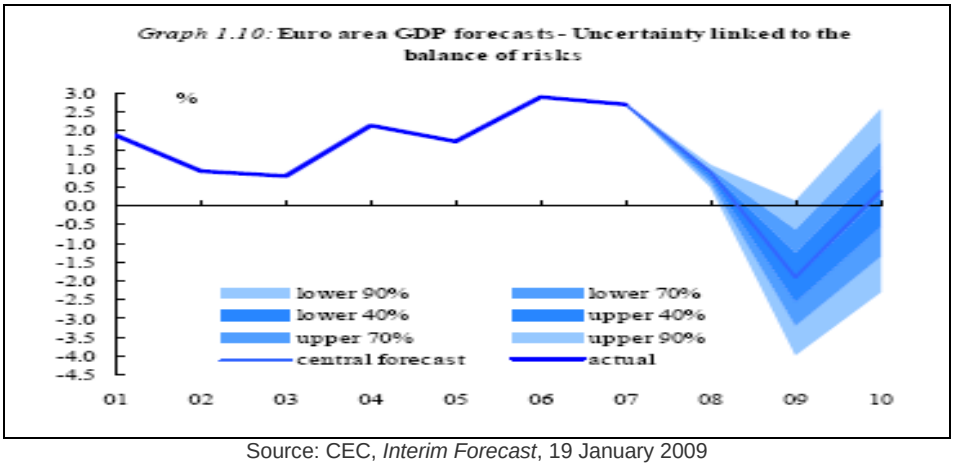
Source: Author's graph based on OECD *Factbook*, 2008

1.10. The current global economic crisis

On the 19th January 2009, the European Commission made public the following interim forecast;

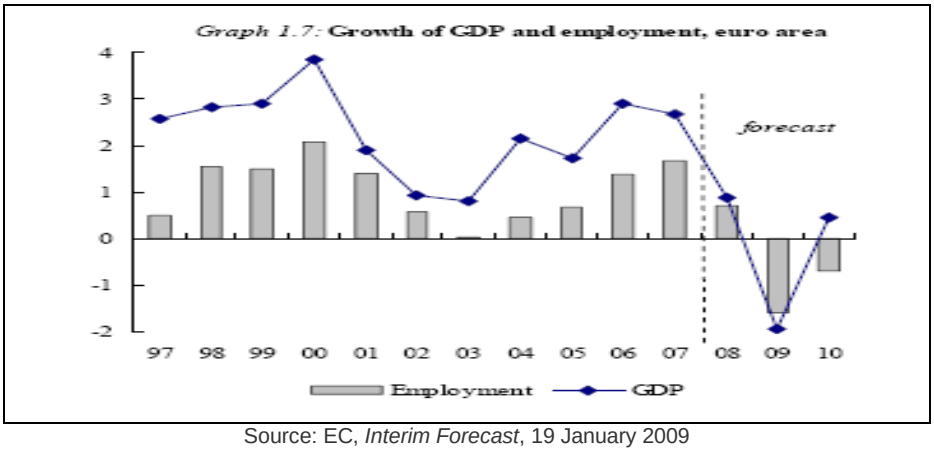
> *"Conditions in the financial markets deteriorated at breakneck speed last autumn, reinforcing the global economic downturn. […] A systemic meltdown was avoided due to massive liquidity injections by several key central banks together with rescue packages put together by national authorities. As a result, several stress indicators have visibly eased recently. […] Evidence is mounting that the risk of an adverse feedback loop between the financial and real sectors is now materialising, as the rapidly deteriorating conditions on the real side affect financial institutions. With the banking sector in the eye of the storm, financing costs have increased and bank lending to the private sector is tightening, especially to households".*

Like other international organisations' forecasts on the current crisis, the above is based on a range of assumptions built into the underlying model and is subject to perhaps large and unquantifiable margins of error.



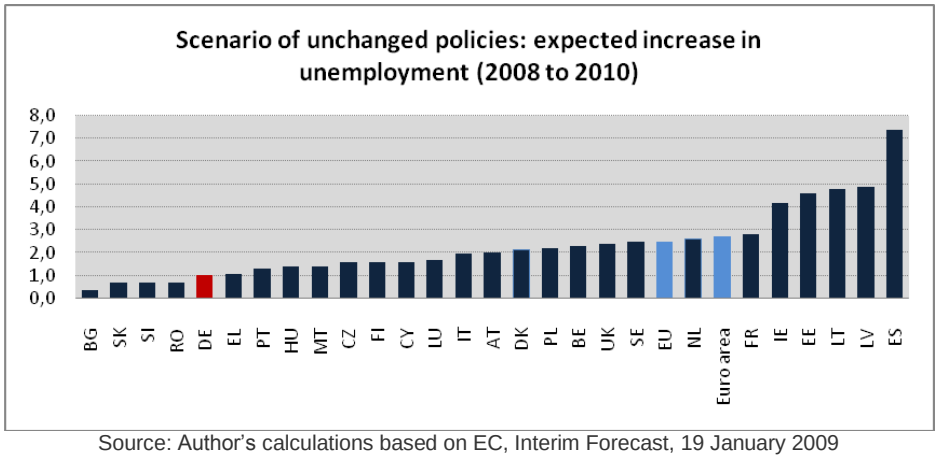
Source: CEC, *Interim Forecast*, 19 January 2009

Nonetheless, it seems probable that a broad-based downsizing across countries throughout the world, including on the so called BRIC[5] economies, will take place. Although different EU Member States will be subject to the crises of differing lengths and depths, overall a recession in the Euro area is more or less taken for granted.



Source: EC, *Interim Forecast*, 19 January 2009

The graph below illustrates the variability of the expected effects of the current crisis on unemployment, based on a scenario of unchanged policies.



Source: Author's calculations based on EC, Interim Forecast, 19 January 2009

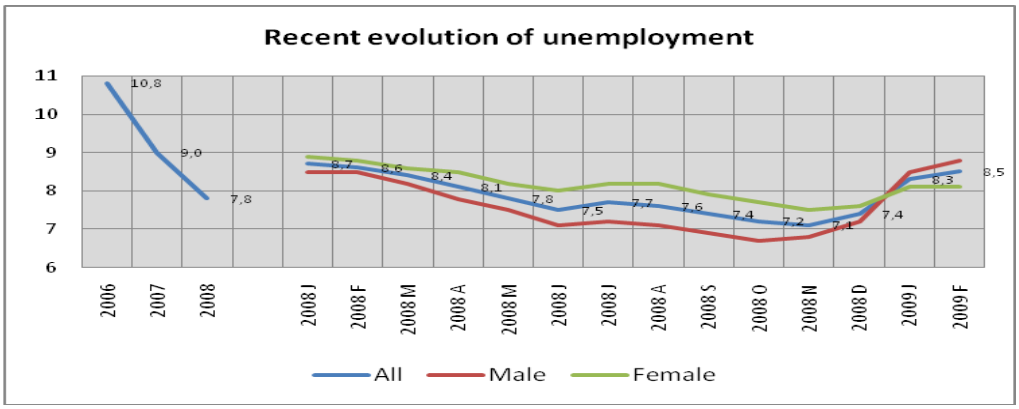
[5] Brazil, Russia, India, and China

According to the European Commission forecast, although a deeper GDP decrease in 2009 is expected for Germany than for the EU globally, the country is expected to perform better than the EU average in 2010.

EC Interim Forecast 19 January 2009 (Real annual % change, unless otherwise stated)			
		EU	Germany
GDP	2009	-1,8	-2,3
	2010	0,5	0,7
Employment	2009	-1,6	-0,8
	2010	-0,5	-0,5
Unemployment rate	2009	8,7	7,7
	2010	9,5	8,1
Government balance (% GDP)	2009	-4,4	-2,9
	2010	-4,8	-4,2

Source: Author's calculations based on EC, *Interim Forecast*, 19 January 2009

The first effects of the crisis on the "real economy" are already apparent in increasing unemployment. The decline in Germany's unemployment rate halted in December 2008 and the trend-line has moved into reverse.

