

# Which institutions to promote a well-functioning wage bargaining system in Europe?

Evidence from the German case

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# The presentation

- **Legal pillars and actors of the German collective bargaining system**
- **The erosion of the bargaining system**
  - **Forms and drivers of erosion**
  - **Measures and proposals to strengthen coverage**
- **A new government interventionism in collective bargaining?**

# Institutional pillars of the post-war system of collective bargaining

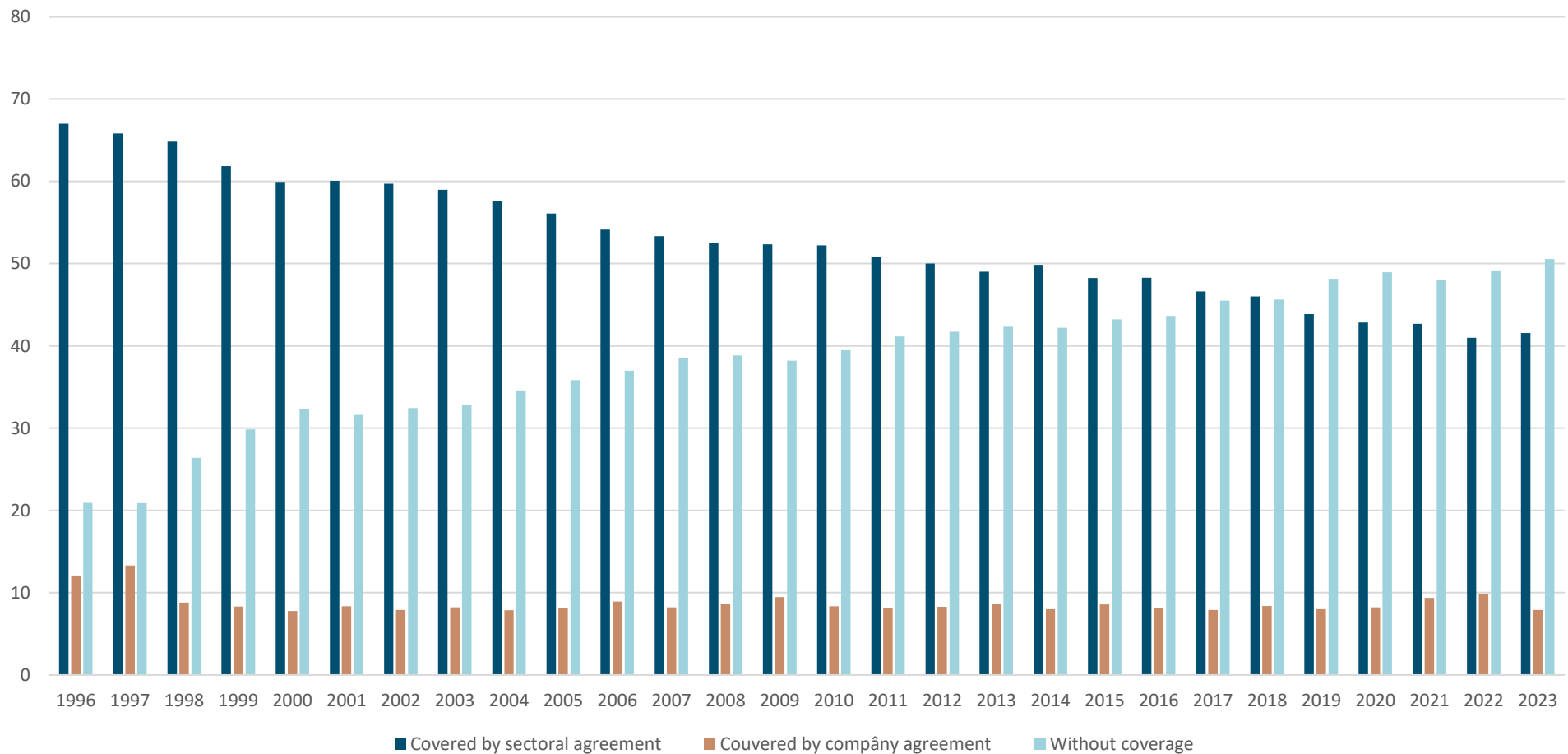
- The **autonomy of collective bargaining**, referring to the constitutional right (§ 9(3) GG) to build coalitions of workers and employers (*Koalitionsfreiheit*) that conclude collective agreements **free from state interference**, in particular on wages and working time.
    - Collective agreements have the direct and enforceable power to regulate subjects covered by them.
    - Institutional separation between the arenas of collective bargaining (TVG; trade union and employer association/single employer) and of company-level representation (BetrVG; MitbestG).
  - A system of **industry-wide, mostly regional collective agreements**, concluded by employer associations (around 700, mostly affiliated to the BDA) and, principally, the industry federations of the DGB (from 16 down to 8; DGB has no right to bargain).
    - Works councils are not allowed to negotiate collective agreements, only works agreements (*Betriebsvereinbarung*) which may not deal with wages and other conditions of employment (typically) fixed by collective agreements (§77(3) BetrVG).
    - Collective agreements are binding for all members of the signing parties (§4(1) TVG). In practice, employers bound by a collective agreement usually follow *erga omnes*.
    - Collective agreements can be extended by the federal or regional Ministries of Labour to include employers and employees that are not bound by the sectoral agreement (§5 TVG).
    - To favour multi-employer bargaining, the 'favourability principle' allows for departures from sectoral agreements only if they favour employees. Bargaining parties may however agree upon opening clauses that allow a derogation from collectively agreed standards.
- => It is a **volontarist system**, based on the adhesion by workers and employers.
- Until 2006, unions were opposed to a statutory minimum wage and the extension of collective agreements
  - To this day, employers consider that state interventionism (statutory minimum wages; extension of collective agreements; wage guidelines) does not fit the volontarist nature of the system.

