

# A Question of Appropriateness

What views underpin German Employer Association's resistance to a widespread use of statutory extension?

Master Thesis: MA International Relations

by

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## **List of Abbreviations**

BDA	Bundesvereinigung der Deutschen Arbeitgeberverbände
CME	Coordinated Market Economy
DGB	Deutscher Gewerkschafts Bund
EU	European Union
FDP	Freie Demokratische Partei
HDB	Hauptverband der Deutschen Bauindustrie
HDE	Handelsverband Deutschland
HVNRW	Handelsverband Nordrhein-Westphalen
LME	Liberal Market Economy
OECD	Organisation for Economic Co-operation and Development
SPD	Sozialdemokratische Partei Deutschlands
VerDi	Vereinigte Dienstleistungsgewerkschaft
VNO-NCW	Vereiniging Verbond van Nederlandse Ondernemingen – Nederlands Christelijk Werkgeversverbond
VofC	Varieties of Capitalism
ZDB	Zentralverband Deutsches Baugewerbe

## **Abstract**

Since the mid-1980s German collective bargaining coverage of employees has continuously declined. Current explanations attribute this decline to structural changes in the German economy, but structural factors by themselves fail to explain why coverage has increased in other European Coordinated Market Economies during the same period. The resulting divergence in coverage can instead be attributed to differences in employer support for the use of statutory mechanisms to shore up collective bargaining. As shown here, German employers have, in contrast to employers elsewhere, continuously opposed such measures. Based on a set of semi-structured elite interviews and case studies, I analyse what explains this opposition. This thesis shows that German employer associations oppose a frequent use of statutory extension by default based on 1) a strong normative aversion to state intervention, 2) a normative appreciation of wage competition, and 3) the believe that statutory extension can itself undermine coverage. Furthermore, I demonstrate that when there are highly salient problems in a sector which employers believe can be remedied by statutory extension sectoral employers can overcome the German default position and use extensions however only to an extent that is perceived as strictly necessary.

## Introduction

Over the last decades, advanced industrial societies have witnessed important changes, as they underwent a process of economic globalization, which has been characterized by unprecedented international interdependence and integration of trade, production, and competition (Thelen, 2014; Steger, 2017). These changes have arguably been particularly intense in Europe, where the process of European integration has not only eliminated barriers to the mobility of labour, goods, capital, and services but has also yielded a common currency and a common legal order, thereby integrating diverse national political economies in a highly competitive single market (Johnston and Regan, 2016; Hall, 2018). In the field of comparative political economy, which has long distinguished capitalist societies as either possessing institutions that promote a more egalitarian or social model of capitalism, including continental European economies, or a more inegalitarian liberal model of capitalism as in the Anglo-Saxon economies, these developments have led to a debate about the sustainability of these distinct models (Thelen, 2014). In this debate some argue that globalization and the process of European integration, either through increased economic competition and capital mobility (Thelen and van Wijnbergen, 2003; Streeck, 2009; Johnston and Regan, 2016; Baccaro and Howell, 2017) or biases in decision making at the EU level (Scharpf, 2002, 2010), will lead national economies to converge towards a neoliberal model of capitalism. Others, however, maintain that national differences will remain strong in the face of economic integration (Hall *et al.*, 2001; Thelen, 2014; Witt *et al.*, 2018).

For a long time, this debate was dominated by schools of thought that argued in favour of stability. These include both the corporatism literature as well as the Varieties of Capitalism approach to political economy. Scholars belonging to these schools such as Hall and Soskice (2001), Pontusson (2005), Busch (2005) and Thelen (2000) argued that the heterogeneity of institutions and interests of actors across political economies would mediate the pressure of globalization and yield different outcomes accordingly. Consequently, they expected that countries with liberal institutions, so called Liberal Market Economies (LMEs), such as the Anglo-Saxon economies, would continue down a path towards more liberalisation, while the Coordinated Market Economies (CMEs) of continental Europe would be able to avoid this (Hall *et al.*, 2001; Hall and Thelen, 2009). For some time, continental European economies did indeed appear to be sheltered from the pressures towards liberalization observed in Anglo-Saxon countries. Now, however, it is increasingly clear that this may no longer be the case. In recent years, scholars such as Baccaro and Howell (2017), Kindermann (2017) and Streeck (2009) have put forward strong arguments in favour of a trend towards liberalization in continental European economies. Scholars long associated with the stability view such as Thelen (2014) and Hall (2015) now also increasingly recognize this trend but argue that it impacts sectors very differently and has therefore resulted in a bifurcation of labour markets rather than an across the board liberalization. One of the most important institutions in this debate is sector level collective bargaining, which is seen as a core characteristic of the coordinated/corporatists economies of continental Europe (Pontusson, 2005). Critics of the stability view point out that there has been a significant trend towards decentralization of collective bargaining and a decline of bargaining coverage in some countries.

A key country in this debate is Germany, which long served as a theoretical and empirical backbone of the arguments in favour of stability as it exhibited a high coverage of sectoral bargaining agreements and low wage dispersion (Baccaro and Howell, 2017). Over the last twenty

years, however, Germany has seen a significant erosion of bargaining coverage and a decoupling of wage trends between the service and manufacturing sector (Thelen and van Wijnbergen, 2003; Howell and Baccaro, 2017). Current explanations of declining bargaining coverage focus on three different structural developments. In line with the power resources theory, one group attributes it to a decline in union membership (Ebbinghaus and Göbel, 2014). A second group argues that as a result of heightened international competition and changes in production methods small and medium-sized employers are increasingly withdrawing from collective bargaining to cut costs (Thelen and van Wijnbergen, 2003; Silvia and Schroeder, 2007). Finally, proponents of the dualization view see declining coverage as a result of shifts in employment from high coverage core sectors in manufacturing to the typically lower coverage service sector (Thelen, 2014). As will be demonstrated in Chapter I these explanations, however, fail to explain existing cross-national variations in bargaining coverage.

One clear sign that these explanations are coming up short is that the developments to which they point are occurring elsewhere in Europe as well but have not resulted in a similar decline in collective bargaining coverage there. The reason of the latter is that these countries extensively use measures, such as statutory extension, to shore up collective bargaining coverage (Bispinck, Dribbusch and Schulten, 2010). As shown in Chapter I, these measures have enjoyed widespread support by employers, which have continuously defended their use against critical governments. In contrast, the use of such measures is minimal in Germany and has further declined since the mid-1990s, despite government and union attempts to encourage a greater use (Bispinck, 2003; Kirsch, 2008; Schulten, 2012; Wiedemuth, 2018). The reason for this is that German employers have consistently opposed a more widespread use of statutory extensions, by vetoing applications to extend agreements and lobbying against the introduction of laws seeking to ease the use of such measures (Bispinck, 2003; Kirsch *et al.*, 2008). This behaviour is puzzling for two reasons, firstly much of the comparative political economy literature implicitly assumes that German employers have a strong interest in maintaining high levels of bargaining coverage, after all, this is seen as a key feature of the German model. Secondly, employers in other European Coordinated Market Economies have not behaved in the same manner. Consequently, Germany now presents a significant outlier among continental European economies, which clearly raises the question: What views underpin German employer associations' resistance to a widespread use of statutory extensions? This question has so far not been comprehensively addressed and thus presents a clear research gap. This thesis fills this gap by conducting an in-depth qualitative analysis of German employer views of statutory extension and collective bargaining more generally. To do so, eight semi-structured elite interviews were carried out with employer representatives across the metal, construction, and retail sectors as well as with Germany's peak employer federation BDA. These interviews were analyzed in conjunction with the existing academic literature and primary sources such as position papers of employer associations to ensure the accuracy of the findings through triangulation. They are also compared to the well-known views of Dutch employers which are taken as indicative of employer views in countries with strong state support systems for bargaining to identify cross country variations.

