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6. Does Decentralisation Lead to New Relationships between Trade Unions and Works Councils? Germany and the Netherlands Compared

Sophie Rosenbohm & Frank Tros

Abstract

A major trends in collective bargaining across Europe is decentralisation, involving a shift from multi-employer to single-employer bargaining. In this chapter, the authors address the question of how decentralisation affects the relationships between trade unions and works councils in dual channel systems of interest representation. The analysis focuses on Germany and the Netherlands, two countries with legally established dual-channel systems of employee representation, where trade unions and works councils play a role in both consulting and negotiating employment and working conditions at the company level. While similar statutory allocations and demarcations of powers between works councils and unions exist in both countries, company case studies reveal marked differences in how trade unions and works council cooperate in practice.

Keywords: collective bargaining, works councils, decentralisation, Germany, the Netherlands, dual channel systems

Introduction: Decentralisation in dual channel systems

One of the main trends in collective bargaining across Europe since the 1980s is decentralisation, involving a shift from multi-employer to single-employer bargaining. However, there are nuanced variations in national developments regarding the initiating actors and the intensity and patterns of decentralisation processes. As a consequence of decentralisation

of collective bargaining towards the company level, trade unions might meet other workers' representatives, such as works councils, at that level.

In this chapter, we address the question of how patterns of decentralisation affect the relationships between trade unions and works councils in dual channel systems of interest representation. Dual channel systems with trade unions and elected works councils alongside are typically marked by a specific divide in rights and responsibilities between trade unions and works councils. Moreover, both arenas – collective bargaining, on the one hand, and workplace employee representation, on the other – are usually separated by different spheres of conflict. But does this relationship fundamentally change during the process of decentralisation when competences are transferred from the industry level to the company or establishment level?

In the literature, it has been discussed whether patterns of decentralisation are dependent on the type of institutional channels of employee representation at the company and workplace level. In single-channel systems, where workplace representatives are elected and/or delegated by trade unions, unions can keep substantial control over decentralisation processes (Ibsen & Keune, 2018). Empirical evidence points to higher effectiveness of single-channel systems by better ensuring a process of organised decentralisation of collective bargaining (Traxler, 2008). This is confirmed by recent developments in coordinated decentralisation in Sweden (Rönömar & Iossa, 2022). In dual-channel systems, where employees are not only represented by trade unions, but also by works councils, the relationships between sector and local negotiators might be weaker and more fragile, reducing the control of unions over decentralisation (Nergaard et al., 2009). In Germany and the Netherlands the dual representation is split over two levels: trade unions are then only active at the sectoral level while works councils are the only channel for employee representation at the company level (see also Chapter 3 in this book; Haipeter, Armaroli, Iossa, & Rönömar, 2023). But these levels and channels can be blurred in practice: works council members can be members of the trade unions and works councils and trade unions can cooperate at the workplace and company level. Trade unions in dual-channel systems might use works councils as a power resource in collective bargaining at the company level. Trade unions can use the institution of works councils in their strategy for better engagement with workers and their needs within companies, to recruit more members and to unionise the councils (Haipeter, 2021). Works councils can use trade unions' competences in negotiating terms and conditions of employment within the company.

While some evidence and assumptions about the differences between single-channel and dual-channel systems with regard to decentralisation exist, we would like to adopt a slightly different perspective and focus on developments within dual-channel systems. It is still an empirical question how relationships between trade unions and works councils are affected by decentralisation within systems where the dualisation of employee representation is anchored in elaborate legislation. Against this backdrop, this chapter seeks to investigate the following questions: Do works councils become substitutes or partners of unions in decentralised bargaining? Do partnerships or conflicts arise between both actors? What does coordination between trade unions and works councils look like and how is it organised?

To give answers to the above-mentioned questions, we focus on Germany and the Netherlands, two countries with legally established dual-channel systems of employee representation where trade unions and works councils play both a role in social dialogue and negotiating employment and working conditions at the company level. We decided to concentrate on those countries where works councils have similar roles for workplace interest representation and where collective agreements with trade unions have legal primacy above workplace regulations with works councils. Fundamentally, collective bargaining and co-determination at the workplace level are separate legal fields. Only when collective bargaining parties give jurisdiction to works councils or if works councils are supported by trade unions (or vice versa) will both fields partly overlap. These more “pure” dual-channel systems in Germany and the Netherlands can be separated from the more “mixed-channel systems,” somewhere between purely single and purely dual-channel systems in workers representation (in e.g., France, Italy, and Spain), where trade unions can have formally delegated members in bodies of employee representation within the companies (Kahmann & Vincent, 2022; Armaroli & Tamassetti, 2022; Muñoz Ruiz & Ramos Martín, 2022).

Thus, from a legal perspective Germany and the Netherlands share similar institutional features with regard to employee representation and formal relationships between the two representative bodies. This similar institutional context makes it interesting to analyse whether we can observe different actors’ strategies – and maybe different organisational power resources of trade unions and works councils – to cope with decentralisation processes, and how this affects the relationship between works councils and trade unions. Against this backdrop and based on company case studies in these countries in manufacturing and retail, we will analyse the role that trade unions and works councils play when it comes to decentralisation. Moreover, we will investigate whether trade unions do see works councils

as a power resource through (re)connecting to workers and for cooperation. Finally, we will explore how relationships between trade unions and works councils are shaped and if conflicts or cooperation emerge.

The chapter has been organised in the following way. The first section describes some stylised facts about the institutional features of the dual-channel systems in Germany and the Netherlands. After a brief discussion of the main decentralisation trends in both countries and their commonalities as well as differences, we present the empirical findings of our company case studies focusing on the impact of decentralisation towards works councils and their relationships with trade unions. The chapter concludes with a discussion of the relationships between trade unions and works councils in both countries, how (dis-)similarities between the two countries in this relationship might be explained, and gives a brief outlook for further studies.

The dual channel system of employee representation in Germany and the Netherlands

In both countries, employee interests are represented through two institutional actors, trade unions, which are in charge of collective bargaining, and works councils at the company and/or establishment level. Moreover, works councils in Germany and the Netherlands have a statutory basis. The first Works Councils Act ('Wet op de Ondernemingsraden') in the Netherlands dates back to 1950 and regulates the structures, rights, and elections of works councils within companies. The legal reforms of 1971 and 1979 strengthened the formal independence from the company (or public sector) director, and the rights to information, consultation, and co-determination. The functioning of works councils in the Netherlands further expanded in the 1980s and 1990s (Van het Kaar & Looise, 1999), but stabilised in recent decades (Tros, 2022). Currently, 95% of companies with more than 200 workers have established a works council in the Netherlands (Wajon, Vlug, & Enneking, 2017). Small- and medium-sized companies have lower establishment rates: around 60% of the companies have between 50 and 100 employees (Wajon, Vlug, & Enneking, 2017). Establishing a works council is obligatory for companies with more than 50 employees, but if the employees do not ask the employer to do so, the employer will not be sanctioned for not having installed such a body.