# The collective bargaining system under pressure

- Until the early 1990s: **High coverage rates of collective agreements** allowed for imposing (generally accepted) minimum standards on the labour market, resulting in **homogenous living and working conditions**.
- Since then, the system has gradually changed, despite the legal foundations of the post-war system remaining largely stable.
  - Reasons:
    - Neoliberal restructuring of Germany (financial & labour markets; privatization of public services), resulting in increasing employer assertiveness (Streeck 2009; Baccaro and Howell 2019).
    - Calls for the 'flexibilization' of collective bargaining against the background of international competitive pressures and economic crisis.
    - New business models provoke the disintegration of the firm (->outsourcing).
    - Enlargement of the EU made threats of relocation more credible.
    - Decline of employer and trade union membership (union density from 32% (1989) to 16% (2018)).
- Indicators of institutional change:
  - **External and internal erosion** of the system. Forms and intensity of decline have varied significantly across regions (notably East and West) and industries.
  - **Labour market split** between a (shrinking) primary segment (strong union and works council presence; high CB coverage rates) and a secondary segment (weak unions & CB coverage; no works councils). Trend observed across and within sectors.
  - Increase of **wage differentials** (manufacturing -34%; health & social care -23%).

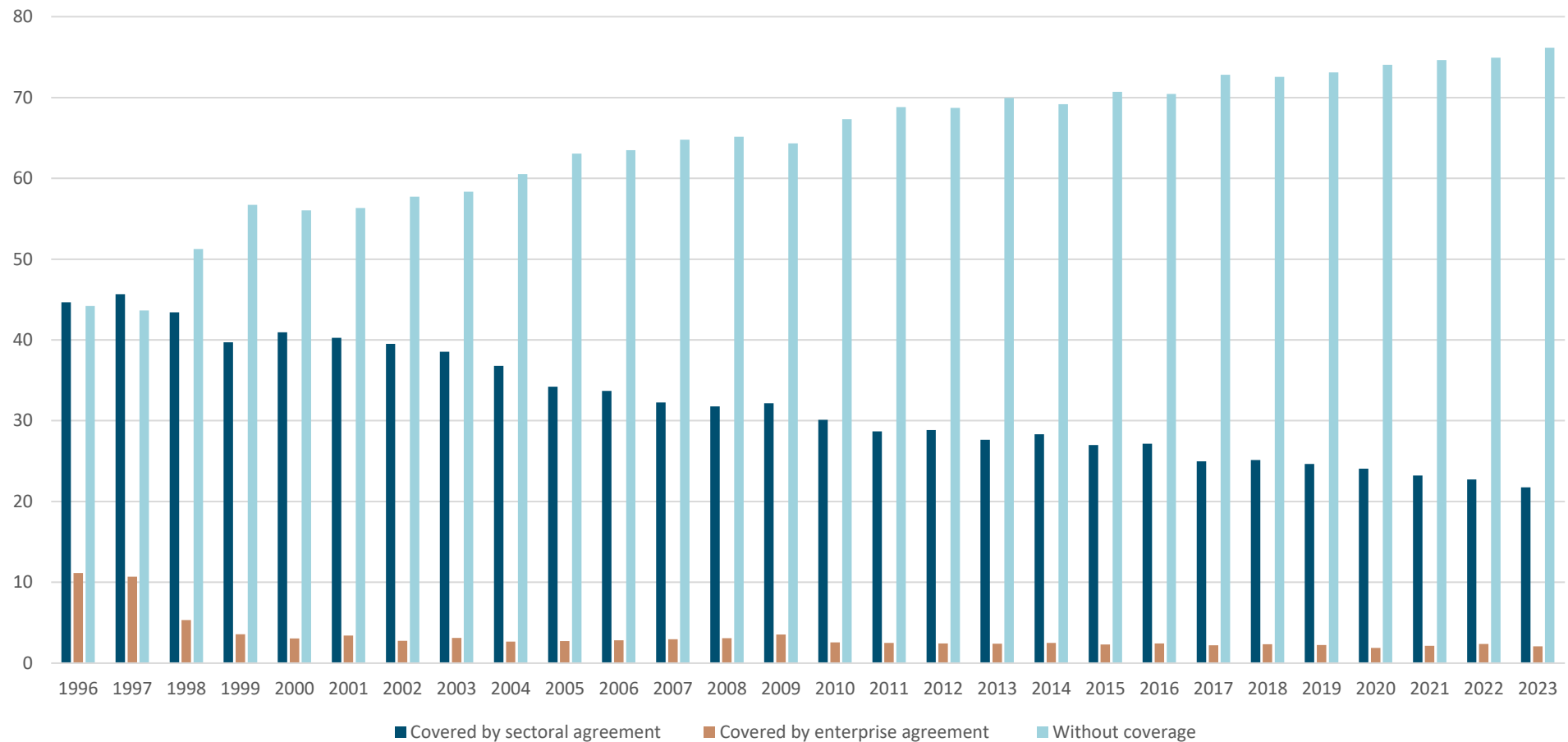
# The decline in collective bargaining coverage ('external erosion'): employees

Employees working in establishments covered by a sectoral or company agreement  
(1996-2023; in per cent; private sector)