This thesis is structured as follows: the first chapter elaborates the research question, explains what different views employers can take and provides further detail on the methodological choices made here. The second chapter presents the main findings of the interviews by conducting a comparison across sectors and by comparing German and Dutch views. The third chapter reviews three case studies based on the interviews and a survey of the existing literature to confirm

that the views uncovered in the interviews conform to and can shed new light on the real-world behaviour of employers. Finally, the last chapter summarizes the key findings and discusses their implications for future research. The core findings of this thesis are that German employers differ from Dutch employers in their normative evaluation of statutory extension which they perceive as an inappropriate form of state intervention and are on average less concerned with the risk of wage competition. Differences across German sectors can largely be explained by the salience of different sector-specific problems and their interpretation by employers. When sectoral employers believe that these problems can be addressed through statutory extension and perceive them as significant threats to their position, then sectoral employers can overcome their normative aversion to statutory extension. But even when this is the case German employers will only favour extensions to an extent that is perceived as strictly necessary for this purpose. In this thesis, I demonstrate that these findings are coherent with high profile cases of employer politics and can also help us gain a deeper understanding of employer opposition to recent legislative reforms as well as the decline of collective bargaining coverage.

## **Chapter I: Background, Theory, and Methodology**

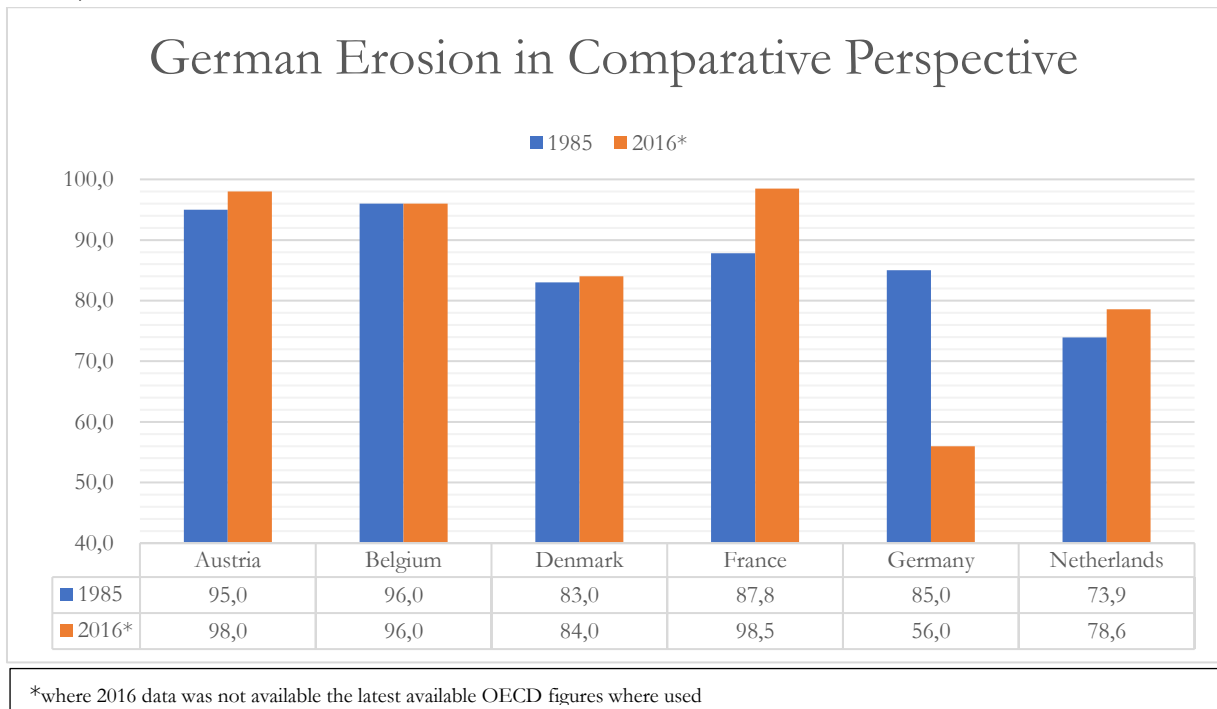
Before turning to the data collected, it is important to take a closer look at the empirical and theoretical literature as well as the methodology deployed here. To do so this chapter is divided into three parts. Part one outlines the research puzzle and demonstrates the importance of employer views by discussing the state of German collective bargaining in international perspective. Part two reviews the theoretical arguments on why employers should or should not favour collective bargaining and statutory extension. The third part explains the case selection and the chosen research design.

### **Collective Bargaining in Germany and Its Erosion**

To better understand the salience of the academic puzzle investigated, it is important to first take a look at the erosion of collective bargaining in Germany from a comparative perspective and to explain why this development is not purely structural but mitigated by the actions of employer associations. Collective bargaining in Germany primarily takes place at a sectoral and regional level in a system of pattern bargaining which historically produced high coverage rates that stood at 85% throughout the 1960s, 70s, and 80s (Marginson and Sisson, 2003; Silvia and Schroeder, 2007; OECD, 2018a). Since the 1980s, however, collective bargaining coverage of employees has slowly but steadily eroded: while in 1985 it still stood at 80,8%, it had already reached 68% in 2000 and in 2016 only stood at 56% (OECD, 2018a). As mentioned above the conventional literature attributes this decline either to de-unionization, rising international competition or sectoral shifts in employment patterns. A comparative overview can illustrate why these structural explanations are insufficient to explain existing variations of bargaining coverage on their own and why employer positions play an important role in determining their impact on bargaining coverage.