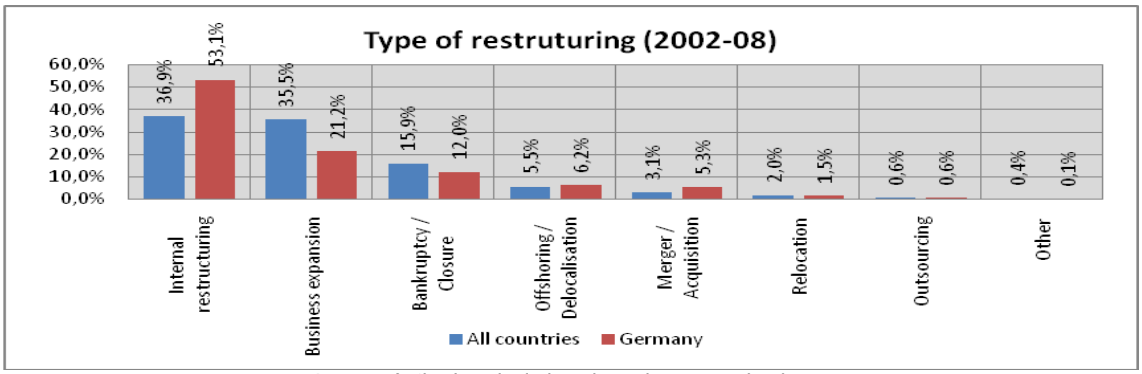


Source: *Statistik der Bundesagentur für Arbeit*, 2009

At the time of writing, the immediate prospects moving forward were not good. Since the beginning of the current crisis, every forecast published by the international organisations and by the European Commission has been more pessimistic than the previous one, suggesting that the depth and scope of the crisis is not yet fully understood.

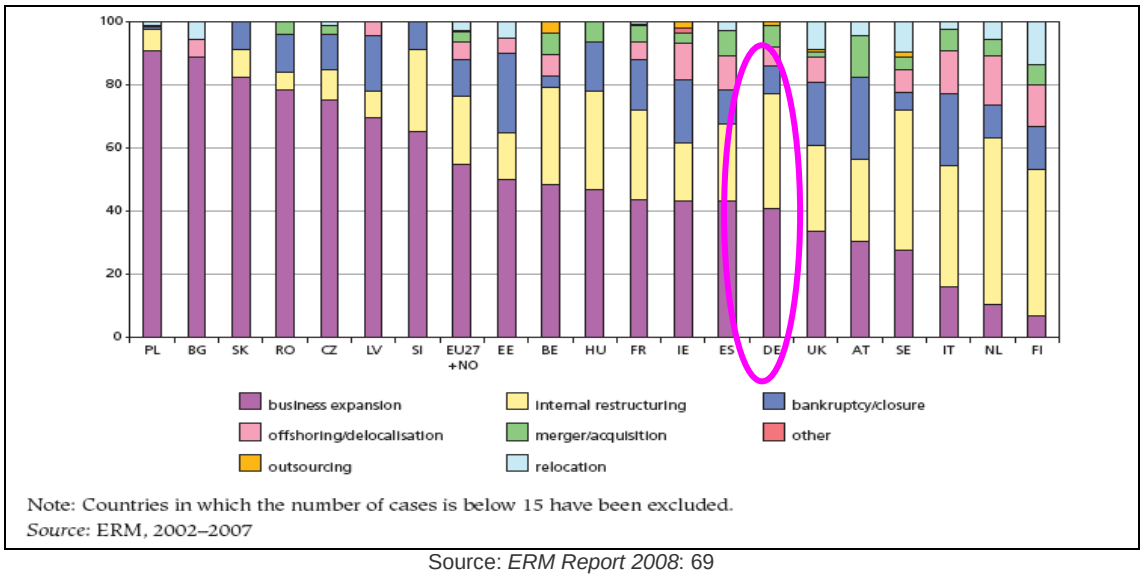
2. The nature and extent of restructuring

It is extremely difficult to evaluate the extent and the nature of restructuring as no set of reliable and comprehensive statistics is available, either for Germany or at the European level. Eurofound's European Monitoring Center on Change publishes a database on restructuring and its effects on employment. Unfortunately, the methodology used to collect data has strong limitations, as it is based on media coverage analysis. According to this source, internal restructuring has been more frequent in Germany that in the European countries as whole and, conversely, business expansion has been less frequent.



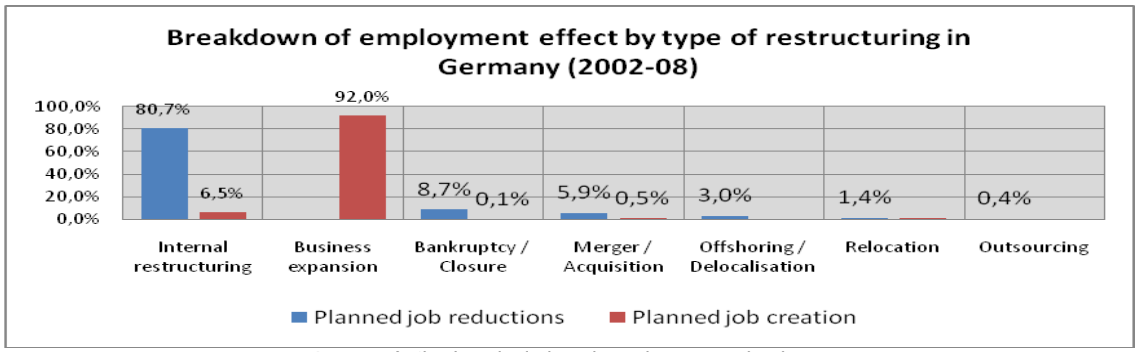
Source: Author's calculations based on ERM database

The figure below compares data from the same source for the year 2007.



Source: *ERM Report 2008*: 69

Not surprisingly, in the German case the expected employment effects differ according to the type of restructuring, with internal restructuring producing both job creation and job reductions and with business expansion inducing only job creation. Bankruptcy, mergers and acquisitions, offshoring and relocations are expected to produce only negative effects on employment.



Source: Author's calculations based on ERM database

Another source of data which estimates the effects of two specific forms of restructuring, relocation and outsourcing, is the works council survey conducted by the Institute of Economic and Social Research (*Wirtschafts- und Sozialwissenschaftliches Institut, WSI*). The survey covers a representative sample of establishments with 20 or more employees and a works

council. The results obtained by the last survey[6] suggest that these two forms of restructuring may be more frequent than indicated by ERM database.

Incidence of relocations and outsourcing by sector (2005 to 2007, %)		
Economic sector	**Relocation**	**Outsourcing**
Whole economy	7.7	11.5
Manufacturing	8.8	11.0
Private services	7.0	11.7

The same survey indicates that the frequency of relocation and outsourcing increases with the size of the enterprise considered.

Relocations and outsourcing by size of establishment (2005 to 2007 %)		
Number of employees	**Relocation**	**Outsourcing**
20–99 employees	5,7	7,6
100–499 employees	8,3	13,2
500 or more employees	14,2	22,8

Note: In both tables figures are based on responses from all establishments with at least 20 employees and a works council. Source: Dribbusch, Heiner in EIRO, 2008. Based on WSI works council survey, 2007

Another relevant finding of the survey is that the vast majority of relocation and outsourcing decisions target, at least partially, the German territory.

Target destination of relocations and outsourcing (%)			
	Germany	**Foreign countries**	**Both**
Outsourcing	68,7	19,9	11,5
Relocation	85,0	5,6	9,4

Note: Figures in all tables are based on responses from all establishments with at least 20 employees and a works council. Source: Dribbusch, Heiner in EIRO, 2008. Based on WSI works council survey, 2007

Source: Dribbusch, Heiner in EIRO, 2008. Based on WSI works council survey, 2007

An analysis of previous surveys conducted by the WSI offers results consistent with those in the quoted study[7].