# The decline in collective bargaining coverage ('external erosion'): companies

Establishments covered by sectoral or company agreements  
(1996-2023; in per cent; private sector)



# The spread of opening clauses in sectoral agreements ('internal erosion')

- Since the 1990s, “hardship (opening) clauses” allow for covered companies in difficulties to derogate from collectively agreed pay increase in exchange for safeguarding jobs. General opening clauses became a standard feature of sectoral agreements in the 2000s.
- Opening clauses in sectoral agreements represent an attempt by social partners to limit “wildcat derogations”.
- Opening clauses are based on a joint application by works council and management, addressed to the sectoral-level bargaining parties.
- As a result, works councils have become increasingly involved in bargaining over wages and working time.
- This has favoured the emergence of a **two-tier bargaining system**. Sectoral agreements function increasingly as framework agreements with reduced regulatory capacity, paving the way for an increased differentiation of wages and working conditions.

# Public policies to address the split labour market

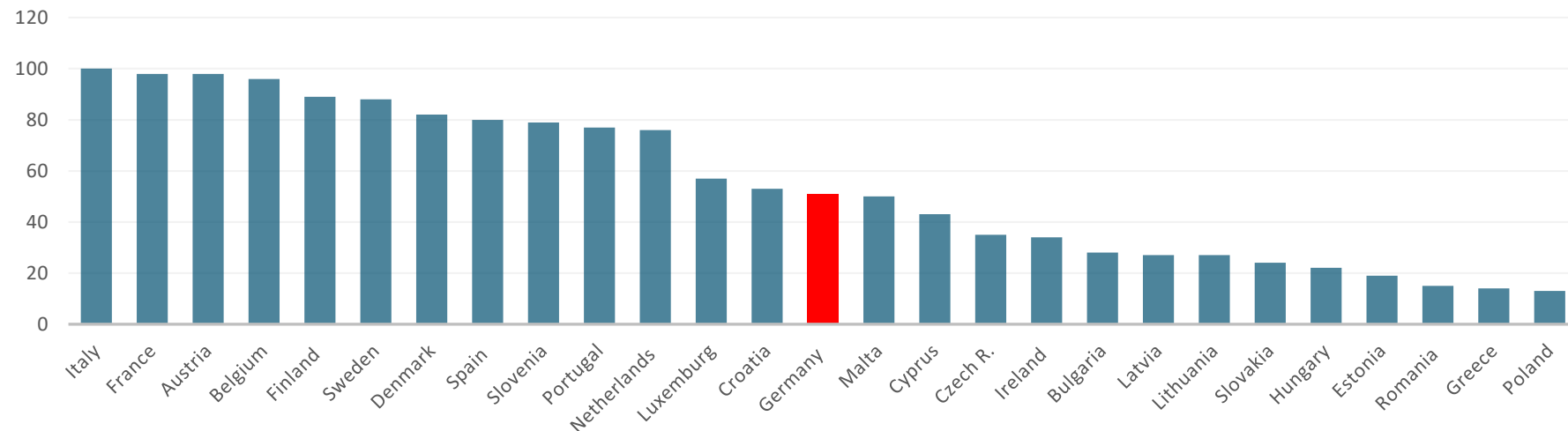
- The erosion of the collective bargaining system reveals the **lack of institutional safeguards against employer exit** (such as minimum wages) where unions are weak. Over time, this has triggered public policy responses.
- 1996 Posted Workers Act (setting a collectively agreed minimum wage in construction, applicable also to foreign service providers).
- 2014 Act on the Strengthening of Collective Bargaining Autonomy:
  - Statutory minimum wage (from €8.50 in 2015 to €12.41 in 2024).
  - Less restrictive rules on the extension of collective agreements, but little quantitative success.