Figure 1 compares bargaining trends in Germany and other continental European economies which share many institutional characteristics with Germany and are similarly classified as CMEs (Witt *et al.*, 2018). Looking at this figure from the lens of the conventional literature we would expect that structural shifts have hit Germany particularly hard, however, this is not so. The trade union density rate, for instance, is almost identical in Germany (17%) and the Netherlands (17.3%) and is much higher than that of France (7.9%) (OECD, 2018b). Similarly the Netherlands, Denmark, and Austria exhibit a greater exposure to international trade measured as a percentage of GDP than Germany, while the German service sector is also the smallest of these countries (World Bank, no date). Therefore, one would expect a similar decline in collective bargaining coverage throughout these societies. But as shown in Figure 1, collective bargaining coverage has only declined in Germany while it increased in the Netherlands, Austria, Denmark, and France and remained stable in Belgium compared to 1985 levels.

**Figure 1:** Collective bargaining coverage (% of the workforce) in 1985 compared to 2016 (OECD, 2018a)



As shown by Schulten (2012) and Lesch *et al.* (2017), the reason is that these countries make extensive use of various tools to shore up collective bargaining coverage. The Ghent countries which include Denmark strongly incentivise union membership by granting employers and unions an important role in administering social security (Schulten, 2012; Lesch *et al.*, 2017). A more widespread measure, however, is statutory extension, a mechanism that extends bargaining agreements to all employers in a specified sector or geographical region (Bispinck, Dribbusch, and Schulten, 2010; Schulten, 2012). This system is widely used in Belgium, the Netherlands, and France where it covers a majority of agreements (Schulten, 2012). Other countries use various measures, which are functionally equivalent to statutory extension, this includes Austria, which ensures virtually universal bargaining coverage through mandatory membership in employer associations (Schulten, 2012; Lesch *et al.*, 2017).

It is well known that statutory extension enjoys great support from employers in France, the Netherlands, and Austria. In the Netherlands, employers have repeatedly made clear that they support a routine use of extensions and together with unions have strongly defended the instrument when it faced criticism by liberal and conservative politicians (Visser, 1998; Hemerijck, Van der Meer and Visser, 2000). Dutch polling data further indicates that this positive view of the extension mechanism is not limited to organised employers, but also widespread among non-organized employers of which 82% support it (Royer and Van Der Veldt, 2012). Similar support can be observed in France, where the largest employer associations favour the use of extensions and describe it as an “essential tool that cannot be abandoned” (Dufresne and Maggi-Germain, 2012: 537). Austrian employers have also demonstrated their approval in a 1995 referendum where 82% of employers voted to continue compulsory membership, which is functionally equivalent to statutory extension (Paster, 2014).



In Germany, a mechanism for statutory extension also exists and has in fact done so since the establishment of the Weimar Republic where it enjoyed frequent use and covered 20.5% of agreements in 1929 (Bispinck, 2003). Statutory extension was reintroduced in 1949 under §5 of the collective bargaining contract act (TVG), which set out that agreements could be extended on the condition that they (1) cover 50% of employers, (2) are in the public interest and (3) are approved by the bargaining committee (*Tarifausschuss*) in which both unions and employer associations hold a veto position. Since its reintroduction, the use of statutory extension was confined to a limited number of sectors, most notably retail and construction but otherwise remained marginal (Bispinck, 2003). Its usage peaked at 5.1% in 1991 but since then has declined significantly and by 2013 only covered 1.7% of agreements (Schulden and Bispinck, 2013).

This “crisis of statutory extension” has been primarily attributed to the position of German peak employers who have strongly opposed a widespread use of the measure and frequently use their veto right in the bargaining committee to block extension requests (Kirsch, 2008; Schulden and Bispinck, 2013). Additionally, in sectors with a longstanding tradition of statutory extension, such as the retail sector, employers have started to abandon statutory extension and where sectoral employers continued to favour its use, this has in numerous instances led to open conflict with the BDA (Bispinck, Dribbusch and Schulden, 2010). For example, in the construction sector attempts to extend minimum wages to posted workers were vetoed by peak employers, even though, sectoral employers supported the measure (Schulden and Bispinck, 2013; Mabbett, 2016). The sceptical stance of employers is also reflected in survey data which shows that 75% of German employers oppose a greater use of the measure (Nicklich, 2013). Furthermore, government attempts to ease the use of statutory extension have faced opposition from peak employers. This includes the introduction of the 1998 posted workers law and the 2014 law to strengthen collective bargaining (*Tarifautonomiestärkungsgesetz*) (Mabbett, 2016). The former allowed for the extension of wages to posted workers in selected sectors while the latter extended the scope of the posted workers law to all sectors and lowered the requirements for extensions by eliminating the 50% coverage criteria that were previously needed for extensions (Mabbett, 2016). Instead of supporting a shoring up of bargaining in the face of mounting structural pressure on collective bargaining, like their EU neighbours, German employers have even reacted to it in the opposite direction. For instance by allowing members of employer associations to opt out of collective bargaining, thereby cutting the link between bargaining coverage and association membership (Behrens, 2011). This remarkable behaviour clearly raises the question what explains this ‘Sonderweg’ taken by German employers?

So far, this question remains unanswered, as the comparative literature has shown little awareness of this – in international perspective – unusual position of German employers (e.g. Streeck, 2009; Thelen, 2014; Baccaro and Howell, 2017). In contrast, employer opposition is well documented in the German industrial relations literature, but scholars in this field often take this position for granted and have not sought to comprehensively explain it (e.g. Kirsch, 2008; Bispinck and Schulden, 2009; Schulden and Bispinck, 2013). There is, therefore, a clear gap in the literature which I fill by systematically analysing the preferences of German employers. I focus here on three aspects which should be particularly relevant: firstly, employer attitudes towards state intervention through statutory extension, secondly, their perception of collective bargaining and thirdly, how they understand the causes of declining coverage. While the relevance of the first aspect is rather self-explanatory as a dislike of state intervention could explain their aversion to extensions, the second and third aspect may also inform their position. This is because even if employers are

relatively indifferent to statutory extension as such, they may simply have lost interest in strong collective bargaining or view extensions as ill-suited to address the decline of coverage. These possibilities are also important to consider from a theoretical perspective because much of the conventional literature has always departed from the assumption that German employers benefit from the 'German model' of high bargaining coverage and would come to its defence (Thelen, 2000; Hall, 2015). However, the behaviour of German employers towards statutory extension clearly calls this into question and scholars such as Kinderman (2005, 2014) have recently argued that the conventional literature overstates German employer commitment to collective bargaining. There is thus clearly a need and growing appetite to revisit conventional assumptions and this thesis also seeks to contribute to this endeavour.

### **Theoretical Pros and Cons of Collective Bargaining and Statutory Extension**

As seen in the last section the position of German employers to statutory extension is puzzling and raises questions about their commitment to collective bargaining more generally. Before these questions can be addressed it is necessary to discuss the theoretical pros and cons of collective bargaining and statutory extension so that the employer interviews can be properly interpreted. The academic literature has identified numerous pros and cons of collective bargaining.