2.1. Structural change in employment

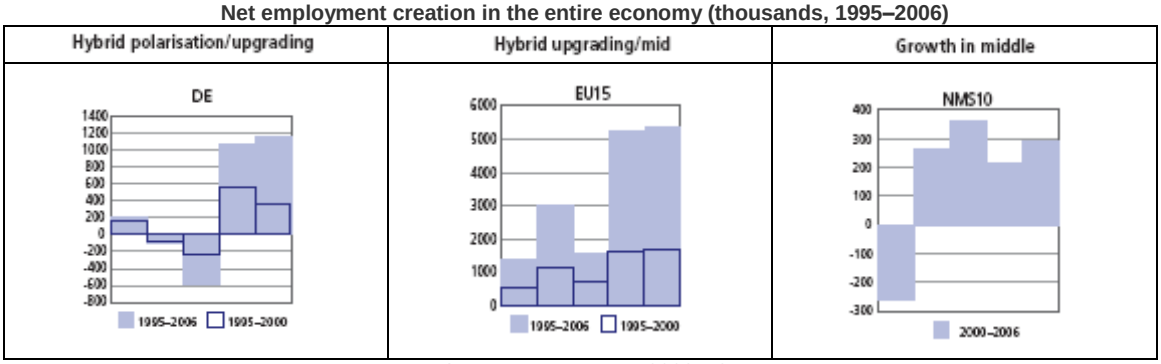
A recent report[8] based on employment data taken from the European Labour Force Survey, ranks jobs in each country using the European Structure of Earnings Survey and the European Survey of Income and Living Conditions (EU-SILC). The consolidated data base is called the European Jobs Project Database. The structure of employment of each country is classified into a matrix of "jobs", i.e., a table in which the columns are economic sectors and the rows are occupations. Calculating the median hourly wage for each of the cells in the jobs matrix, and ranking them accordingly (within each country), allows the "jobs" to be divided into quintiles, i.e., by dividing the whole working population of each country into five equal-sized groups. Quintiles are, as usual, numbered, from bottom to top, one to five. Analysis of this data shows that the development of net employment creation differs both quantitatively and qualitatively across EU and that Member States can be grouped according to identified trends.

[6] The survey was carried out between September and November 2007. See http://www.eurofound.europa.eu/eiro/2008/10/articles/de0810029i.htm

[7] See Behrens, Martin and Jürgen Kätdler: *Company Restructuring: the impact of management levels on Codetermination in Germany*, Paper prepared for presentation at the 8th IIRA Congress, Manchester, 2007.

[8] Fernández-Macías, Enrique and John Hurley, *ERM REPORT 2008 More and better jobs: Patterns of employment expansion in Europe*, Dublin, Eurofound, 2009.

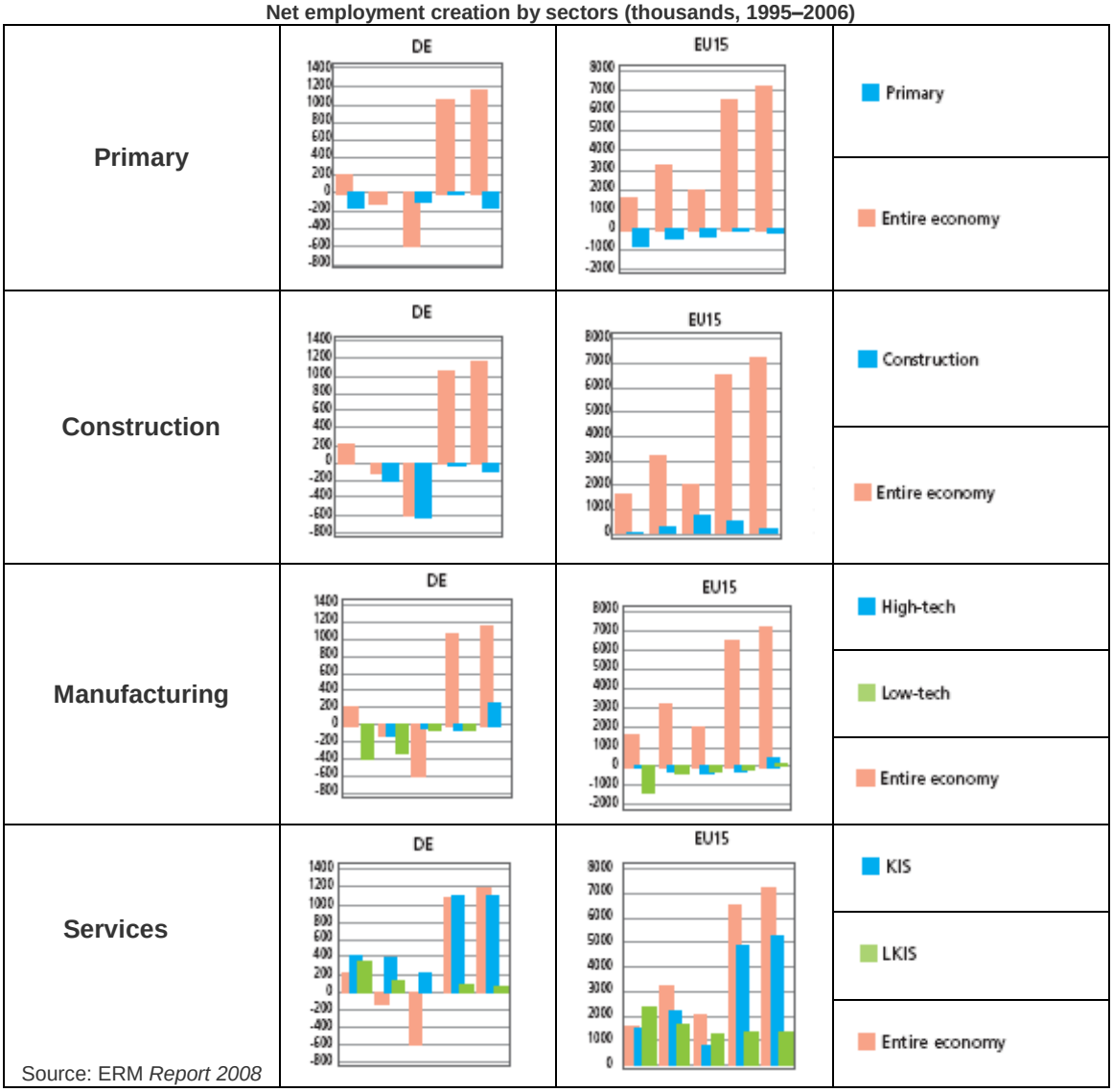
Net employment creation in the entire economy (thousands, 1995–2006)



Source: *ERM Report 2008*: 12

The study classifies countries into five groups, named “Polarization”, “Hybrid polarization/ upgrading”, “Upgrading”, “Hybrid upgrading/mid” and “Growth in middle”. Germany, together with Belgium, Austria, the UK and Slovenia are grouped by the researchers under the heading of “Hybrid polarization/upgrading” to underline the existence of a polarized pattern, although more skewed towards the top of the employment structure than in the Netherlands, France, Cyprus, Slovakia and Hungary, a group of countries that showed a balanced polarized pattern of job growth, with intense job creation at the top and at the bottom and a big gap in the middle.

Net employment creation by sectors (thousands, 1995–2006)



Source: ERM *Report 2008*

The outcomes of this study for Germany seem consistent with both the sectoral structure of employment[9] and the skill levels of workforce[10]. From a sectoral point of view, net creation of employment in Germany shows the following main trends:

- In the primary sector, while in the EU15 most of the jobs destroyed in the primary sector were in the two bottom quintiles, in Germany job destruction in the upper quintiles was also relevant;
- In the construction sector, a sector that is subject to very strong cyclical variations, net job destruction in Germany is concentrated in the middle quintile, although it has also been sizeable in the upper quintiles; in the entire EU15 net creation took place in all quintiles, especially in the middle one;
- In manufacturing, Germany witnessed a substantial loss of low-tech jobs on the first and second quintiles; on the second, third and fourth quintiles, net negative effect was present for both high-tech and low-tech jobs; net creation of high-tech jobs, albeit a substantial one, took place only in the upper quintile. Quoting this study;

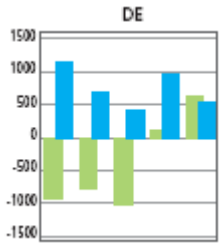
> "*[this] implies that some employment in manufacturing in Germany has shifted towards higher value-added, higher-technology jobs; but it also suggests that many low value-added German industrial jobs (of the low-tech and low-pay) have simply disappeared or moved elsewhere*"[11];

The EU15 as a whole witnessed net job destruction of both types declining in all quintiles;

- In the services sector, net creation of employment has been positive in Germany for all quintiles and both for low knowledge-intensive services (LKIS[12]) and for knowledge-intensive services (KIS), with KIS jobs growing at higher levels than LKIS ones; in the EU15 as a whole, net employment creation has been positive in all quintiles, either for KIS or LKIS jobs.