In Germany, the Works Constitution Act – the first version of which dates from 1952 and has been amended several times since then (1976, 1989, 2001, 2021) – regulates the structures and participation rights of works

councils, which are elected by all employees in a workplace. Works councils can be elected in all establishments with more than five employees. The establishment of a works council is voluntary and at the initiative of the employees. Currently, a works council exists in around 8% of all establishments (Ellguth & Kohaut, 2021). However, coverage varies widely between smaller and bigger establishments. Prevalence of works councils remains at a consistently high level of 90% (of employees) and 85% (of establishments) in large establishments with more than 500 employees.

In addition, works councils are formally independent of trade unions and are elected by all employees at a workplace in both countries. In Germany, the Works Constitution Act sets out that works councils have a duty to maintain “industrial peace” and are obliged to act in the best interests of both the workforce and the establishment. This means that works councils in Germany may not call for industrial action, such as strikes. In a similar manner, works councils in the Netherlands have a dual aim according to the law: to act in the interest of the workforce in the context of the interests of the company. Trade unions in the Netherlands have always been ambivalent towards works councils as a consequence of this dual aim, and, moreover, because of the employers’ generally friendly attitudes and behaviours towards works councils in the Netherlands. According to FNV (the largest trade unions confederation in the Netherlands), works councils cannot organise countervailing powers because works councils are expected to also represent the interests of the company and its management and because of missing the strike weapon.

Demarcation of powers

The dual-channel systems in both countries are marked by a specific demarcation of powers between works councils and trade unions (Jansen & Tros, 2022; Haipeter & Rosenbohm, 2022). In Germany, and in contrast to trade unions, works councils are not allowed to negotiate collective agreements. Works councils and management can, however, negotiate so-called workplace agreements (*Betriebsvereinbarungen*) on a range of issues. The relationship between workplace agreements and collective agreements is regulated by statutory law. In addition to the stipulations of the Collective Bargaining Act, the WCA specifies (in Section 77.3) that collective agreements have primacy. That is, pay or other working conditions that are actually or customarily regulated by collective agreements may not be determined by a workplace agreement unless the collective agreement expressly permits the conclusion of supplementary workplace agreements.

In contrast, trade unions in Germany have only a limited legal anchoring in the workplace, which is one reason why they have often moved to set up workplace trade union representatives' bodies in large companies (shop stewards), elected only by trade union members and designed to function as counter-organisations or supplementary to works councils. Unlike works councils, these have no legal independent co-determination rights. However, shop stewards serve as links between the trade union organisation, the workforce, and the works council in larger companies in Germany.

The demarcation of powers between works councils and trade unions in the Netherlands is similar to Germany. In the Netherlands, the powers of trade unions, on the one hand, and works councils, on the other hand, are delimited in the Works Councils Act in relation to the regulation of collective terms and conditions of employment (Jansen & Tros, 2022). The statutory allocation of powers means that the works council does not, in principle, have any powers in relation to primary terms of employment, such as fixing remuneration, the number of holidays, or working hours. It is also a consequence of the law that, if the collective agreement provides an exhaustive set of rules, the works council loses its power in relation to secondary and tertiary terms of employment. This is called the primacy of the collective agreement. Rules are regarded as exhaustive if a collective agreement offers no further scope for elaboration at the company level. The literature mentions that collective bargaining parties and works councils can often cross over into each other's domains because an agreement between a company and a works council can make arrangements on (primary) employment terms while collective bargaining parties are not obliged to confine themselves in collective labour agreements to the regulation of primary terms of employment. (Jansen, 2019: 204). In contrast to collective agreements, the principle in Dutch law is that arrangements with the works council on terms of employment do not automatically permeate to individual employment contracts. That said, there are ways to do so in practice. If collective bargaining parties agree in the collective agreement to grant authority to the works council and the employer to make arrangements for the further detailing of a particular topic, then those more detailed arrangements may permeate the employment contracts of all employees. We see such "decentralisation provisions" in several collective agreements in the Netherlands across different sectors.

Important in our analysis is that shop stewards in the Netherlands are almost non-existent. This can be understood in historical perspective. In the early 20th century – when industrial relations were further shaped – trade unions focused their activities on the sector and national levels; the economic

crisis taught them that unemployment and problems of distributions and industrial production could be better solved at the sector levels, instead of the company levels (Windmuller et al., 1987: 73). The pragmatic reformist (rather than revolutionary) ideology among trade unions was strong. Furthermore, employers in the Netherlands were relatively more resistant to trade union activities within the companies (Windmuller et al., 1987: 81). This led to a central focus of the social partners in the Netherlands, further institutionalised and developed after the Second World War, when two national social dialogue institutions were established: the bipartite Labour Foundation (1945) and the tripartite Social-Economic Council (1950). Both these institutions became highly influential and part of an implicit trade-off that involved respecting the employers' "management prerogative" to organise their organisations in a capitalist social-economic system without direct co-determination rights for the trade unions in the organisation of work. In the 1960s and 1970s, some trade union networks (*bedrijfsledengroepen*) were installed within a number of large companies, but without much success. They experienced complicated relationships with trade unions at more central levels as well as with works councils that were considered too focused on harmony with the management (Kösters & Eshuis, 2020). Since the 1980s, the already limited numbers of union networks within companies have declined further. Shop stewards and union networks in companies seem to have been a temporary phenomenon in the Dutch industrial relations system in the extraordinary decades of the 1960s/1970s, although there might be good reasons nowadays for trade unions to organise actions at the workplace level (Bouwman & Eshuis, 2018; Kösters & Eshuis, 2020).

Relationships between trade unions and works councils

Trade unions have no direct influence in works councils in either Germany or the Netherlands. They can influence things indirectly, however, to the extent that union candidates are works council members and, in turn, works councils ask advice from trade unions. In Germany, important links exist between both actors. Analysis of the German works council election results in 2018 show that just over two thirds of the members elected were members of trade unions affiliated to the German Trade Union Federation (DGB) (Demir et al., 2019).¹ In addition, an intensive division of labour has de-

1 Due to missing data or different data structures, these figures refer only to IG Metall, ver. di, IG BCE, and NGG.

veloped between trade unions and works councils in Germany. Trade unions have taken on the tasks of providing training for works council members and supplying expert advice as well as organising support when needed. They also provide organisational power to works councils as a strongly unionised workforce will bolster the works councils' hand in negotiations with management. Finally, by concluding collective agreements, they relieve works councils of the burden of having to negotiate on contentious issues, such as pay increases or the length of working hours, for which they are ill-equipped given that they lack the right to strike.

Conversely, works councils in Germany have a legal duty to monitor compliance with the provisions of labour law and the implementation of collective agreements at company and workplace level. Their focus is on specific problems concerning employment conditions at the company and/or workplace level that cannot be dealt with in the broader provisions of industry-level collective agreements. They can also support the mobilisation of workers for strike action during collective bargaining, provided they do not directly call a strike themselves. Finally, they undertake union recruitment in the workplace, an especially important task in workplaces where unions have not established their own representation in the form of shop stewards. For Germany, then, it can be concluded that both actors have a reciprocal and interdependent relationship.