# Public debate in the wake of the European Minimum Wage Directive

- The 2022 **European minimum wage directive** urges Member States to achieve a collective bargaining coverage of 80% to reduce the share of low-wage workers in their economies.
- Analyses show: strong union density and the use of extension are the principal factors of high coverage rates in the EU.

Bargaining coverage in the EU (in per cent of employees)



# Proposals to increase collective bargaining coverage: strengthening social partners

## ■ Unions advocate for **strengthening social partners**

Trade unions	Employer associations
<b>Organizing projects:</b> anti-union busting legislation; facilitating the election of works councils	<b>Limiting / ban on membership in employer associations</b> without being bound to collective agreements ('OT')
<b>Tax deductibility</b> of union dues	<b>Obligation</b> to negotiate for the Chambers of Crafts
<b>Preferential rules</b> for members in collective agreements	<b>Obligation to negotiate</b> for companies from a certain threshold of union members on
Right of the union to <b>initiate proceedings</b> against an employer ( <i>Verbandsklagerecht</i> )	

# Proposals to increase collective bargaining coverage: Supporting the collective bargaining system

- Unions also advocate for **legal reform of the collective bargaining system**:
  - Adoption of the Federal Law on **public procurement** whereby contracts are awarded only to companies to comply with bargaining agreements.
  - Reform of the decision mechanism (TVG) for the **extension** of a sectoral agreement.
  - Continuity of coverage in case of restructuring (*kollektive Fortgeltung*).
- **Employers** advocate for:
  - More opening clauses in sectoral agreements.
  - Modular approach (*à la carte*) by companies to agreements.
  - Strengthening of company-level bargaining parties.

# A new state interventionism in wage setting?

- The autonomy of collective bargaining rejects direct state interference in wage bargaining. However:
  - At the height of the inflation crisis in 2022, the Federal Government set up a tripartite Commission (*Konzertierte Aktion*), designed to find solutions to master inflation and compensate for the loss of purchasing power.
  - Contrary to 1967, Government did not issue any wage recommendations. Instead, it advocated for the use of the 'inflation prime' in sectoral agreements (€ 3,000 max., exempt from taxes and social security contributions) instead of (durable) percentage increases.
  - Government stopped concertation as soon as inflation declined (early 2023).
  - However: The statutory minimum wage has an (indirect) effect on collectively agreed wages:
    - The agreements concluded in 2022 anticipated the rise of minimum wage to €12 (gross hourly wage). This led to the highest percentage increases in the low-wage sectors (hotels & restaurants; cleaning; temporary agency work; transport).
    - Sectoral bargaining in the industrial sector (chemicals, metalworking) was more modest, showing the impact of strong economic insecurity (rise of energy costs; digital and ecological transformation).

# Conclusion

- Over the past 3 decades, the collective bargaining system has become very flexible, leaving ample room for company-level adaptation of sectoral norms.
- The strategy of ‘stabilisation by flexibilisation’ of the system has had limited success in terms of coverage.
- This has triggered the development of public policy to strengthen coverage
  - However, no turning point has been reached in coverage. Much remains to be done.
- Over time, the system has become less voluntarist. Yet, there are no signs of durable interference in wage setting.