As far as the quality of employment is concerned, the results may be summarized as follows:

Net employment creation by status (1995-2006)

<table>
<tr><td rowspan="2">Part-time</td><td> 
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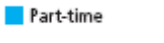
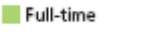
</td><td rowspan="2"> 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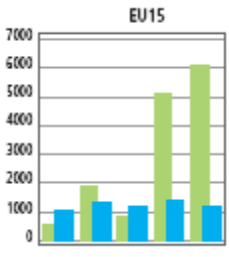
<tr><td>Fixed-term</td><td> 
</td><td> 
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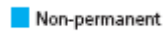
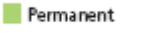


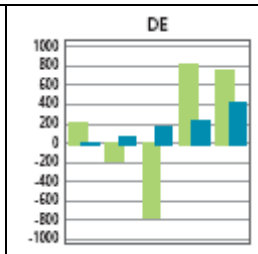
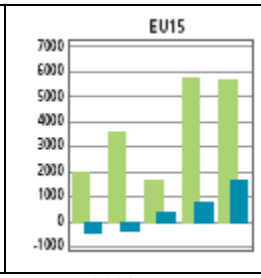


9 See page 12 of this dossier.

10 See page 18 of this dossier.

11 See below the conclusions of the WSI studies on offshoring and relocation.

12 LKIS include retail, hotels, restaurants and catering, land transport, public administration, recycling and private households. KIS sectors include transport and communications (except land transport), financial and business services, education, health and recreational services.

Self-employment			Self-employed Employee

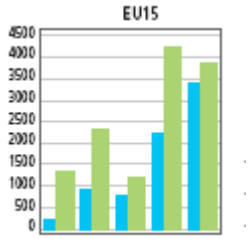
Source: ERM *Report 2008*

The quality of job creation in Germany when compared with the EU15 as a whole shows significant differences:

- *Part-time/Full-time*: In Germany there is a net creation of part-time jobs in all quintiles; a net destruction of full-time jobs in lower and middle quintiles but net creation of full-time jobs in the two upper quintiles. In the EU15 the net destruction of full-time is restricted to the lowest quintile;
- *Fixed-term/Permanent jobs*: In Germany, there is a net creation of fixed-term jobs in all quintiles and net destruction of permanent jobs in lower and middle quintiles. At the EU15 level there is a net creation of both type of jobs in all quintiles;
- *Self-employment/Employees*: Germany has seen an increase of self-employment in all quintiles. Conversely there has been a reduction in the number of "employees" in the second and third quintiles and a growth of "employee" jobs in the upper quintiles. By comparison, at the EU15 level there has been a net reduction of self-employment in lower quintiles and growth of the number of employees in all quintiles.

In summary, the development of employment in Germany involved a larger growth in atypical employment than in the EU15 as whole.

Net employment creation by gender (1995-2006)

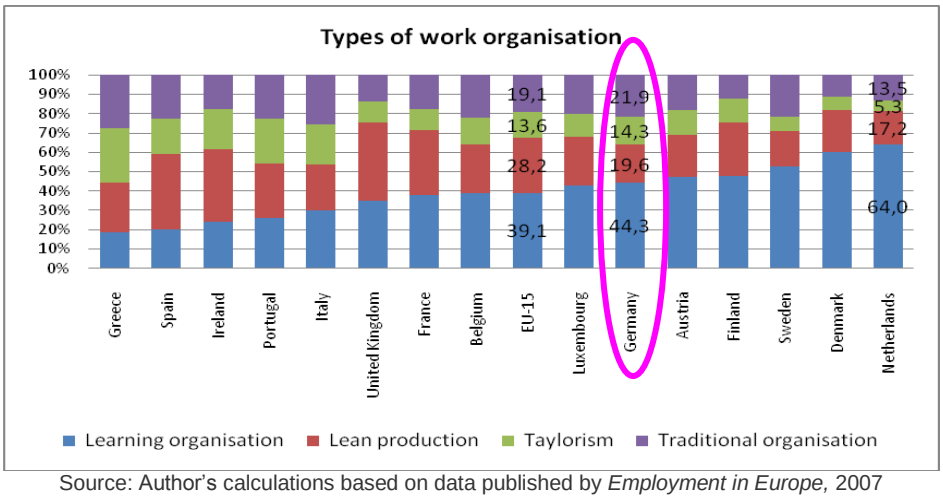
		Women Men

Source: ERM *Report 2008*

From the gender point of view, Germany has seen a net destruction in men's employment from lowest to middle quintile and the opposite trend on the higher quintiles whilst the women's trend was typically a hybrid polarization combined with upgrading. In the EU15 during the eleven years under analysis the data show net employment creation in all quintiles for both women and men, with sizeable concentration on higher quintiles, which is more intense for women than for men.

2.2. Effects on work organization

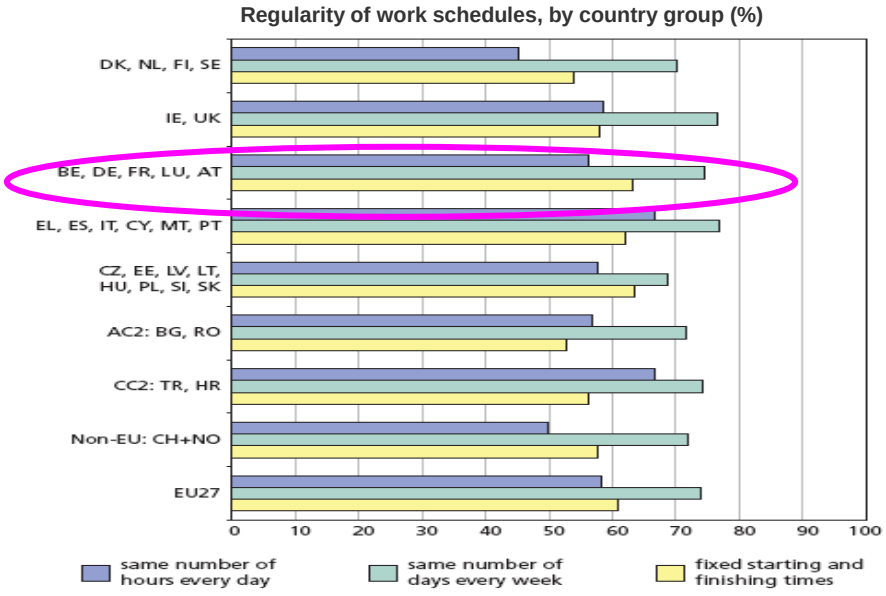
The changes described above appear entirely compatible with the types of work organization that predominate in Germany.



Source: Author's calculations based on data published by *Employment in Europe*, 2007

The graph above shows that advanced forms of work organization – learning organization and lean production – represent together almost two thirds of the world of work in Germany. Whilst this result clearly places Germany in the "modern" side of the graph it also show that in five out of 15 Member States measured, "modern" types are more represented than in Germany.

On working time flexibility (below) Germany belongs to the third group, which makes the country one of the Europe's better performers on this type of internal flexibility.



Source: Eurofound, *4th. European Working Conditions Survey*. 2007.Data refers to 2005

The above mentioned analysis on organisational models and on working time arrangements are consistent with the results obtained by another researcher[13] that studied the prevalence of flexibility in European systems of employment.

[13] See Auer, Peter: *Security in labour markets: Combining flexibility and security for decent work*, Economic and Labour Market Papers, Geneva, ILO, 2007.

Enterprise and worker oriented flexibility in Europe

	High degree of worker oriented flexi**	Low degree of worker oriented flexi
High degree of enterprise oriented flexi*	NL (3,1), SWE, DK, FIN, DE (6,5) BE, IE	UK (1,8)
Low degree of enterprise oriented flexi	↑ [A(10,7)]	PT (15,15), LUX, ES, EL, IT, FR

Source: Auer, 2007: 7

As the figure above shows, according to the results obtained by the ILO, Germany is one of the countries with high levels of flexibility, both enterprise- and worker-oriented.