Beginning with the advantages, five direct benefits from the perspective of employers can be identified. Firstly, sectoral bargaining provides transparency, bureaucratic ease and reduces transaction costs as it eliminates the need to negotiate agreements on an individual or company level and provides employers with a template for wages and working conditions (Marginson and Sisson, 2003). Secondly, sectoral bargaining agreements typically cover multiple years allowing employers to predict developments and plan long-term (Marginson and Sisson, 2003; Thelen and van Wijnbergen, 2003). Thirdly, it enhances peace on the shop floor and reduces the costs of industrial conflict. The former because collective bargaining is conducted outside the firm, thereby, eliminating direct confrontation of management and workers (Hassel and Rehder, 2001). The latter because industrial action would affect an entire sector/region, thereby, reducing the risk that a competitor can profit from strikes in one's company (Hassel and Rehder, 2001). Fourthly, as agreements set minimum standards on wages they reduce wage competition among organized employers (Streeck, 1997; Hall *et al.*, 2001; Marginson and Sisson, 2003). Employers can be seen as interested in this because it serves as an entry barrier to low wage (low productivity) competition and also reduces the risk of staff being poached (Hall *et al.*, 2001). Fifthly, it allows employers to engage in sector-level self-regulation without government interference, for instance, to self-regulate low pay or to set up social funds (Marginson and Sisson, 2003; Asshoff, 2012).

In addition to these five direct benefits, the Varieties of Capitalism literature argues that collective bargaining is highly valued by employers in CMEs, because the effects of multi-employer bargaining and the corresponding high degree of employer organization is thought to be complementary to other institutions in these economies, such as training, inter-firm relations and patient capital financing (Hall *et al.*, 2001; Pontusson, 2005). They argue that firms in CMEs have structured their business model around these institutional configurations which grant them a comparative advantage when it comes to long term incremental innovation and high-end manufacturing (Hall *et al.*, 2001; Hall and Thelen, 2009). Consequently, they expect that it will be in the interest of CME employers to defend existing institutions including multi-employer bargaining (Hall *et al.*, 2001; Kinderman, 2017). Another reason to assume employer support stems from the corporatism literature, which holds that collective bargaining can have a beneficial impact

on macroeconomic performance (Flanagan and Flanagan, 1999; Molina and Rhodes, 2002). Corporatism scholars argue that bargaining at a centralized level reduces transaction costs and allows unions and employers to price in externalities and react better to price signalling from central banks (Flanagan and Flanagan, 1999; Hall and Franzese, 2000; Molina and Rhodes, 2002). It is argued that this will lead to wage restraint and reduce unemployment and inflation (Flanagan and Flanagan, 1999; Molina and Rhodes, 2002; Traxler and Brandl, 2010).

Turning towards the drawbacks of collective bargaining, three core concerns, that employers might have, are commonly discussed in the literature. The first and arguably most crucial one relates to issues of flexibility. Sectoral agreements are based on the needs of an entire sector, which can be problematic as sectors typically contain very heterogeneous groups of firms. Consequently, differences in firm size, specialization, production and distribution methods, unionization rates and location may lead to very different preferences among employers which cannot easily be reconciled in a single agreement (Hassel and Rehder, 2001; Zagelmeyer, 2005). Depending on the different factors at play, it may thus be preferential for employers to negotiate on a company or individual level to get a tailor-made bargaining agreement (Eichhorst and Marx, 2009). A second disadvantage from an employer (and union) perspective is that multi-employer bargaining represents a public good which entails the risk of free riding as employers may choose to follow agreements without paying membership fees to associations (Henneberger, 2017). A third disadvantage is that from an orthodox view of labour markets, employers and unions act like a cartel which enables wages to be set at different levels than they would be under equilibrium (Lesch, 2006; Wyplosz and Baldwin, 2015; Lesch *et al.*, 2017). While employers may favour the resulting limits on wage competition, there are also reasons to dislike it. Economists such as Lesch (2003, 2005, 2006) and Sinn (2006a, 2006b) argue that employers may face wage costs which are higher than they would be under perfect competition, which is thought to have a negative impact on profits, investments, and employment. Furthermore, while wage competition may work to the advantage of large and incumbent firms, it might be particularly problematic for new market entrants and exporting firms. That is because it creates market entrance barriers and exporting firms may suffer a loss of competitiveness vis a vis international competitors, especially in a currency union as exchange rate revaluations no longer affect real wages (Sinn, 2014). These arguments widely featured in the analysis of the German economic malaise of the 1990s. For instance, Sinn (2006b, 2006a) argued that wage rigidities resulting from multi-employer bargaining in parallel with increasing international competition meant that German manufacturers were increasingly outsourcing upstream production to retain cost competitiveness, leading to a continuation of high wages but increasing levels of unemployment.

Statutory extension amplifies these pros and cons. On the one hand, it extends transparency, peace, predictability and bureaucratic ease throughout an entire sector and the (domestic) supply chain. Furthermore, it aids sectoral self-regulation, in particular through insurance-based systems by making contributions mandatory (Asshoff, 2012). It can also be seen as encouraging membership of employer associations because employers seek to influence extended bargaining agreements (Flanagan and Flanagan, 1999; Traxler, 2004). Perhaps most crucially, it strongly limits wage competition by banning deviations from collective agreements. On the other hand, by limiting the possibilities to defect from multi-employer bargaining it also increases the risk that an employer is caught up in a suboptimal agreement for their firm. Employers may also judge that extensions increase rather than reduce the free riding risk as employers are covered by agreements regardless of their membership in employer associations (Lesch *et al.*, 2017).

Based on the view that bargaining partners act as a cartel one can also expect negative macroeconomic outcomes due to the restriction of outsider competition which can be seen as keeping the wage level of a bargaining cartel in check (Lesch, 2005; Lesch *et al.*, 2017).

**Table 1:** Advantages and Disadvantages of Collective Bargaining and Statutory Extension

	<b>Advantages</b>	<b>Disadvantages</b>
<b>Collective Bargaining</b>	Micro-level: <ol style="list-style-type: none"> <li>1. Bureaucratic ease</li> <li>2. Predictability</li> <li>3. Labour Peace</li> <li>4. Reduces wage competition</li> <li>5. Sectoral self-regulation</li> </ol> Macro: <ul style="list-style-type: none"> <li>• Institutional Complementariness</li> <li>• Reduced transaction costs and wage restraint</li> </ul>	Micro-level: <ol style="list-style-type: none"> <li>1. Limits flexibility</li> <li>2. Freeriding</li> <li>3. Risks of higher wage costs</li> </ol> Macro: <ul style="list-style-type: none"> <li>• Adverse impact on competitiveness, investment, and employment</li> </ul>
<b>Statutory Extension</b>	Amplifies advantages: <ul style="list-style-type: none"> <li>• Wage transparency</li> <li>• Strictly limits downward wage competition</li> <li>• Self-regulation</li> <li>• Incentivises Association membership</li> <li>• Promotes wage restraint</li> </ul>	Amplifies disadvantages <ul style="list-style-type: none"> <li>• Flexibility and high wages as firms can no longer defect from sectoral bargaining</li> <li>• Free riding as agreements become automatically applicable</li> <li>• potential negative macroeconomic impacts by restricting outsider competition</li> </ul>