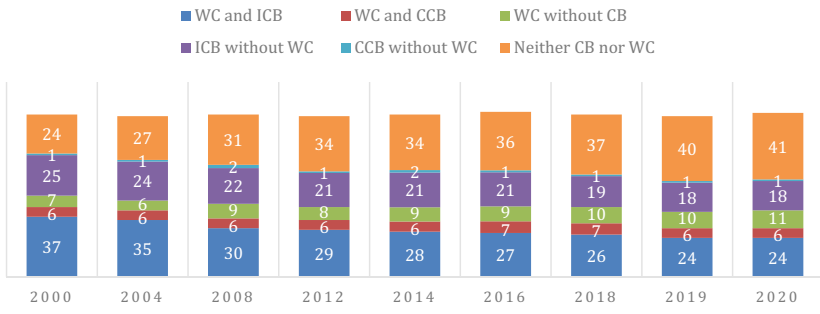
In the Netherlands, too, trade unions have some indirect influence in works councils, albeit to a lesser extent than in Germany. A comparative study from wsi/Hans-Boeckler-Stiftung about works councils in Germany and the Netherlands estimates that almost 60% of Dutch works councils never, or hardly ever, receive advice from trade unions, compared with 28% of the works councils in Germany (Van den Berg et al., 2019). Compared to Germany, Dutch works councillors take more advice from (commercial) consultants, have poorer relationships with unions, and have relatively better relationships with management (Van den Berg et al., 2019). According to the earlier mentioned survey, the interactions of works councils in the Netherlands seems to be based on cooperation with management, social partnerships, and constructive dialogue with management more than they are in Germany (Sapulete, Behrens, Brehmer, & Van Witteloostuijn, 2016; Van den Berg, Grift, Sapulete, Behrens, Brehmer, & Van Witteloostuijn, 2019). Compared to the German Betriebsräte, works councils in the Netherlands seem to act in a less formal way (Sapulete et al., 2016; Van den Berg et al., 2019). These strong ties with management and weak ties with trade unions may also explain why trade unions in the Netherlands are hesitant about delegating negotiating powers to works councils.

Like in Germany, works councils in the Netherlands have a legal duty to enhance compliance of the stipulations in collective agreements within the companies and they can ask for trade unions to get involved if an employer refuses to abide by the collective agreements.

Perforated systems

It is important to note that not all employees in Germany are encompassed by this “dual system” of industrial relations (collective bargaining and works councils). Only 30% of employees are currently covered by both a works council and a collective agreement. Compared to the early 2000s, this represents a decline of 13% points. Accordingly, the proportion of employees outside the scope of collective bargaining and not represented by a works council has risen sharply (Figure 6.1.). In this respect, it can be argued that different “worlds of industrial relations” or “parallel universes of collective bargaining” exist within the German system (Schröder, 2016; Müller & Schulten, 2019).

Figure 6.1. Share of employees with works councils (WC), industry collective bargaining (ICB), company collective bargaining (CCB), and collective bargaining (CC) in the private sector in Germany, 2000–2020



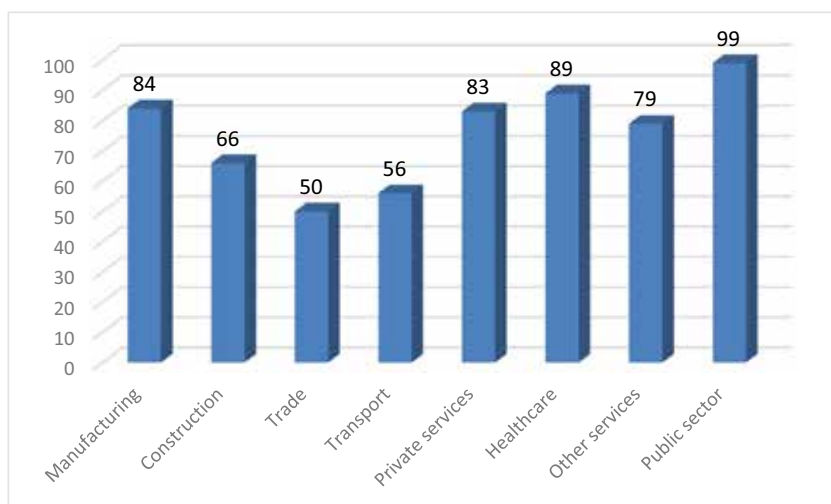
Source: IAB-Establishment Panel; authors’ illustration.

In the Netherlands, the coverage rate of collective bargaining is higher and stable,² but here, too, not all companies – and in particular SMEs – have established such councils in their organisations, despite a legal obligation to do so. Figure 6.2. shows considerable sectoral variation in this: from just 50%

² This stability refers to “coverage”; trade union involvement is less stable (fewer signings of collective agreements by FNV, the largest trade union confederation in the Netherlands).

in the trade sector to 99% in the public sector. Trade is also the sector with the lowest trade union memberships (9.5% in 2021, compared to 30.4% in the public sector). This suggested positive correlation between trade union membership and establishment levels of works councils, is not evident for all sectors: private service companies in the Netherlands often install a works council, but their workers are relatively organised at low levels. There is also large variety in the establishment of works councils between firm size categories: from 54% in companies with 50–75 employees to 95% in 200+ companies (Wajon et al., 2017). This is another reason for trade unions being hesitant to decentralise powers to works councils.

Figure 6.2. Share of establishments with works councils by sector, companies with more than 50 employees (2017, the Netherlands)



Source: Wajon et al., 2017.

In sum, in both countries national legislation strictly demarcates the rights and powers between trade unions and works councils. In Germany, trade unions have more interactions with works councils than in the Netherlands, which might be explained by the Dutch trade unions' strategies on establishing an influential position in national and sectoral dialogue, instead of organising workplace representation in the 20th century. However, there are higher rates of works councils being established in the Netherlands. The works councils' coverage rate in Germany has fallen slightly, but the proportion of employees who are neither covered by a works councils nor a collective agreement has risen sharply.

Decentralisation within dual-channel systems of employee representation

Before turning to the case studies, which describe the role of trade unions and works councils in decentralisation in detail, it is important to first give a short, more encompassing picture of decentralisation in Germany and the Netherlands.

Germany: All types of decentralisation

While the legal basis and main features of the German dual system of industrial relations remains largely unchanged, considerable changes within the system have taken place in recent years with decentralisation being the most relevant development. Decentralisation has taken different forms ranging from wild decentralisation to controlled decentralisation (Haipeter & Rosenbohm, 2022). In general, the erosion of collective bargaining coverage constitutes the main threat to the German model. Over the last 20 years, collective bargaining coverage has decreased considerably. Currently, only 51% of employees are working at a workplace that is covered by a collective agreement. Moreover, collective bargaining coverage varies widely depending on establishment size and sector. In 2020, 84% of West German (and 72% of East German) establishments with more than 500 employees were covered by collective agreements; by contrast, for workplaces with 10–49 employees, the coverage rate was just 36% in West Germany and 26% in the East. Coverage rates (by employees) also varies between sectors, ranging from 98% in the public sector to 13% in the information and communication sector (Ellguth & Kohaut, 2021). The decline in collective bargaining coverage is an expression of uncontrolled decentralisation as it is mainly driven by two processes: that of firms leaving employers' associations (or opting for an "agreement free" status within them); and that of firms that never join associations in the first place.