Section two: The role of the German social partners in restructuring

In summary;

- Workers representation in Germany is based on the so-called “Dual System”. The trade unions, primarily at the sectoral level, engage in collective bargaining on pay and conditions of work. Elected works councils engage in discussions at the enterprise and company level on the introduction and management of change, including restructuring;
- Trade union density in Germany is around the average for EU countries but collective bargaining coverage is high as a consequence both of sectoral bargaining and the use of extension mechanisms;
- Whilst collective bargaining centralisation remains high, recent years have seen some decentralisation through the increasing use of “opening clauses” that permit controlled variations from the sectoral agreement;
- The tendency in recent years in collective bargaining has been toward pay moderation with the objective of achieving greater job security. Opening clauses have also been used extensively to trade greater flexibility, particularly in working time arrangements, for enhanced job security;
- The influence of employee representatives on restructuring is primarily at the level of the enterprise or company and in works councils. German works councils have extensive rights to information and consultation, and on certain social issues enjoy the benefit of codetermination. The relationships between works councils and company management are generally based on consensus based decisions;
- Where restructuring takes place, the company and the works council negotiate a social plan to mitigate the extent and effect of job losses. In recent years greater use has been made of “transfer companies” designed to facilitate job to job transfers for those affected by restructuring;
- Recent research (referred to further below) has indicated that increased business concentration has led to an increasing distance between those managers responsible for conducting social dialogue and those responsible for decision making on major changes. Works councilors suggest that the effectiveness of social dialogue is increased when those conducting discussions are decision makers themselves or are close in the organisation hierarchy to the locus of decision taking.

1. Social Partners and Social Partnership in Germany

1.1 The German dual system: trade unions and works councils

Workers’ representation in Germany is based on the so called “dual system” of interest representation, i.e., a system where trade unions are particularly active at the multi-employer collective bargaining level and works councils undertake the key responsibility for workers representation at enterprise level.

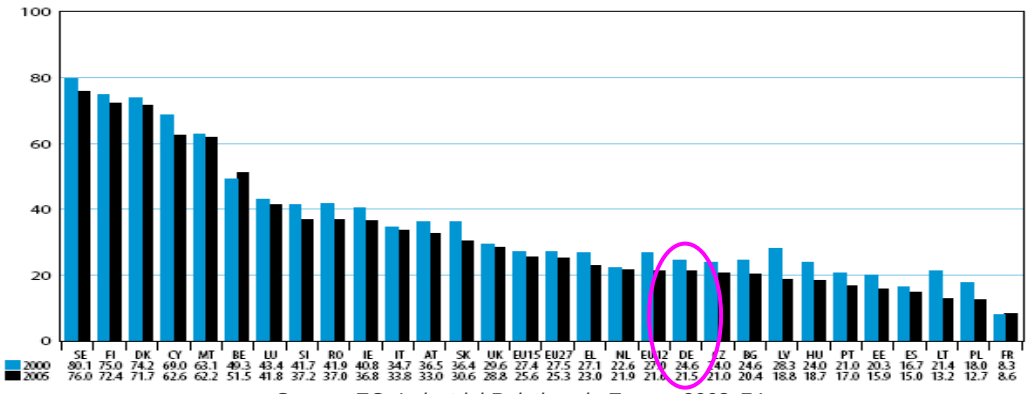
The main trade union confederation in Germany is the DGB (*Deutsche Gewerkschaftsbund* or Confederation of German Trade Unions), an umbrella organization with eight member trade unions who enjoy a considerable degree of autonomy: *IG Bauen-Agrar-Umwelt* (Construction, Agriculture, Environment); *IG Bergbau, Chemie, Energie* (IG BCE, Mining, Chemicals, Energy); *Gewerkschaft Erziehung und Wissenschaft* (Education and Science); *IG Metall* (Metalworkers); *Gewerkschaft Nahrung-Genuss-Gaststätten* (Food, Beverages, Catering); *Gewerkschaft der Polizei* (Police); TRANSNET (Transnet Railway Workers); *ver.di - Vereinte Dienstleistungsgewerkschaft* (United Services).

IG Metall (2.3 million members), ver.di (2.2 million) and IG BCE (0.7 million) are the three largest trade unions.

The DGB, founded in 1949 and a member of ETUC, represents 6.4 million workers, 85% of all trade union members in Germany[14]. The other 15% of unionized workers are members of DBB, with 1.3 million members in the public sector and former public sector such as teachers in vocational colleges or those working for the German border police[15]. or of CGB, a Christian trade union confederation with around 0.3 million members, mainly airline pilots, doctors and air traffic controllers[16]. DBB has 45 trade union members, most of them from special categories of the public sector and who are prohibited by law to negotiate pay conditions or to take industrial action. Other members of the DBB enjoy normal workers' rights and are organized in *DBB Tarifunion* (0.4 million members).

According to trade union data, membership declined by 3.3% in 2005, 2.8% in 2006 and 2.2% in 2007. Women's share of trade union membership remains unchanged at 31.9%. Trade union membership is greater among manual workers in the manufacturing sector and in the public sector and smaller in the private sector. At present, German trade union density is below the EU average.

Trade union density in Europe (2000 and 2005)



Source: EC, *Industrial Relations in Europe 2008*: 74

Works councils, set up in 1952 by the Works Constitution Act[17], may be created in all private sector workplaces with five or more workers. An analogous system of staff councils exists in the public sector. A central works council (GBR) may be elected at company level and it is possible to elect a KBR, the equivalent of a works council in a group of companies. According to data[18] published by the IAB[19], in the private sector works councils exist only in 10% of the eligible workplaces but, as they are concentrated in bigger companies, they cover 47% of the workforce in western *Länder* and 38% in the East. This source indicates that 96% of the workplaces with 1,000 or more employees had works councils. In the public sector, staff councils cover 13% of workplaces and 53% of employees.

Although works councils are not structures of the trade union movement, in 2006 73% of elected members of works councils were members of DGB unions. Similarly, DBB and DGB have a strong influence on public sector staff councils. Women's presence on works councils has increased since the 2001 amendment of Works Constitution Act, up to 25.9% in 2006.

In enterprises with more than 100 permanent employees, the law states that an economic committee, appointed by the works council or the works council itself, has the right to be consulted on economic and financial issues. Health and safety committees can be created in

[14] See http://www.eurofound.europa.eu/eiro/2008/03/articles/de0803019i.htm . Data refers to 2007.
[15] Source: http://www.worker-participation.eu/layout/set/print/national_industrial_relations/countries/germany/trade_unions
[16] See http://www.worker-participation.eu/national_industrial_relations/countries/germany
17 The Act has been amended several times since then. Last amendment dates is of 2001. See http://www.worker-participation.eu/national_industrial_relations/countries/germany
[18] Data refers to 2004. See http://www.worker-participation.eu/national_industrial_relations/countries/germany
[19] An independent institute of the Federal Employment Agency (*Bundesagentur für Arbeit*)

workplaces with 50 employees. Senior staff of companies with 10 or more senior managers may elect a body for their own representation.

1.2 Employers' Organizations

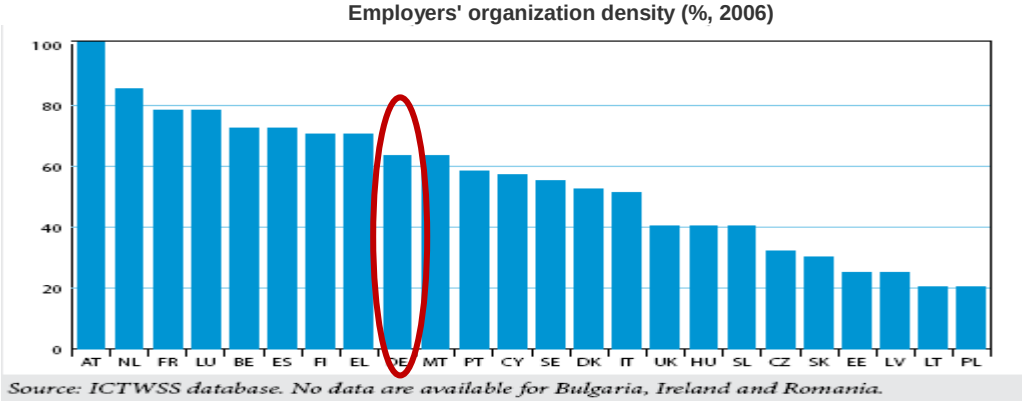
The *Bundesvereinigung der Deutschen Arbeitgeberverbände* (BDA, Confederation of German Employers) is a member of BUSINESSEUROPE and is Germany's main employers' confederation. "*Unternehmerverband Deutsches Handwerk*" (UDH) is the employers' organization under the umbrella of the ZDH (German Confederation of Skilled Crafts),, the German member of UEAPME. CEEP is also represented through its associates in the German industrial relations scene through BVÖD (the German Section of CEEP) which affiliates, amongst others, VKA *Vereinigung der kommunalen Arbeitgeberverbände.*

The BDA is not directly involved in collective bargaining. In a similar manner to the trade unions, employers' organizations are structured on a sectoral basis and act in the regional collective bargaining arenas. The BDA's responsibility is the coordination of pay policies of its member organizations. The major member associations of BDA include Gesamtmetall, and the employers' associations in the chemical, construction and printing industries, domestic and foreign trade, banking, and insurances sectors.