Looking at these pros and cons summarized in Table 1, it is apparent that economic theory is indeterminate when it comes to employer preferences, which makes it hard to say from an ex-ante perspective what system of wage bargaining (firm, individual, sectoral level) employers will prefer and whether or not they support or oppose statutory extension. In the presence of such uncertainty over outcomes employers' positions likely will depend on their subjective interpretation of the advantages and disadvantages. Their interpretations in turn likely depend on the norms and the economic ideas that they adhere to as these can serve as ideational blueprints of what the consequences and appropriateness of their actions will be (Blyth, 2001). Given the cross-national differences discussed above and the cross-sectoral differences in Germany explained below, it appears that these evaluations vary significantly between employer associations. The next section explains in more detail the research design used here to tease out these differences in employer preferences as well as the rationale for the cases selected for this thesis.

## **Methodology and Case Selection**

To uncover the differences in employer views, this thesis adopts a two-stage research design. In the first stage, the attitudes of the BDA and employer associations across the German retail, construction, and metal sector were gauged and compared among each other as well as to the views of the main peak employer federation of the Netherlands, the VNO-NCW. The aim of this first stage is to uncover patterns that reveal what variables underpin the observed differences in support or opposition towards statutory extensions across these sectors and to contrast them to Dutch employer views. The three German sectors were chosen as they have varying traditions of statutory extension. The construction sector widely makes use of extensions, the retail sector traditionally used extensions but ended the practice in 2000, while the metal sector was included because extensions do not play a large role there and it is often used as a proxy for the attitudes of industrial employers (Thelen and van Wijnbergen, 2003; Asshoff, 2012; Thelen, 2014). The purpose of the comparison of German employer preferences to those of the VNO-NCW in this first step is not to conduct a fully-fledged cross country comparison. Instead, the VNO-NCW is taken to be indicative of employer views in other EU countries and thus used to create an international baseline against which German views can be benchmarked to uncover systematic cross-national differences. The VNO-NCW was chosen for this purpose because it is the largest Dutch employer association and thus an excellent representative of business views in the Netherlands. The focus on the Netherlands here is justified because it represents a most similar case given that like Germany it is typographed as a CME with a Christian-Democratic Welfare state and has a similar union density rate (Arts and Gelissen, 2002; OECD, 2018b; Witt *et al.*, 2018).

In the second stage of the analysis, three German cases in which at least some employers showed opposition towards statutory extension are reviewed. This is done to check whether the stated preferences of employers derived in the first stage actually play a role in real-world employer politics and can contribute to a better understanding of developments in Germany. The cases chosen for this part are the introduction of the posted workers directive (1996), the end of statutory extension in retail (2000) and the passage of the Tarifautonomiestärkungsgesetz (2016). The rationale for this selection is two-fold. Firstly, all cases are well documented in the literature which allows testing whether the interviews are in line with previously observed factors. Secondly, the cases allow for a longitudinal comparison of attitude as they cover nearly the entire period during which statutory extension has been in decline.

Both parts of the analysis rely primarily on a set of eight semi-structured elite interviews with representatives of employer associations. For the Netherlands, one interview was conducted with the VNO-NCW (Int8)<sup>1</sup>, while in Germany one representative of the BDA (Int1) and two representatives of each sector were interviewed. In both, the construction and retail sector included a state level representative from Northrhine-Westphalia (HV-NRW (Int5) and Bauindustrieverband NRW (Int7) as well as a federal representative (HDE (Int4) and ZDB (Int6)) to control for potential differences between the peak and regional level which typically directly negotiates with unions. Because two large employer federations exist in the construction sector, one specialized on the construction industry the HDB and another specialized on craftsmen the ZDB, care was taken to select a federal representative from the ZDB and a representative of the NRW section of the HDB to control for potential differences in attitudes between these confederations.

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<sup>1</sup> See Appendix for a full list of Interviews and codes

In the metal sector, a representative from the NRW association (Metall NRW(Int2)) was also interviewed but as the federal association Gesamtmetall refused an interview request, a second interview was conducted with Südwestmetall (Int3) instead. This was done because Südwestmetall is Germany's largest state-level employer association and typically negotiates the pilot agreement for the metal sector(Thelen and van Wijnbergen, 2003). Both metal representatives were also involved in the state level peak employer associations (Unternehmen NRW (Int2) & Arbeitgeber Baden Württemberg (Int3) and like the BDA representative directly deal with requests for extensions in their respective state bargaining committees. With the exception of the interviews with Bauindustrieverband NRW and the VNO-NCW, all interviews were conducted via the phone. The first part of the interview was structured along the following three main questions: employers were asked, firstly, to state advantages and disadvantages of collective bargaining and statutory extension, secondly, to explain why they believed bargaining coverage is declining and thirdly, to evaluate policy options that can reverse the trend of declining coverage including statutory extension. The second part of the interviews was unstructured. Here, the cases of the second part of the analysis were discussed with the relevant stakeholders.

Given the potential problems of bias and reliability associated with interviews, various secondary methods of data collection are used to increase reliability through triangulation (Tansey, 2007; Halperin and Heath, 2012). In part one (Chapter II) existing survey and interview data are taken from the literature to ensure that the VNO-NCW interview is representative of the wider attitudes of Dutch employers. Furthermore, position papers and press releases of interviewed employer associations were used to interpret interviewees' responses and to ensure that they are in line with official policy positions. In the second part(Chapter III), each case study is conducted by surveying the existing academic literature. The findings of scholars were then compared to the conducted interviews and position papers of the interviewed employer associations to fill explanatory gaps and evaluate competing explanations. Additionally, two interviews with trade union representatives from the retail (Int9) and metal sector (Int10) were carried out to correct for potential biases in employer accounts of union behaviour.

## **Chapter II: Analysing Employer Views of Collective Bargaining Agreements, Their Extension and Decline**

This chapter presents the main results from the elite interviews and document analysis and compares them across sectors and to the VNO-NCW. As outlined above, I focus on three aspects here a) employer attitudes towards statutory extension, b) their evaluation of collective bargaining, and c) their assessment of the causes of declining coverage and the usefulness of extensions to counter it. Based on the elite interviews and primary documents, this chapter seeks to present patterns of association that explain why German employers have opposed statutory extension. To do so, this chapter is divided into three sections. The first section briefly presents the views that Dutch employers take towards both statutory extension and collective bargaining. The second section analyses how German employers in different sectors view statutory extension by comparing statements of different German sectoral and peak representatives. At the end of this section, the different views of associations are categorized, discussed and compared to the VNO-NCW. The third section analyses German employer attitudes towards collective bargaining and their perception of the causes of its decline. The purpose of this section is to test whether German employers are as supportive of collective bargaining as is traditionally assumed and to see whether varying perceptions of pros and cons of collective bargaining inform employer associations position on extensions.