At the same time, however, more organised forms of decentralisation have become apparent within the German system of industrial relations. One form of coordinated decentralisation includes the shift of regulatory competences from the actors at industry level to the actors at company level. This development constitutes a process of layering, in which new elements and new competencies are added to existing institutions. It is coordinated in the sense that the collective bargaining actors themselves define the norms and have the possibility – at least in principle – to redefine them at any time. Thus, it does not (automatically) lead to lower importance of institutions at the sectoral level. In Germany, this process originates in the late-1980s, with the delegation of authority over the organisation

of working time. Thus, this process includes a transfer of responsibilities from the field of collective bargaining to that of co-determination and the regulatory zone of the Works Constitution Act. This shift in the locus of regulation to the workplace requires works councils to address new topics and take on new responsibilities (Haipeter & Rosenbohm, 2022).

Another type of decentralisation, and, in terms of its repercussions on industry collective bargaining, the more important form of coordinated decentralisation, concerns the use of derogation clauses. Trade unions and employers' associations may agree to such clauses within collective agreements, which then allow deviations at company level, even if they suspend, delay, or undercut collectively agreed standards at sectoral level. In Germany, the demands for such decentralisation arose during the early 1990s, when a public debate about the system of collective bargaining and whether and how it should be reformed arose – mainly triggered by an economic crisis, the transformation of the economy in East Germany, and challenges posed by globalisation. From the employers' side, collective agreements were increasingly depicted as a rigid corset, clamping down on companies' freedom of manoeuvre in this debate. Moreover, this was complemented by companies leaving the employers' associations – and thus withdrawing from collective agreements – or informally circumventing collectively agreed provisions. In the early 2000s, the whole debate about decentralisation gained importance due to political pressure from the federal government and the threat to amend the law to allow company pacts, which would permit the undercutting of collective agreements by the workplace parties. The response of the collective bargaining parties, especially in manufacturing,³ was to develop controlled forms of decentralisation by introducing "opening clauses," starting with the introduction of hardship and restructuring clauses (see also Haipeter, 2021; Haipeter & Rosenbohm, 2022; Müller & Schulten 2019). In the metalworking industry, the conclusion of the so-called Pforzheim Accord in 2004, significantly widened the scope for such derogations since it contained, for the first time, a general opening clause. Derogations are now permitted for a wide variety of reasons where this can be shown to improve competitiveness, innovation, and the safeguarding of employment. Chapter 3 in this book also concludes that the German manufacturing sector ticks all the boxes of decentralisation pathways (Haipeter et al., 2023).

It is important to note that the existing agreement regulating derogations in the metalworking and electrical industry stipulates that derogations can only be negotiated by recognised collective bargaining parties – the trade

3 Up until now, there have been hardly any general opening clauses allowing for derogations from collective agreements in retail.

union and either the individual employer or the employers' association. This means that works councils in the metal working industry are not in charge of negotiating those derogations. This underlines that this type of decentralisation does not include a shift from the field of collective bargaining to the regulatory zone of the Works Constitution Act. However, shortly after the Pforzheim Accord was signed, some instances occurred in which works councils nevertheless agreed to management's demands before the trade union had even become involved (e.g., Bahnmüller, 2017; Haipeter, 2021). As a consequence, in 2005, IG Metall drew up a set of coordination guidelines in order to ensure effective control centred on the following points. Firstly, applications to negotiate agreements on standards below the industry norms had to be submitted to the union's area headquarters (Bezirke), the organisational equivalent of the regional employers' associations, and required approval by officials at that level after considering extensive information about the company in question. Secondly, area officials could give local union branches authority to conduct negotiations. Thirdly, negotiations were to be supported by firm-level collective bargaining committees, whose role was to ensure that union members took part in the negotiations, were informed, and could participate in decision-making. In these instances, it is the union that checks company applications for derogation, establishes and leads the collective bargaining committees, negotiates with management, and organises membership participation and membership recruitment.

Overall, the practice of decentralisation varies considerably across sectors in Germany. Especially the use of derogation clauses, allowing for company-level derogations, varies substantially across industries (see also Müller & Schulten, 2019). While the decentralisation of collective bargaining in the German metalworking industry has been characterised by a complex interplay of "wild" and controlled decentralisation – with the latter entailing both a shift to the establishment as well as derogations from industry agreements – decentralisation in retailing has mainly been of the wild variety. Ending the extension of collective agreements and introducing scope for association membership without collective bargaining coverage – triggering a sharp decline in organisational density at the employers' associations that applied collective bargaining – has led to an enormous shrinkage of collective bargaining coverage in the German retail sector.

The Netherlands: Less decentralisation

In contrast, in the Netherlands, collective bargaining coverage is still high, at a level of 80% of the employees in the private sector. Sector agreements remain dominant and still cover almost 90% of the workers under collective

bargaining. The numbers of collective agreements at the company level have been stable in recent decades: around 500 agreements, covering 11% of the total employees under collective bargaining. The Dutch collective bargaining regime is not really multi-layered: a company is covered by a sector agreement or has its own company agreement. Sector bargaining parties have the authority to give dispensation to a company from coverage under the sector agreement if it concludes its own collective agreement. In response to the “threat” that a big company might exit the sector institutions, in 2021 the social partners in the metal- and electrotechnical industry clarified three dispensation conditions. The first condition is that the same trade unions that bargain at the sector level must be involved in company-level bargaining. Second, the terms and conditions of employment in the company agreement must be of “equal value.” The third condition is that the company keeps its obligations in terms of contributing to sector funds for pensions, training, and labour market policies. Collective bargaining parties have some scope for deviations at the company level but only above the minimum standards, so there are no negative derogations options as we see in Germany. Some sector agreements, such as in the metal and electro-technical industry, contain “decentralisation provisions,” where works councils have the power to agree tailor-made regulations on working hours and holidays and unions on pay systems at the company level (but not on collective wage increases). This modest trend of coordinated decentralisation is limited in all sectors because of the resistance of trade unions to give power to works councils and because a large proportion of the employers (especially SMEs) do not want to bargain twice about employment terms and conditions with trade unions (Jansen & Tros, 2022). In sum, we see a trend of cautious organised decentralisation and limited wild organisation in the Netherlands. Together with the full use of legal extension mechanisms, the strategy of wage moderation might also explain why bargaining coverage remains robust in the Netherlands (Ibsen & Keune, 2018). The collective bargaining system is still going strong, but it should also be noted that trade unions in the Netherlands struggle to negotiate good agreements for workers (e.g., in the retail, hospitality, and healthcare sectors).