According to EIRO[20], more than 1,000 legally and economically independent employer associations act in the field of industrial relations for industry, handicrafts, commerce and services. These associations are represented through 54 sectoral organizations operating at national level and 14 regional organizations.

According to EIRO employers' organisation density in Germany was 63% in 2007 (European Commission, 2009)[21]. Two major instruments have been put in place to counter the current trend away from multi employer collective bargaining. First, the so-called "opening clauses" described in more detail below. Second, the possibility created by some employers' association of a special type of membership without attachment to collective agreements ("OT-Mitgliedschaft").

Employers' organization density (%, 2006)



Source: ICTWSS database. No data are available for Bulgaria, Ireland and Romania.

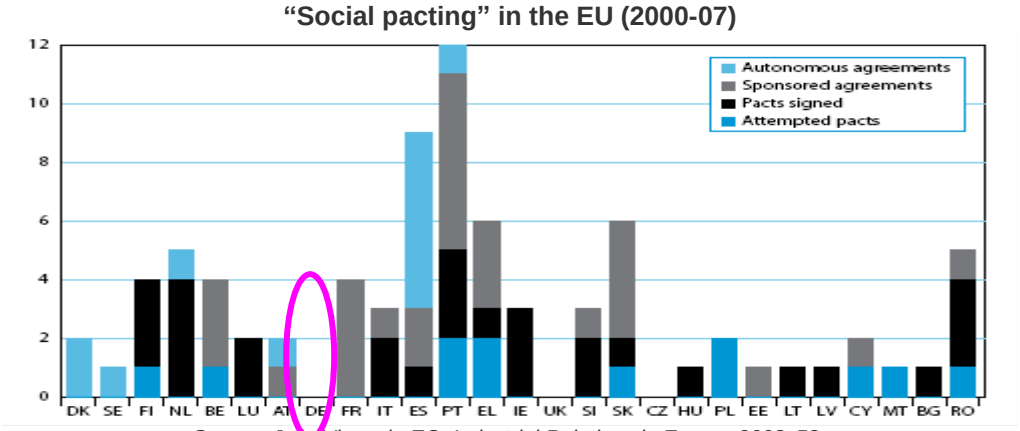
Source: EC, *Industrial Relations in Europe 2008*: 75

2. Restructuring as an issue of social dialogue and collective bargaining

Germany witnessed various attempts to conclude a tripartite social pact from 1998 to 2002 without success.

[20] See http://www.eurofound.europa.eu/eiro/country/germany_1.htm

[21] http://www.eurofound.europa.eu/eiro/country/germany.pdf



Source: Jelle Visser in EC, *Industrial Relations in Europe 2008*: 52.

At present, together with the United Kingdom and the Czech Republic, Germany belongs to the group of 3 out of 27 European countries without any form of national level tripartite agreement on the design and implementation of public policies on social and economic issues. To date, the concerted action (*Konzertierte Aktion*) in the late 1960s and early 1970s is the only example of successful experience of national level tripartite agreements in Germany.

2.1. The legal framework of employee participation at company level

Workplace industrial relations are organized on three bases: the right of works councils to be consulted by management; the right to co-determination on certain issues provided by law to the works council; and the right of workers' representatives to seats on the supervisory board of larger companies.

In companies with 500 or more employees, workers representatives may be elected to the Supervisory Board to which the day-to-day management of the enterprise reports. The number of seats varies with the size of the company. In companies with 500 to 2,000 employees, workers representatives have the right to one third of the seats. In companies with 2,000 or more employees half of the seats are reserved for workers' representatives. At least one seat in companies with 2,000 or more employees must be reserved for a senior management representative. The employee representatives have the same rights and duties as the shareholders' representatives. Except in larger coal and iron and steel corporations (where the chairperson is an independent and elected person) the chairperson of the Supervisory Board represents the shareholders and has the right to cast a second vote in the event that a vote is tied. The rights of the Supervisory Board include the appointment and the dismissal of current management and the analysis of relevant information on the economic and financial issues.

German works councils enjoy extensive rights to information and consultation on social matters and economic issues. In larger organizations, works councils must be informed quarterly on the economic situation of the enterprise. They must also be consulted on any changes in the plant that may negatively affect the labour force and on the introduction of new technologies. Co-determination rights encompass an array of social issues including disciplinary rules; working time management (including overtime, short time working and holiday arrangements); organisation of work in areas like group work; the principles of pay policy including the setting of bonuses and targets; protection of privacy in the workplace, including the introduction of cameras or other devices to measure work or check the behaviour of employees and the data to be registered on the individual workers; and arrangements for the operation of works institutions like canteens or sports grounds.

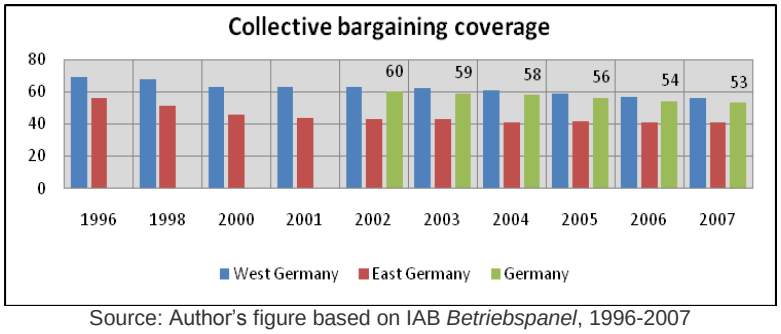
2.1. Collective bargaining

The legal framework on collective bargaining follows the German pattern of prescribing procedures, not outcomes. Even for the legal enforcement of agreements, public bodies are able to intervene only after an individual or collective social actor demands it. Since 1949, collective agreements have been concluded with legislative effect, classically as general

collective agreements negotiated at regional level for a specific sector. In 2002, there were more than 50,000 general collective agreements and some 6,000 single-company collective agreements in force[22]. According to EIRO[23], there were 69,592 collective agreements in force at the end of 2007. Every year around 6,000 collective agreements are concluded.

Since the nineties, the German system of collective bargaining has demonstrated a progressive trend toward decentralization. The number of sectoral agreements has declined and the number of company-level agreements grown. The industrial relations agenda at the company level changed with the establishment of the so-called "company pacts for employment" (*Betriebliche Bündnisse für Arbeit*), a kind of concession bargaining based on the trade-off between concessions on pay or working conditions in exchange for increased job security guarantees.

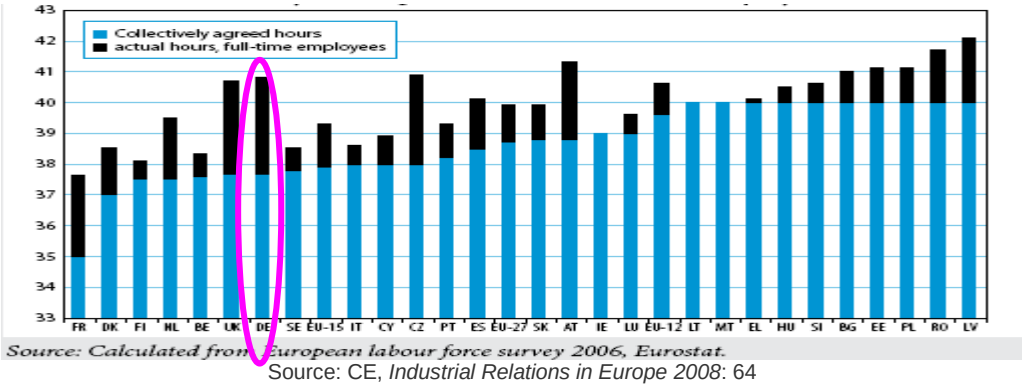
Collective bargaining coverage in Germany is slightly less than the European average and is declining both in East and in West Germany, the latter remaining higher than the former.