### **Constructing an International Baseline: Dutch Employers and Statutory Extension**

As explained in Chapter 1, this section does not conduct a full analysis of the Dutch situation but rather establishes a baseline against which German positions can be tested. It is important to do so to uncover country level specificities that would not appear in an intra-German comparison. While the Netherlands and Germany share many similarities, Dutch employer associations have, in contrast to their German counterparts, consistently demonstrated strong support for statutory extension. This is reflected in the frequent use of extensions described in Chapter I and in the policy positions the VNO-NCW, which for instance opposes measures designed to restrict the use of extensions by arguing that these would interfere in the autonomy of the social partners (Int8). Furthermore, the VNO-NCW has also supported reforms which place stricter conditions on agreements through which employers can deviate from extended agreements (Int8).

These positions are underpinned by broad support for extensions among employers, which is based on several rationales. The most important one is that employers strongly favour the limits to competition over wages and working conditions that result from statutory extensions (Rojer & Van Der Veldt, 2012, Int8). Secondly, the VNO-NCW views extensions as a key tool to engage in sectoral regulation independent from government, for instance, to create a sectoral social policy which encourages the inclusion of older workers in the labour market (Int8). A third reason is that Dutch employers believe that it reduces economic uncertainty and increases transparency over wages and working conditions (Rojer and Van Der Veldt, 2012, Int8). When it comes to disadvantages of extensions, polling shows that a minority (23%) of Dutch employers see the loss of flexibility of extensions as problematic. The same poll, however, showed that a clear majority (65%) could not name a single disadvantage of the extension mechanism which was also the case for the VNO-NCW representative (Rojer and Van Der Veldt, 2012). When asked whether he saw

extensions as unwanted government intervention and what he thought about the potential negative impact on flexibility, wages, and membership, he rejected the premises of these questions, arguing that extensions are ‘merely a technical measure’ to give force to ‘balanced deals’ negotiated by the sectors (Int8). He also followed a corporatist logic by arguing that extensions force negotiators to internalize the broader impact of negotiations on a sector and could thus reduce wage drift (Int8). Moreover, he held that employer association membership was not adversely impacted by statutory extensions (Int8).

It is thus unsurprising that the extension mechanism’s advantages are frequently seen as tightly interlinked with those of sectoral bargaining per se. This is evident in the fact that Dutch employers name the avoidance of wage competition as an advantage of collective bargaining, alongside transparency over wages, labour peace and bureaucratic ease (Rojer & Van Der Veldt, 2012, Int8). Criticism of collective bargaining predominantly focuses on flexibility, while a small minority of employers (3-7%) also criticizes the transaction costs of sectoral bargaining and resents the limits on competition over wages and working conditions (Rojer and Van Der Veldt, 2012). Overall, there is thus clearly broad support for both statutory extension and collective bargaining in the Netherlands, based primarily on the desire to limit wage competition and engage in sectoral self-regulation.

### **German Employers and Statutory Extension**

How then do different German sectors compare to this benchmark? Do they view it systematically different and can differences between sectors explain why some German sectors used or are using the mechanism and others do not? To explore these questions, this section compares views across the different sectors, with peak and metal employers grouped together in this analysis. This is done because both metal representatives also work for regional peak employer associations and in this secondary role deal more extensively with statutory extensions. Furthermore, during the interviews, they frequently referred to this role and largely took the same position as the BDA (Int1-3).

Taking Dutch views as the norm of a pro extension view, the German constructions sector should take a similar position. Because the sectors extensively uses statutory extension to cover minimum wages and minimum working conditions (Asshoff, 2012). In comparison to the other sectors discussed here, it maintains a medium level of coverage of 41% for non-extended agreements (Statistisches Bundesamt, 2014). It further is a highly labour-intensive sector with many active posted workers which should make it susceptible to wage competition (Asshoff, 2012). In contrast, metal employers should diverge strongly from the Dutch norm, as the metal sector makes virtually no use of the mechanism. Nonetheless, it retains a relatively high coverage rate of 48% and wages in the sector are higher than in the rest of the economy (Statistisches Bundesamt, 2014). Perhaps the most interesting case is the retail sector which in the past extensively used statutory extension. Like construction, it is a labour-intensive sector and stagnant turnovers have intensified competition (Bispinck, Kirsch and Schäfer, 2003). Furthermore, the retail sector has a rather low rate of bargaining coverage at 24% (Statistisches Bundesamt, 2014; Thelen, 2014). All these factors should theoretically make statutory extension attractive to employers there.

### **Peak and Metal Employers**

As expected, metal and peak employers do indeed take the most sceptical stance towards statutory extension which was evident in the interviewee’s general description of the extension mechanism.



The Südwestmetall representative described it as an “extremely double-edged sword”<sup>2</sup>, while the Metall NRW representative held that “statutory extension is not loved by the employer side” and “we oppose it, when we feel that it is being abused” (Int2). Similarly, the BDA representative stated that the BDA approaches “it [statutory extension] critically and sees it as a special instrument, which may be appropriate in individual cases”, echoing the BDA’s formal position paper, which calls statutory extension an “exception” that “requires special justification”<sup>3</sup>, (BDA, 2017b, Int1).

This scepticism towards statutory extension is based on three rationales: firstly, statutory extension is seen as enhancing free riding. Secondly, it is viewed as at odds with the German principle of autonomy of the social partners (*Tarifautonomie*) and thirdly peak/metal employers take a more favourable view of wage competition than their colleagues from the VNO-NCW. To borrow from sociological institutionalism, one can say that these reasons follow two distinct but interlinking logics, a logic of consequences and a logic of appropriateness (March and Olsen, 1998). The former dominates in rationale one as peak and metal employers fear adverse consequences to membership as a result of extensions. The latter dominates rationale two as peak/metal employers view extensions as an inappropriate deviation from the norm of *Tarifautonomie*. Rationale three contains elements of both logics as wage competition is on the one hand in line with *Tarifautonomie*, as interpreted by German employers, and on the other viewed as more positive in macroeconomic terms.