Since the mid-2010s, there has been debate about greater works council involvement in company regulations on terms and conditions. The employers’ association AUVN⁴ sees collective agreements with trade unions as the most obvious and efficient method to regulate employment terms

4 AUVN is an employers’ association at national level and is involved in the making of over 450 collective agreements in many sectors.

and conditions. In their view, collective bargaining with trade unions at sector as well as at company level better serves industrial peace, prevents competition in employment terms and conditions, and fosters sustainable relationships in social dialogue and employment relations. Nevertheless, somewhat ambiguously, AWWN *also* sees regulations on employment terms and conditions in co-determination with works councils (and without trade unions) as a good method. The most important criterion, in AWWN's view, should be the level of support among the workers in the companies for trade unions or for works councils acting as their representative body. FNV is strongly against this "alternative" pathway to agreeing company regulations about primary terms and conditions of employment with the works council. They point to councils' and councillors' dependencies on their employers, the lack of a strike weapon, and works councils' lower expertise and negotiation skills in collective bargaining.

There is no empirical research about the numbers of collective regulations with works councils in the Netherlands. It can be assumed that the proportion of workers under such a regime is at least lower than the share of employment not covered by collective agreements because of the legal primacy of collective bargaining by unions (so less than 20%).

In sum, when we compare both countries, we see a far stronger erosion of collective bargaining coverage in the last decades in Germany than in the Netherlands. This has also led to significant variation in organised and wild forms of decentralisation between sectors in Germany. In the Netherlands, however, we see a less sharp decentralisation trend, as a result of more cautious sectoral collective bargaining parties and their supportive legal framework that makes sector agreements generally binding for all companies within the sector (including unorganised employers).

Case studies on relationships between trade unions and works councils in decentralisation processes

Germany: Insights from case studies in the metalworking and electrical industry

In the following, we will shed light on what role the relationship between trade unions and works councils plays during decentralisation processes. Both case studies from the metalworking and electrical industry in Germany relate to controlled decentralisation and the use of derogations. Focusing on the metalworking and electrical industry is particularly interesting since

the trade union IG Metall has developed specific procedures for safeguarding coordination and for preventing unauthorised derogations as well for regulating concessions.

Case study Germany: Metal Forming⁵

Metal Forming is a medium-sized company with around 400 employees at its headquarters. The company makes parts for applications in the automotive industry, such as components for car bodies and powertrains. The case study investigates a derogation agreement that the company concluded with IG Metall in 2019, following a similar agreement negotiated the previous year. The company had been experiencing liquidity problems and had undergone a change in ownership.

There were several key points in the negotiations of the derogation agreement that both parties insisted on. According to the works council's expert, the management's main focus was on the savings to be made and on the scope for reducing employee numbers. Job security was a "red line" issue for the employee representatives, and they were not prepared to agree to both concessions and headcount reductions. In addition, there were a number of other important concerns, such as whether monetary concessions would be repaid if the business situation improved, and the number of apprenticeships. In the end, both parties achieved an agreement that comprises a mixture of material concessions by employees and *quid pro quos* from the company on job security, investment commitments, repayments of missed income, and information and monitoring rights. A conflict arose over the question of a bonus payment for union members only; in this case, these bonus payments were intended – as they were generally in the metalworking industry – to offset union dues, strengthen member loyalty, and create incentives to join the union. For these reasons, the employers' associations in the metal industry have decisively rejected any such arrangements, and this was also the case at Metal Forming. IG Metall subsequently concluded an agreement on this only with the company and without the consent of the employers' association, as an addendum to the derogation agreement.

Case study Germany: Lights⁶

Lights is a medium-sized company with about 5,500 employees worldwide, with around 1,500 employees at the German headquarters. The company

5 For the whole case study, see Haipeter & Rosenbohm, 2022: 47–53.

6 For the whole case study, see Haipeter & Rosenbohm, 2022: 53–60.

produces light fixtures and offers lighting system solutions. In 2021, the company concluded a derogation agreement with IG Metall.

In late 2019, however, management approached the works council and IG Metall with a request to negotiate a derogation agreement. The works council and union then undertook a quick check of the company's situation and realised that management's request was not without foundation.

The employers' side entered the negotiations with two main demands: firstly, to extend weekly working time without pay compensation; and secondly, to postpone the industry-level collectively agreed pay increases and not implement a new element in the industry collective agreement, an annual one-off payment that can also be converted into additional time off. Of these, employee representatives were more willing to agree to longer working hours than to a reduction in pay. However, this was only on the condition that this would also promote the harmonisation of working time standards between the company's various parts. Negotiations were not limited to these points, however, and were broadened, not least due to the demands raised by the employee side. Apart from the central issue of job security, the employee side demanded investment commitments and wanted to enforce extension of the scope for co-determination by the works council. In this regard, it was demanded that the works council gets involved in outsourcing decisions ("make-or-buy") earlier, in order to be able to influence product development at the gestation stage. In addition, employee representatives requested the establishment of a joint task force with management to solve operational problems. This was supplemented by demands for an increase in the apprenticeship quota, an extension of part-time work for older workers, the conversion of temporary workers' contracts into unlimited contracts, a guarantee that the company would become full members of the employers' association, and the payment of a bonus for union members. As in the Metal Forming case, this latter payment became a bone of contention between the negotiating parties, especially given the resistance of the representative from the employers' association. Although employee representatives realised that their chances of winning this were slim, it offered helpful leverage to push through other demands.

In the end, a derogation agreement was concluded comprising a mixture of material concessions by employees and *quid pro quos* from the employer. It includes, for instance, the postponement of agreed industry-level pay increases, a convergence of working times, but also a commitment to investments and rules regarding the monitoring of those investments by the trade union and the works council, with the possibility of a sanction for any shortfall. Among other things, it excludes compulsory redundancies and ensures that

the works council participates in make-or-buy decisions at an early stage and stipulates the establishment of a task force consisting of management and the works council to jointly work out solutions for any operational problems.

Case studies in the Netherlands

To illustrate the relationships between trade unions and works councils and their positions and strategies in decentralised collective bargaining in the Netherlands we go more in-depth in two case studies. The first case reflects the traditional roles of trade unions and works councils in the Netherlands (DSM, manufacturing). The second case relates to uncoordinated (or “wild”) decentralisation by breaking traditions in collective bargaining and co-determination (supermarket).

Case study the Netherlands: DSM⁷

From century-old roots as the Dutch State Mines, DSM has evolved into a multinational company numbering 23,000 people worldwide and around 3,800 people in the Netherlands, specialising in food, chemicals, and bioscience. DSM has its own company agreement, negotiated with four trade unions (FNV, CNV, De Unie, and VHP). There is no sector agreement in DSM-related sectors in the Netherlands. The advantage that DSM has from having a company agreement is that it is able to control its labour cost developments and to follow its own policies in e.g., sustainable employability and variable pay. At plant and business unit level, DSM has six works councils, all under the umbrella of one works council at the central level (the *centrale ondernemingsraad*, Central Works Council).