Source: Author's figure based on IAB *Betriebspanel*, 1996-2007

Although there is no explicit collective bargaining coordination at national level, the rather low number of employers' confederations and of trade unions and the existence of pattern-setting places Germany amongst the highest coordinated systems of industrial relations in Europe[24]. Typically, collective agreements on wages and salaries are valid for one or two years[25], while for other issues, the period of validity is three to five years. The extension of collective agreements by the government is possible, provided that an agreement covers more than 50% of the workers in the industry in question. The influence of collective agreements on actual conditions of work is relevant to both pay and working time, but the gap between negotiated and actual pay and working time length is becoming more significant.

Actually worked and collectively agreed weekly working hours (2006, full-time employees)



Source: CE, *Industrial Relations in Europe 2008*: 64

[22] See Ulrich Zachert *et al.* : *The evolution of labour law in the European Union: 1992-2002. Country report: Germany and Austria,* 2003.

[23] See http://www.eurofound.europa.eu/eiro/studies/tn0803029s/de0803029q.htm

[24] Jelle Visser estimation for the level of co-ordination in Germany is 4, in a scale of 1 (minimum) to 5 (maximum). See EC, *Industrial Relations in Europe*, 2008: 77

[25] EIRO estimates for the duration of wages and salaries agreements in 2007 is 22,2 months.

The table above shows a relatively significant gap between negotiated and actual working time length although new figures from the IAB (the research institute of the German employment agency) points to only 0,89 hours overtime per week for 2008. According to German national data the average weekly working time is 38,33 hours.

Wage moderation has been the rule on pay negotiations since the nineties and a number of innovations have been introduced. One major innovation is the so-called "opening clause", currently included in around a fifth[26] of collective agreements and used by half of the companies covered by these agreements. Opening clauses are instruments of increased wage flexibility that allow employers and workers' representatives at plant level to replace the collective agreement regulations by other different rules better adapted to the particular conditions of a specific employer and often to enhance job security.

2.2. Industrial relations in the public services

The German public sector encompasses the *Bund* (courts, authorities and other institutions of the Central Government), the *Länder* (the Federal States), local authorities and associations, the Federal Railways Fund (*Bundeseisenbahnvermögen*, BEV) and, in the area of indirect public service, the Federal Employment Agency (*Bundesagentur für Arbeit*, BA), the *Deutsche Bundesbank*, social security bodies, and the legally independent public institutions[27].

Local Public Enterprises (LPE) are another relevant part of Germany's public services. According to a recent evaluation, this sector includes more than 12000 enterprises, employing almost 1 million persons. In 2008, LPE's turnover represented 7.8% of Germany's GDP.

Career civil servants (*Beamte*), which constitute a group with considerable number of employees, are excluded from collective bargaining and have no right to strike both at central, federal or local levels. Their pay and working conditions are determined by a special statute which includes life-long employment. The last amendment of this statute dates back to 1990. Other public sector employees are covered by one collective agreement *(Tarifvertrag öffentlicher Dienst, TVöD)*, concluded in 2005 after two years of negotiations. TVöD, which covers 2.1 million employees of the federal and local public sector, replaced two separate collective agreements (for blue-collars and for white-collars) that were in force for almost half a century.

In December 2008 the higher administrative court of the federal states of Berlin-Brandenburg suspended the introduction of minimum wages in the postal services sector after an establishment survey commissioned by the German Chambers of Industry and Commerce showed the introduction of minimum wages would lead to a decline in employment in many industry sectors. In spite of trade union protests, the court's decision that declared unlawful the result of an agreement between *ver.di* and the United Services Union and their employment counterpart (*Arbeitgeberverband Postdienste e.V., AGV Postdienste*) remains in force[28].

Up to the end of March 2009, a legal framework at the federal level (based on Art 75 of the German Constitution) was binding for the legislation in the Länder. This guaranteed the same rules for civil servants at the federal and state levels as well as for local government bodies. A federal law, in force since April 2009, states that in general, the legislative power for civil servants is now a prerogative of the state legislator with only a few principles from the federal level remaining that are binding on the state legislator.

2.3. Social partners and restructuring

Workers' representatives have an extremely important role to play in three different but interconnected areas of restructuring. First, negotiations about a possible "reconciliation of

[26] See http://www.worker-participation.eu/layout/set/print/national_industrial_relations/countries/germany/collective_bargaining . Data refers to 2005. Alternative sources suggest than one third of companies currently using "opening clauses".
[27] See http://www.eurofound.europa.eu/eiro/studies/tn0611028s/de0611029q.htm
[28] See http://www.eurofound.europa.eu/eiro/2009/01/articles/de0901029i.htm

interests" and a "social compensation plan" related to the restructuring. Second, if the employee takes individual legal action, the right to be heard before each dismissal is actually invoked, with the possibility to voice an objection. Third, the right to be informed and consulted if restructuring includes collective dismissals.

"Social compensation plans" are the major outcome of social dialogue on this issue. They may include one or all of voluntary redundancies; retraining and outplacement services; and job transfers schemes. The incidence of "transfer companies" to assist affected workers in managing the transition from one employer to another is increasing. As "social compensation plans" are of a private nature, there are no wide-ranging statistics on the topics covered. Whilst works councils are both powerful and influential in the restructuring process in many sectors and companies, some limitations can be identified. The most important relates to company size. As works councils play a pivotal role in the process of restructuring, social dialogue does not play a major role for more than 50% of the workforce[29], i.e., where there is no works council. This mostly affects workers employed in small companies. A recent study (below) illustrates the organisational authority distance between those managers involved in social dialogue and those involved in restructuring decision making.

Levels of Corporate Management	**Percent**
Workplace	22 %
Workplace and Corporation	25 %
Workplace and Corporate Group	3 %
Workplace, Corporation and Group	11 %
Corporation	21 %
Corporation and Group	7 %
Corporate Group	9 %
don't know / refused to answer	3 %

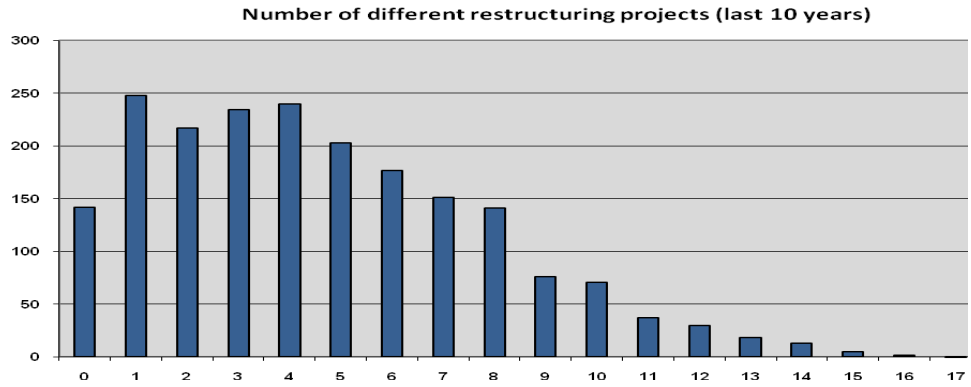
Source: Behrens and Kätdler, 2007: 7

The Behrens and Kätdler paper[30] shows that the percentage of cases where works councils deal exclusively with plant management is a small minority. Where several levels of management operate, this tends to create an imbalance if a higher level of works council is not operating for the firm as a whole (*Gesamtbetriebsrat, GBR*) or for the corporate group (*Konzernbetriebsrat*, *KBR*). But, even if does, it "*seems doubtful that a GBR or KBR could compensate for the weakening of their management counterparts*" as "*in the eyes of the works councilors, management reliability increases the closer management is to the workplace*".

The analysis of the works councils surveys leads Behrens and Kätdler to suggest that the level of restructuring in Germany has been very high. Moreover, the number of restructuring projects tends to grow with the size of the company. In enterprises with more than 2,000 employees the average number of different projects over the ten year period studied is more than the double the figure obtained for the smallest workplaces surveyed (20 to 49 employees).