The fear of free riding was well summed up by the Südwestmetall representative, who argued that using statutory extension to increase bargaining coverage was “a little bit like treating oneself with cortisone” it elevates some symptoms in the short term but has negative long-term consequences (Int3). He elaborated this view further by arguing that statutory extension could act like a “vortex”, creating a path-dependent trajectory, in which one uses extensions because unions and employers are weak (Int3). This in turn then leads to more free riding, resulting in ever-increasing reliance on the state and ultimately a move away from the voluntarist nature of bargaining. This view also featured in the BDA statement on the latest reform of collective bargaining and was echoed by both the BDA and Metall NRW interview (BDA, 2014, Int1-2). Both representatives, however, conveyed that they thought the bigger problem with statutory extension was that it interferes with ‘*Tarifautonomie*’. This was made particularly clear by the Metall NRW representative when confronted with the VNO-NCW representative position that extensions do not curtail membership. In response to this, he stated that he was aware that some scholars share the Dutch perspective and hold that associations and unions should not fear extensions. He stated that:

*“it is more than this aspect. We are not just interested in having as many members as possible or to make as much money as possible, but we are also really endowed with a basic political orientation – which is reflected in our statutes, which is against state interference and statutory extension is such an interference” (Int2)*

Similarly, the English language website of the BDA states that the BDA “opposes state intervention in the social partners’ autonomy in various areas of action, including minimum working condition” (BDA, 2017a). All three representatives framed this objection to statutory extension as based on the fundamental constitutional principle of freedom of coalition from which

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<sup>3</sup>All direct citations from the German interviews were translated, the original text is available upon request

*Tarifautonomie* is derived. In fact, one employer even stated that extensions were hard to reconcile with Germany's "basic liberal order", while the BDA representative described it as a tool of "compulsion" (Int1,3). Thus, peak and metal employers clearly see *Tarifautonomie* as a strong norm and the question of extension largely as a question of appropriateness. It is important to note that *Tarifautonomie* became firmly established in Germany because of negative experiences with the mandatory bargaining arbitration system used in the Weimar Republic (Kittner, 2005: 473). The concept has since then been nurtured by both employers and the state and has grown in importance in the public debate (Fehmel, 2010, 2011). In contrast to the Dutch notion of the autonomy of social partners, which protects the substance of agreements from political interference, the German notion of autonomy is wider in scope. This is because the German notion contains the right not to partake in agreements and protection from any form of state interference in the sphere of working conditions as a whole (Fehmel, 2011; Ulrich, Preis; Ulber, 2014). These differences explain why Dutch employers view extensions as a "technical measure", while for German employers they present an interference in their autonomy (Int8). This strong normative logic should however not be misunderstood as resulting in a categorical rejection of all extensions. In fact, interviewees pointed out that, although hypothetically one could use the veto position in bargaining committees liberally, this was not their position. Instead, they emphasized that they were dealing with requests "constructively" (Int1), "in a proper manner" (Int2) and on a "case by case basis" (Int1-3). They pointed out that employers, regularly approve extensions and rejected the accusation that they were out to always block it (Int1-3).

When asked under which circumstances extensions are appropriate, all three interviewed peak/metal representatives warned that their handling of extension requests always depends on case-specific circumstances (Int1-3). All of them consequently named several examples where employers had agreed to extend agreements. Firstly, they conveyed that in weakly organized low pay sectors, where "Schmutzkonkurrenz" (Int1-2) or "Schmuddelkonkurrenz" (Int3) was rampant, the statutory extension of minimum working conditions and wages could be appropriate. *Schmutzkonkurrenz* directly translates to 'dirt competition', a form of wage competition at the margins leading to socially ruinous working conditions. Secondly, they mentioned that social funds could be justified in sectors dominated by small employers such as construction (Int1-3). They, however, also cautioned that it needs to be ensured that funds do not impact employers falling under other agreements but are working at construction sites (Int1-2). Furthermore, when asked about the elimination of an employer veto for extensions under the posted workers law as a consequence of a 1998 reform, the BDA and the Metall NRW interviewees stated that the rationale for extensions differed under this law as it intends to stop foreign competitors from ruining domestic working conditions and that because it was only limited to minimum wages and working conditions it was something "one can live with" (Int2).

In sum, under tight conditions, that is when foreign competition is threatening employment or when wage competition has severe social consequences, BDA and Metall employers seem to tolerate the use of extensions of minimum wages. However, they strongly oppose the use of extensions with the intention to limit outsider competition more generally. This position is especially evident in BDA documents, in which the BDA holds that sectoral bargaining must be in competition with other forms of labour relations (i.e. firm-level bargaining) (BDA, 2017b). Similarly, the interviewed BDA representative stated that he rejects "the possibility to use collective agreements to rule out competition" (Int1). All three, peak/metal representatives that I spoke to also rejected the use of statutory extension as a measure to strengthen bargaining coverage (Int1-

3). They did so because of the free-riding and voluntarism arguments outlined above. How, then do these views compare to the positions taken in the retail sector, which ended the extension practice of extensions in 2000 and in contrast to the metal sector has not been able to maintain high levels of coverage without it?

### **Retail Sector**

Surprisingly, like their metal sector colleagues, retail employer associations oppose the use of statutory extension, even though some large retail employers such as the Schwartz Group which owns LIDL have come out in support of a reintroduction of the practice (Schulten, 2017). In line with the official position of the retail confederation HDE, the two interviewees argued that currently, they do not see a need for extensions in retail (HDE, 2017, Int4-5). Like the BDA, the HDE (2017) sees statutory extensions as interference with *Tarifaautonomie* and fear that it incentivizes free riding. However, in contrast to the interviewed peak/metal representatives, these rationales were considerably less emphasized in the interviews. By this, I mean that the two retail representatives referred to these rationales much more sparingly and often simply enumerated them as secondary reasons for their position (Int4-5). Furthermore, retail employers appear to take a somewhat less favourable view of the appropriateness of wage competition, given that the HDE representative argued that they were seeking to reduce wage competition through the “norm-setting function” of collective agreements (rather than extensions) (Int4). The idea here is that non-organized employers would approximate the wage level of collective agreements as a result of peer pressure (Int4). A second indication that retail employers are somewhat sceptical of wage competition is that both retail interviewees principally accepted the introduction of an extended sectoral minimum wage but argued that this had been made redundant by the introduction of a statutory minimum wage (Int4-5). The, in comparison to peak/meatal employers, weaker emphasis on *Tarifaautonomie* and more critical view of wage competition is probably due to sectoral specificities. The German retail sector is highly cost competitive and the share of labour costs in total costs are particularly high, circumstances which provide fertile grounds for wage competition (Bispinck, Kirsch and Schäfer, 2003). Until the year 2000 when retail employers decided to abandon statutory extensions and allowed members to opt out of collective bargaining, the risk of *Schmutzkonkurrenz* and wage competition due to the aforementioned circumstances were used as the basis for extension requests (Behrens, 2011). Furthermore, the exit from statutory extension was by no means a unanimous decision and some employers as well as the services union favour a return to this practice (Behrens, 2011; Schulten, 2017). Given this background, it would be rather surprising, if the retail sector would rely on strong normative grounds to reject extensions and view wage competition as favourable as the BDA appears to do. Such a stance would not only be diametrically opposed to the historic position of the HDE but also side-line the concerns of some large organized employers.