The main conclusion of the case study is that the roles and activities of trade unions and works councils are clearly divided. Some years ago, there was a discussion among DSM’s Supervisory Board, its Company board, and the Central Works Council, questioning a larger role for works councils in the traditional trade union field of employment terms and conditions. This discussion led to the conclusion that works councils have less knowledge about wages, other payments, and collective bargaining processes than trade unions. Secondly, works council members are more dependent on DSM as their employer than professional negotiators paid by trade union organisations. Although they have demarcated powers, trade unions and works councils profit from reciprocal communications. Firstly, DSM’s works councils see a role in keeping close control over the fulfilment of DSM’s

7 For the whole case study, see Jansen & Tros, 2022: 29–33.

collective agreement and, for example, the detailed implementation of working hours schedules within the standards set out in the collective agreement. Many works councillors, including the chair of DSM's Central Works Council, are members of one of the trade unions (in this case, FNV). Moreover, the recent "triangle" project group involved in making a teleworking arrangement during the COVID-19 pandemic is an example of communicated trade unions and works council activities (unions agreed on payments, works councils on organisational conditions at the same social dialogue table with the employer).

Sometimes, there are frictions between the three stakeholders (employer/governor – trade union – works council) when they want to enter the other's field. The FNV union wants to be involved earlier in reorganisation and transfer plans in order to have more influence in earlier stages of the plans themselves and their effects on DSM's personnel and loss of employment in the region. According to DSM and its Central Works Council, information and consultation about reorganisation are tasks for the works councils, as they are regulated in the national Works Councils Act. As regulated by national law, announcements of collective dismissals have to be made to the trade unions, but they can only negotiate about the terms and conditions of those involved in collective dismissals or those threatened by job losses and not about the justification of the reorganisation itself or other organisational impacts. DSM prefers to have a long-term Social Plan with the unions about these terms and condition to prevent social unrest in every restructuring plan (there is now a five-year Social Plan). The chair of the Central Works Council points to the negative side effects when trade unions want to be involved too early in consultation rounds: "fighting can lead to less willingness by DSM's management to give information about reorganisations, what is needed for the works councils."

A recent case involving DSM's sale of a small company offers another example of the tensions and lack of cooperation that arises between the two bodies. The works council gave its approval on condition of agreeing a good "transfer collective agreement" (*transfer cao*) with the trade unions. When DSM could not come to an agreement with trade unions, the works councils did not withdraw their approval of the transfer.

Case study the Netherlands: Supermarket⁸

This case is an example of uncoordinated or disorganised decentralisation, where the workers' representation changed from trade unions to the works

8 For the whole case study, see Jansen & Tros, 2022: 36–39.

council in the distribution centres (supply chain) of a large supermarket in the Netherlands. In response to strikes and conflicts with the trade unions in 2017, the employer stopped bargaining with the trade unions – which were asking for a wage increase of 2.5% and fewer temporary jobs and more standard employment contracts. The employer initiated consultations with the supermarket's central works council and the works council for the distribution centres about a company regulation – a so-called *arbeidsvoorwaardenregeling* (AVR) – regarding the same topics that were traditionally regulated in the collective agreement with the trade unions. The supermarket's works councils did not ask the employer to restart the collective bargaining with the trade unions, despite the fact that around 700–800 distribution workers are trade union members. The representativeness of the council members is disputed by the unions and the interviewed works councillor. In early 2018, the works council gave its consent to the AVR proposed by the management, for a period of five years. Management gave every individual worker in the logistics departments a choice, although it was pressing for them to sign the AVR in a context of social unrest with resistance from trade union members in the workplaces. The FNV negotiator in this case is not only highly critical of the way the employer bypassed and overruled the trade unions in collective bargaining, but is also fundamentally against AVRs as a way of regulating employment terms and conditions. According to him, workers' interests when it comes to primary conditions, such as wages and bonuses for inconvenient working hours, etc., should not be represented by works council members who have no expertise in bargaining, who are too dependent on their employer, and who cannot use the strike weapon. "In fact, an AVR is a one-sided regulation by the employer," in his view. This case has three main effects. Firstly, compared to the former collective agreement, the lower labour standards that are regulated in the AVR are actually resulting in lower earnings for new logistic workers in standard employment, as well as employees on flexible labour contracts – including many temp agency workers. It has led to a divide between the older "expensive" workers and the new "cheaper" workers, with a financial incentive to replace older employees with younger (often migrant) workers. The second effect is a further polarisation between the employer and the trade unions. The trade unions felt undermined by their replacement with works councils and met a closed door. FNV's trust in the employer has also been damaged by what they saw as "aggressive behaviour from the company in pressing the employees to sign the new AVR in 2018 and excluding workers who did not want to sign from a collective wage increase." A third effect is related to the functioning of the works

councils in the supermarket, now with more trade union members but also with lower trust in the management.

Discussion based on the case studies

Cooperation among works councils and trade unions in decentralisation

Case studies in Germany

Overall, evidence from the German metalworking and electrical industry highlights that, in the case of the decentralisation via derogation clauses, trade unions are still the most important actor in bargaining at establishment or company level, since they check any applications by companies seeking to derogate from industry standards, set up and lead bargaining committees and negotiate with management, and organise membership participation and recruitment. Although derogations in the metalworking and electrical industry clearly fall within the scope of action of the collective bargaining parties, the cooperation between the union and works councils is highly relevant for negotiating and implementing such provisions. Works councils usually play a central role on negotiating committees, they are the experts in their own companies, and their approval is vital, as no viable agreement can be reached without their involvement and consent. In the case of Metal Forming, the bargaining committee not only consisted of an experienced collective bargaining official from IG Metall, but also of unionised works councillors and shop stewards from different departments in the company, enabling information and concerns to flow in both directions between the committee and individual departments. Similar to the case of Metal Forming, the union and the works council in the case of Lights were anxious to make the composition of the bargaining committee as broad as possible and to represent as many company affiliates, departments, and employee groups as they could. This body then appointed a smaller negotiating committee, led by IG Metall but also including six works councillors from different areas of the company, who were also trade union members.

In the case of Metal Forming, the link between the works council and the trade union was also highly relevant when the derogation process started. The whole process started with the management's announcement that it would shut down an essential part of the establishment. In line with the Works Constitution Act, the works council was informed about this alteration to operations. The works council immediately informed the IG Metall's

local administrative office and used its network to locate and engage legal advice. Talks then began with the company that revealed that there was a major liquidity problem that could not be dealt with by closing the tool shop alone and that further measures would be necessary, which would include seeking a derogation from the industry agreement.

This underlines that close cooperation between the trade union and works councils is crucial for successful coordination of collective bargaining at company level. In our case studies, this is mainly ensured by a high organisation rate of works council members. Several aspects are important in this regard. Firstly, the union needs to ensure that works councils are not too willing to concede when faced with employer pressure. Secondly, having the union take the lead in contested negotiations can be a great help for works councils, relieving them of the challenge of facing management, who will have to sit down with the union's typically highly experienced negotiators, and allowing them to benefit from the power resources that the union can mobilise during the negotiation process. Moreover, negotiations on these issues can also enhance works councils' capabilities, as they will be provided with comprehensive business information by the employer that they would not otherwise have received in such a detailed form, despite their statutory right to such information in the normal course of co-determination (Haipeter, 2010).