[29] See page 35 of this dossier.

[30] Behrens, Martin and Jürgen Kätdler: Company *Restructuring: the impact of management levels on Codetermination in Germany 2007.*,



Source: Behrens and Kätdler, 2007: 12

An analysis of works council activity in firms engaged in relocation discussions or involved in actual relocations show that social dialogue plays an important role in almost all aspects of the implementation of restructruing related projects[31]. The analysis studied 26 different areas of possible concern and has concludes that the most mentioned include promotion of health and safety at the workplace (73.9%); further training and vocational training (66.4%); retirement benefits (61.9%); employment security (58.8%); partial retirement (53.4%); redundancies (52.7%); increased overtime (52.2%); new forms of work (461%), and the introdution of new techniques (43.9%).

[31] See Ahlers *et al*., 2007: 22

Section Three: Case studies

Case study one – Nord Oberpflatz Clinics

The case study presented related to the restructuring and privatisation of former municipal authority hospitals in order to keep local facilities open, to provide best value for money and to avoid duplication of hospital services in the region.

Nord Oberpflatz is one of the administrative regions in the east of Bavaria. The Nord Oberpflatz clinics provide hospital services to 22,000 inhabitants in facilities with 1,265 beds serving 46,000 patients per year through 2,700 employees. It is the largest employer in the region.

In 2003, the region's hospitals came under severe financial pressure in the context of limited public budgets. In that year the combined hospital's deficit was running at € 6m with a prospect of this increasing to € 10m by 2006. Public officials, hospital management and employee representatives from the works councils met to discuss the problem and it was decided that the solution was to merge the regions hospitals into a single joint stock company or "AG".

The form of AG established was in "not for profit" form in order to maximise potential tax benefits. The challenge all parties accepted was to survive economically with as few job losses as possible in a region that had already suffered major job loss with the closure of porcelain plants. One step toward this was the establishment of a new collective bargaining agreement covering the organisation's staff.
The German trade union VerDi entered discussions with a series of concerns. These related to job security, the prospect of pay and benefit cuts following the organisation's withdrawal from the previous collective bargaining agreement and the threat of outsourcing of services like laboratories and cleaning. The union was however supportive of the establishment of the new AG structure and entered negotiations to set new arrangements that would lead to a sustainable future for the workforce.

In the end, the negotiations produced an outcome where the organisation used the collective bargaining agreement for public sector workers as a basis for their own arrangements and avoided collective redundancies.

The employees invested in the future of the organisation by agreeing to take a share of 50% of any surplus made but accepting that in the event of losses there would be a formula where pay could be reduced by up to 7% per year. In the event pay reductions of 3% in 2006, 3% in 2007 and 2% in 2008 were accepted. In effect the employees had collectively invested some € 5.5m back into the enterprise in forgone pay. By 2006 the hospital had avoided the projected € 10m deficit and achieved a balanced budget based upon € 2m savings in pay and € 8m of savings achieved through a variety of other means.

Both management and the workers' representatives reported that the post 2003 working atmosphere had changed and engagement in the process of change had led to the development of a new mentality. With the long term goal of "medical care for people from the region in the region" further hospital mergers are planned and a new service provision model is being introduced. Rather than every hospital offering uniform provisions, service duplication will be minimised by establishing separate primary care, general and tertiary care facilities.

The new regional management structure is mirrored by a new regional works council structure. It was recognised that privatisations of public services are not always the best way to go.. This specific case shows that the employees also contributed significantly to the success of the restructuring process, by accepting substantial wage moderation measures.

This relatively small case was described against the current € 56bn deficit in German healthcare, chronic overwork of staff and 50,000 recent job losses. In Nord Oberpflatz the shift from an administrative to a business based approach combined with a new approach to collective bargaining and worker engagement had produced results.

The presenters of this restructuring case at the seminar highlighted three factors that had contributed to the success of the initiative;

- ✧ The anticipation of change and the willingness of both parties to recognise problems and discuss alternatives at the earliest stage;
- ✧ The restructuring plans took into account the interests of employees at every stage and a formal structure was put in place to make this happen;
- ✧ The trade unions played a crucial role in the setting up of the new collective bargaining agreement and recognising that the interests of the employees in this case were best served by a single employer agreement.

Case study two – Daimler AG

Daimler AG with its businesses Mercedes-Benz Cars, Daimler Trucks, Daimler Financial Services, Mercedes-Benz Vans, and Daimler Buses, is a globally leading producer of premium passenger cars and the largest manufacturer of commercial vehicles in the world. The Daimler Financial Services division has a broad offering of financial services relating to automobiles. Daimler distributes its products in nearly every country of the world and has production facilities on five continents. The company is listed on the stock exchanges in Frankfurt, New York, and Stuttgart. The Group's registered office and headquarters are in Stuttgart.

The current brand portfolio includes Mercedes-Benz, as well as Smart, Mercedes-AMG, Maybach, Freightliner, Mitsubishi Fuso, Sterling, Western Star, Detroit Diesel, Setra, Orion, and Thomas Built Buses. Daimler describes itself as an automotive group with a commitment to excellence, and aims to achieve sustainable growth and industry-leading profitability.

The company had sales revenues of more than € 95m in 2008 and, at the same time, employed almost 275,000 people. More than 167,000 Daimler employees are based in Germany.

In 2004, Daimler in Germany entered a process of change that they described as having the most impact on the organisation since 1929 and they suggested "redefines restructuring". The changes have involved agreements with the works council to use opening clauses in industry level collective agreements creatively to benefit the long term security of Daimler workers and obviate the need for outsourcing.

A major agreement struck in 2004 made a series of commitments to the year 2012 on no redundancies for operational reasons; investment plans; and guarantees to keep certain locations open in return for new working time arrangements and pay and job transfer provisions that cut costs and introduced innovative new HR policies. A social compensation plan was agreed for voluntary leavers and the company's managers took a 2.7% pay cut. The company launched a wide range of activities including divestments of property to improve cash flow and cut costs. At the time of the presentation of this restructuring case at the seminar, it was the hope of Daimler that the plans would be robust enough to withstand the recession.

The presentation focused not on the specific details of the agreements reached, but on the underlying pre-requites for success. In broad terms it was suggested that the social partners can only be effective if they engage early and talk about real problems in an atmosphere of trust and where both sides are prepared to make concessions. It was also recognised that there many things an organisation can do to improve cash flow and reduce costs that do not involve sacrificing jobs. More specifically two detailed issues were emphasised:

- ✧ The establishment of a clear and consistent approach to the challenges faced that join up the different levels of decision making, codetermination, agreement and consultation at the levels of the supervisory board, the European Works Council and the Betriebsrat;

- ✧ Setting the right conditions and protections for divergence from industry wide agreements that are well planned, considered and understood.

Case study three - Currenta GmbH & Co. OHG

Currenta is a joint venture between Bayer AG and LANXESS AG and operates the “Chempark” sites in Leverkusen, Dormagen und Krefeld-Uerdingen. With approximately 3,500 employees and five business units, Currenta supports businesses in the Chemparks by providing a comprehensive portfolio of services, including utilities, environmental services, safety and security, analytics, training and other Chempark services. Currenta also offers some of these services to customers located outside the Chempark sites.

The company was initially spun off from Bayer in 2003 as an independent member of the Bayer Group and then restructured under the name Currenta in 2008 with the objective of becoming a competitive service provider to the industry.

The Currenta restructuring project commenced in April 2006 and one year later an agreement was struck providing a no compulsory lay-off guarantee; establishing centres for retraining and outplacement and a guarantee that the division would not be sold before the end of 2008. The other side of the agreement increased the working week from 37 to 40 hours, a reduction in pay for those working 35 hours and phased pay savings over four years associated with the introduction of a new grading system.

The chairman of the Currenta works council said that the success of the restructuring agreement was based on trust and transparency. The workers had felt that they were “unwanted children” of Bayer but were prepared to work together with new management to stay close to Bayer; to remain in the chemicals industry collective bargaining agreement; and protect jobs. He said that it was clear that restructuring was necessary and it was the responsibility of everyone to deliver a competitive company. One option for the company had been to outsource activities and withdraw from the collective bargaining agreement and this was something the trade unions and works councils wished to avoid. In the end both sides managed to find a joint solution.

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