Moreover, works councils need trade unions, both to provide professional support when engaging in the new tasks devolved to them and to back them up with organisational and bargaining power to enable them to negotiate fair derogation deals with management. The Lights works council has benefited greatly from the close cooperation it has enjoyed with IG Metall in implementing the agreement. One important factor in this is the importance of the company to the local union administration; Lights is the second largest company in the area and the chairman of the works council sits on the executive board of the local union office. This form of networking between the union and the works councils at large companies has existed for a long time. However, it has been recently complemented by the involvement of works councils in union projects to support and activate works councils that go beyond the well-rehearsed patterns of union support on specific enquiries and problems. For instance, an important building block in the context of the derogation agreement at Lights was the participation of the works council and the company in a trade union project aimed at strengthening the competences of both employee representatives and employers in dealing with digitalisation. Within the framework of the Work 2020 project, an "Agreement for the Future" was concluded between IG

Metall and the company. This was not a collective agreement in the formal sense, but rather a form of workplace agreement, concluded at company level, which focused on improvements in training opportunities for employees and included provisions on obligatory discussions on training between employees and supervisors and digital skills surveys to be conducted, if desired, by the works council.

In both German cases, established relationships between the works council and the union were crucial during the negotiation phase and formed an important resource for the employee representatives. Not only are all the members of the Metal Forming's works council in the union, but there are also close ties between the works council and the local union administration. Works councillors regularly attend union training sessions and seek union advice if problems arise.

In the case of derogations from industry agreements, trade unions need works councils as these represent the link to both workforces and management and are indispensable for monitoring how derogations are implemented at workplace level. Moreover, a core element of derogations in the metalworking and electrical industry is participation by union members. Indeed, the trade union included this as a requirement in its 2005 coordination rules. It is intended to foster a closer relationship between the union and its members, as well as employees more generally, when it is engaged in negotiations over derogations, given that, in contrast to bargaining over pay increases, these can entail a lowering of terms and conditions, at least temporarily. In the case of Metal Forming, the works council and trade union also played an important role in informing the workforce. Works councillors and shop stewards frequently went to departments to talk to workers in person and explain the risks posed to the whole workforce from closing the toolroom, helping strengthen employee unity. This approach also helped to increase union membership within the workforce. Both the works council and the union attribute this to intensive communication, the negotiation of the union membership bonus and, importantly, the legal protection offered by membership – an important argument for joining the union in view of the threat of job cuts. In the case of Lights, the union and the works council also made great efforts to create incentives for employees to join the union. Firstly, they provided comprehensive information; and secondly, only union members had a right to vote on the outcome of the negotiations. Both of these are typical incentives used by IG Metall in negotiations on derogations. However, a further instrument was added at Lights. In the questionnaire sent out at the beginning of negotiations to ask employees about their priorities, employee representatives also asked about union

membership and enclosed a piece of paper asking if employees would like to have a say in the negotiations. As a result, the union was able to recruit up to 80 new members.

In the case of Lights, the IG Metall and trade union members of the works council invited the IG Metall members among the employees to a membership meeting, to vote on whether or not negotiations should be initiated. Negotiations for a derogation agreement had been held twice before – the last time only a year previously – and on both occasions without a result. In the previous year, union members at an IG Metall membership meeting had decided to break off negotiations. In any event, the breakdown of talks in the preceding dispute proved helpful in obtaining a mandate to start discussions again in the general meeting held to discuss fresh negotiations. IG Metall and the works council were able to argue that they would adopt a tough stance and would not hesitate to break off negotiations if necessary.

Case studies in the Netherlands

Where we see trade unions in the German cases being the bargaining actors, together or at least in active cooperation with works councils, we see far less overlapping of roles in both Dutch cases. Either it is “only trade unions” (as in DSM) or “only works councils” (as in the supermarket). For the Dutch manufacturing sector, then, we can conclude that it is only trade unions that bargain on wages and other material compensations (see also Chapter 3 in this book; Haipeter et al., 2023). Remarkably, and also in the DSM case, trade unions leave the implementation of such decisions entirely to management and the works councils, without their involvement. The DSM case clearly reflects the aims and functioning of the Dutch legal system: collective bargaining on employment terms and conditions is for trade unions and co-determination on organisational and non-wage HR issues is for works councils. This case study mirrors the regulation and practices in other manufacturing sectors in the Netherlands where trade unions have decentralised the issue of flexible working hours (by day, month, and year) towards works councils, without any formal involvement of trade unions. The cooperative practices between unions and councils of the type seen in the German cases, do not exist in the Netherlands. Not even in the DSM case, where we would expect such strategic partnerships due to the combination of DSM’s collective bargaining at the company level (instead of the dominant sectoral level in the Dutch regime) and relatively well-developed co-determination practises by works councils. The company has continued these demarcated practices in recent issues, such as teleworking, COVID-19 measures, and restructuring. In their own way, both case studies in the

Netherlands confirm and perfectly illustrate the dual-channel system in the Netherlands of separated juridical competences and demarcated positions of trade unions and works councils. In the supermarket case, where trade unions have been entirely replaced by works councils, this separation is absolute. At DSM, both bodies of workers representation communicate what they are doing in their own field, although the unions prefer to be more involved in organisational development issues than the employer and the works council allow for. In the supermarket case, the employer strategically replaced trade unions' collective bargaining with works council involvement, without coordination between the two bodies of workers representation and, consequently, it undermined the position of the trade unions. However, both cases show, albeit in different ways, that trade unions might benefit from greater cooperation with works councils in their negotiations with individual employers to prevent further decentralisation in negotiating employment terms and conditions and decentralisation of social dialogue towards works councils.

Trade union presence at the workplace

Crucial differences exist between the German and Dutch cases with regard to trade union presence in the workplace. While IG Metall uses different means in the workplace when it comes to derogations, ranging from being present and leading the bargaining committee and organised works council members to shop stewards, similar activities are not observed for the Dutch cases. In both German cases, the majority of works council members are organised within the trade union and thus form a hinge between the workplace level and trade union activities. This is supplemented by separate workplace trade union representatives' bodies (shop stewards), which are elected by trade union members. Although, those shop stewards have no legal co-determination rights, they nevertheless open up a direct link between the workforce and the trade union. For the union, such bodies are indispensable for staying in control of derogation processes and monitoring their implementation.

As described earlier, trade unions in the Netherlands are traditionally not present at workplace level (with some exceptions). Moreover, works councillors are less likely to be trade union members than in Germany. Nevertheless, the DSM case shows that works councils in business units with higher union memberships are more oriented towards the unions' agendas and policies than works councils in less organised business units (overall estimates of trade union memberships vary from 25% to 40%). It

also helps communication between unions and councils when (chairs of) works councils are members of trade unions. But the difference is that in the Dutch manufacturing sector, neither bodies cooperate other than giving each other information and perhaps discussing certain issues. Respect for each side's own, separate roles is seen as crucial for the functioning of both collective bargaining as well as consultation and co-determination. The DSM case also shows that the proper functioning of this dual-channel model in this company is challenged by several factors. The continuity of collective bargaining by trade unions is dependent on union membership among new generations of workers. Younger workers are less unionised in the Netherlands, and that is also the case at DSM. The actual good communications and relations between the two bodies are partly based on the unions' having members on the works councils, but this factor also gives no guarantee for the future. Frictions and tensions remain and will require the right responses from all stakeholders in terms of their respect for the different roles and positions of the two bodies of workers' representation. Trade unions' presence in the workplace and involvement in the functioning of works councils is quite different than in the German cases where they operate together when it comes to derogations from collective agreements. The supermarket case in the Netherlands is illustrative of the isolation of both workers' representation bodies. It is difficult to imagine that trade unions would have been replaced by works councils if there had been more trade union members in the works councils and trade unions had had more communications with the works councils. Furthermore, dissatisfaction among employees around the replacement of the collective agreement by company regulations (AVR) has led to the election of new, more unionised works council members in the company. The new works council seems to adopt a more proactive approach, but, at the same time, more unionisation of the councils seems to lead to lower trust in the relationship between the management and the works councils. Following this experience, FNV is aiming for closer cooperative relations with the supermarket's works councils, including new communications and face-to-face meetings in order to support them in providing information, consultations, and expertise.

Conclusion

We see similar statutory allocations and demarcations of powers between works councils and unions in both countries. There is no formal difference between the two countries in the opportunity for works councils to be

involved in negotiations at the company level if the collective bargaining parties give them a role. We also see debates in both countries about giving works councils more involvement in negotiating collective terms and conditions of employment at the company or even workplace level. However, there are some key differences between the two countries that have an impact on the role of works councils in shaping decentralisation and on the new relationships between trade unions and works councils. Firstly, there is more “effective” pressure from German employers to decentralise. Secondly, trade unions in the Netherlands are traditionally weaker and less present in the workplace than in Germany. Thirdly, in Germany, works councils are more influenced by trade unions as a result of consultation and unionised councillors. How can this be explained?

In Germany, there is more experience and evidence of factual decentralisation practices towards works councils. Contrary to the Netherlands, in some German industries there are general derogation clauses within collective agreements, which allow deviations at company level, even if these suspend, delay, or undercut collectively agreed standards at sectoral level. In addition, we also observe a shift in regulatory competences from the actors at industry level to the actors at company level; especially with regard to flexible working time arrangements. However, both forms can be regarded as controlled forms of decentralisation as they are defined through norms set by the bargaining actors at sectoral level. Controlled decentralisation through agreed derogations from industry-level collective agreements or in the form of shifting competencies to the workplace level does not, however, lead to a general erosion of the dual system of interest representation in Germany. Our empirical evidence underlines that when effective coordination is in place, works councils do not become substitutes for trade unions. However, the opposite might be true as well: when there is no coordination, employers might be able to bypass trade unions. Nevertheless, in Germany, the relationship among those actors changes considerably and the previously clear division of labour within the dual system becomes much more blurred. Works councils in Germany are getting involved, alongside the trade unions, in collective bargaining, and trade unions are much more actively involved in company affairs (see also Haipeter, 2021).

It is worth mentioning that organised decentralisation within the German metal and electrical industry rests upon a close articulation between works councils and the trade union and a strong union presence in the workplace (see also Müller & Schulten, 2019). In the growing segment where the institutions and actors of the dual system are absent (see Figure 1), meaning

that neither collective agreements nor works councils are in place, no such coordinated process of decentralisation is feasible in Germany. For instance, in industries like retail, where trade unions are much weaker and works councils are less widespread, such mutual reinforcement is much rarer.

Much more than in Germany, trade unions in the Netherlands are very prudent and hesitant to give works councils a role in bargaining on primary working conditions, such as wages and working hours. Negative derogations are not possible. Positive derogations can be done unilaterally by employers without the involvement of any workers' representatives, unless it is explicitly agreed in the collective agreements, e.g., with respect to working time (but definitely not in wages). The case study of the Dutch supermarket illustrates that, in practice, the employer can bypass the trade union by making agreements with the works council, even in a context of rather high trade union membership. This is a possibility within the Dutch law. Although hard evidence cannot be given that such uncoordinated, wild decentralisation practices are growing in the Netherlands, debates and awareness about this issue have grown in recent years. More than in the past, some employers and their associations are seriously considering the pathway of making company agreements with works councils instead of collective agreements with trade unions. One of the unintended effects might be that works councils become more unionised, as we have seen in the supermarket case, which might also affect the traditional consensual model of co-determination in the Netherlands. In general, social partners in the Netherlands do not see trade unions and works councils cooperating in collective bargaining as a real option (again, a difference with Germany).

Our case studies suggest that trade unions and works councils are more collaborative in Germany. This might be explained by the strategic trade union response to the employers' push towards decentralisation. In Germany, this push from the employers' side has more power and impact, while in the Netherlands sector bargaining is more supported by legislation on the extension of sector agreements, which gives companies very low escape options in the direction of works councils (with exceptions of sectors like IT). To put it in other words, many German employers can directly profit from "opting-out" of employers' associations, while unorganised employers in most of the sectors in the Netherlands remain covered by sectoral agreements. During derogation negotiations in Germany, works councils, workplace union representatives, and the union itself – as negotiation leader – must coordinate their interests and develop common negotiating aims and strategies much more closely than usual in the normal operation of the

dual system. The success of any derogation process very much depends on the presence of union officials, who are skilled in collective bargaining, and on works councils, which are able and willing to collaborate with the union. The clearer separation of activities of trade unions and works councils in the Netherlands is not only shaped by Dutch labour law, but also by less need of trade unions to connect to works councils in a stable collective bargaining regime, consisting of sector agreements without derogation opportunities. Trade unions in the Netherlands therefore have less experience in collaborating with works councils, do not see them as a power resource in decentralisation, and continue their strategy of “no decentralisation to works councils.” At the same time, in the quite stable context of the Netherlands, works councils do not build up negotiation skills and capacities in the same way as German councils in manufacturing do. Then we come to a “chicken-and-egg” discussion to explain the councils’ passivity in collective bargaining in the Netherlands or to a self-fulfilling prophecy of incapable works councils. No derogation leads to low experience among councils, and low experience leads to an unwillingness among collective bargaining parties to delegate to these unexperienced councils. Given the stricter functioning of the dual-channel structure in the Netherlands, which assigns a very limited role to works councils in co-negotiating and in the implementation of collective agreements, one might also say that Dutch trade unions are missing the opportunity to (re-) connect with workplaces and to deepen or widen their rank and file. By not advising or collaborating with works councils, trade unions risk becoming powerless in future cases of “wild” decentralisation in which employers initiate regulation of collective terms and conditions of employment with works councils.

Finally, we would like to make the comment that work councils in Germany and the Netherlands are both confronting big challenges today and in the near future. They might be increasingly involved in consultations and co-determination about organisational developments and its effects on jobs, skills, and quality of work, as a result of the anticipated digital and “green” transitions in companies. When done right, this might lead to further growth of the functioning of the institution of works councils in many companies in both countries. The possible trend of broadening and deepening the agenda for co-determination and works councils in organisational transitions might result in a further decentralisation in labour relations, while it can be assumed that, at the same time, these issues can limit influenced at sectoral level. In turn, this requires new strategies from trade unions to set the rules in collective agreements and to consider greater involvement in the functioning of works councils.

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