Instead, the position of retail employer associations is more strongly determined by pragmatic sector-specific concerns, which were highly emphasized by both retail interviewees. In this regard, both retail representatives cited three concerns: firstly, they worried that extensive use of statutory extension would increase litigation risk and negatively impact small- and medium-sized businesses (Int4-5). Secondly, the HDE representative argued that while extensions “prevent wage competition on paper”, they do not do so in practice because enforcement is difficult (Int4). Thirdly, both representatives cited the outdatedness of agreements as the main reason for a “loss of acceptance of statutory extension on the employer side” (Int4-5). To understand this last point,

one needs to know that as a result of intensifying competition, employers began pushing for a reform of agreements in the 1990s. The key issues on the agenda were related to pecuniary groups, classifications of tasks, working time rules and the wage scale (Kalkowski, 2008). While the retail trade union also wants to ‘modernize’ agreements, the substance of reform has been and continues to be a matter of intense conflict between unions and employers (Int9). One example which helps to illustrate the difficulties in these talks regards the role of cashiers. Employer representatives argue that historically cashiers required extensive knowledge of the inventory and training but nowadays the use of barcodes and technology makes this redundant (Int4-5). In contrast, the interviewed representative of the united services union (Verdi) argued that employees increasingly face a multitude of tasks and harsher working conditions due to environmental factors such as noise and significantly extended opening hours (Int9). Consequently, they take very different views on how wages and working conditions should be adjusted. Despite several attempts to break the reform deadlock, including the scientifically accompanied FIT project, the conflict over a reform of agreements remains unresolved (Kalkowski, 2008). Employers pointed out that this has resulted in a situation, in which sample tasks and working time rules are outdated (e.g. El Sharif, 2013). Dissatisfaction with this situation was used as the primary argument against reintroducing extensions by retail representatives. Both of whom held that they could not credibly justify the extension of such outdated agreements to their members (Int4-5).

More broadly, however, retail employer representatives appeared to find extensions more often permissible than their peak/metal colleagues. In addition to their principal view that minimum wage extensions are legitimate, the HDE representative also did not want to rule out that extensions could be back on the agenda if the situation changed (Int4). Furthermore, he very much accepted the usefulness of social funds and argued that these could become important in the debate on occupational pensions (Int4). Overall retail employers thus take a slightly less restrictive stance on the normative appropriateness of extensions than peak and metal employers do. However, they currently strongly oppose a reintroduction of extensions because they fear negative economic implications for their sector as a consequence of reintroducing extensions of existing agreements. How then do employers in the construction sector, where extensions are widely used, perceive the extension mechanism?

### **Construction Sector**

As expected construction representatives in comparison to their German colleagues expressed the greatest support for statutory extension. For instance, the ZDB representative stated that “the advantages by far outweigh the disadvantages” (Int6). Similarly, both construction employer federations, the ZDB and the HDB, also have position papers, which strongly support statutory extension and have called for a lowering of hurdles to the use of statutory extension in order to increase legal certainty for social funds (HDB, no date; ZDB, 2017). The reasons for their support of statutory extension are clearly tailored towards the current use of extensions in the sector, which cover social funds and minimum wages. Regarding social funds, employers emphasized that procedures covering holiday pay, skill formation, and pensions were advantageous as “employees change employers multiple times a year” (Int6-7). In the absence of social funds, frequent turnovers would create a classic collective action problem in the construction sector, as employers would be disadvantaged by investing in training workers who would then go on to work elsewhere and employees could hardly take annual holidays on short term contracts. Social funds get around this problem by socializing costs and by making contributions mandatory (Asshoff, 2012). Both

employer representatives, therefore, viewed statutory extension in this area as essential to ensure the continued functioning of social funds and by extension continuity and security for employees in the industry.

In terms of the extension of minimum wages, employers clearly followed an anti-wage competition rationale, much like Dutch employers do. The NRW representative emphasized that extended minimum wages are necessary to protect employment and wage levels in the construction sector, which would otherwise be threatened by firms from Central and Eastern European states, where wages are substantially lower (Int7). This view is also reflected in the 2011 HDB position paper on minimum wages in construction, which emphasises their importance from a macroeconomic perspective and argued that adverse consequences on prices and unemployment were not evident (HDB, 2011). The ZDB representative was a little less optimistic about minimum wages as she pointed out that they certainly cost jobs in some cases (Int6). Nonetheless, she agreed that the rationale of an extended minimum wage to gain influence on foreign firms active in Germany was good and highly important for the labour market (Int6). Consequently, she described statutory extensions in construction as “corset rods holding the German labour market in the construction sector together” (Int6). It can thus be said that construction sector employers value current extensions as they fear that abandoning extensions would have dire negative consequences for the wage level and sectoral social policies.

However, both construction interviewees were sceptical of expanding extensions beyond minimum wages and social funds. When asked about proposals to extend the entire wage scale, the ZDB stated that they oppose this, citing fear of free riding, overregulation and encroachment on employer freedom (Int6). Similarly, the HDB representative made clear that “statutory extension is not a good in itself” and is only appropriate to achieve very specific aims (Int7). Like peak/metal employers, both strongly focused on the negative freedom of coalition argument as reasons to be sceptical of expanding the use of extensions. For instance, the HDB argued that in the worst-case scenario, a more automatic use of extensions could lead to a change of system in which voluntarism is lost and weak associations and unions only negotiate government enforced wages (Int7). Therefore, it appears that construction employers share the norm of *Tarifautonomie* with peak/metal and retail employers. On this basis, they view a more widespread use of extensions as problematic, however, strongly defend its current use because of the tangible benefit it provides.

### **Making Sense of Employer Arguments Towards Statutory Extension**

Looking at the rationales underpinning employer positions in comparison (Table 2), clear patterns of association become visible that can explain the divergence within Germany as well as between Germany and its neighbour. Starting with the latter, it is first noticeable that German and Dutch employers have very different assessments of the normative appropriateness of statutory extension. All German employers share the norm of *Tarifautonomie* which leads them to view statutory extension as principally inappropriate while Dutch employers exhibited no such concerns (Int1-8). In fact, they perceive it as a “technical measure” to be deployed if employers want it and view government policies designed to curb it as a potential intervention (Int8). Secondly, despite sectoral variation, German employers appear on average less concerned with wage competition than the VNO-NCW. This is at least in part a result of their shared normative beliefs as the concept of *Tarifautonomie* entails that employers have the right to be outsiders. However, in part, this also is a cognitive assessment because at least the BDA thinks that competition between individual, company and sector level bargaining can be economically advantageous. This notion, that different

forms of bargaining should be in competition, echoes Loesch's theoretical analysis that a wage cartel should be held in check by outsider competition (Lesch, 2005). In contrast, the VNO-NCW shared a corporatist interpretation of wage discipline being encouraged by extensions. A third pattern was that German employers tend to see extensions as increasing the odds of free riding, a view absent in the Netherlands. Therefore, the primary difference between German employers and their Dutch counterparts are very different normative and to some extent different cognitive perceptions of the consequences of extensions.

**Table 2:** Rationales for and against statutory extension

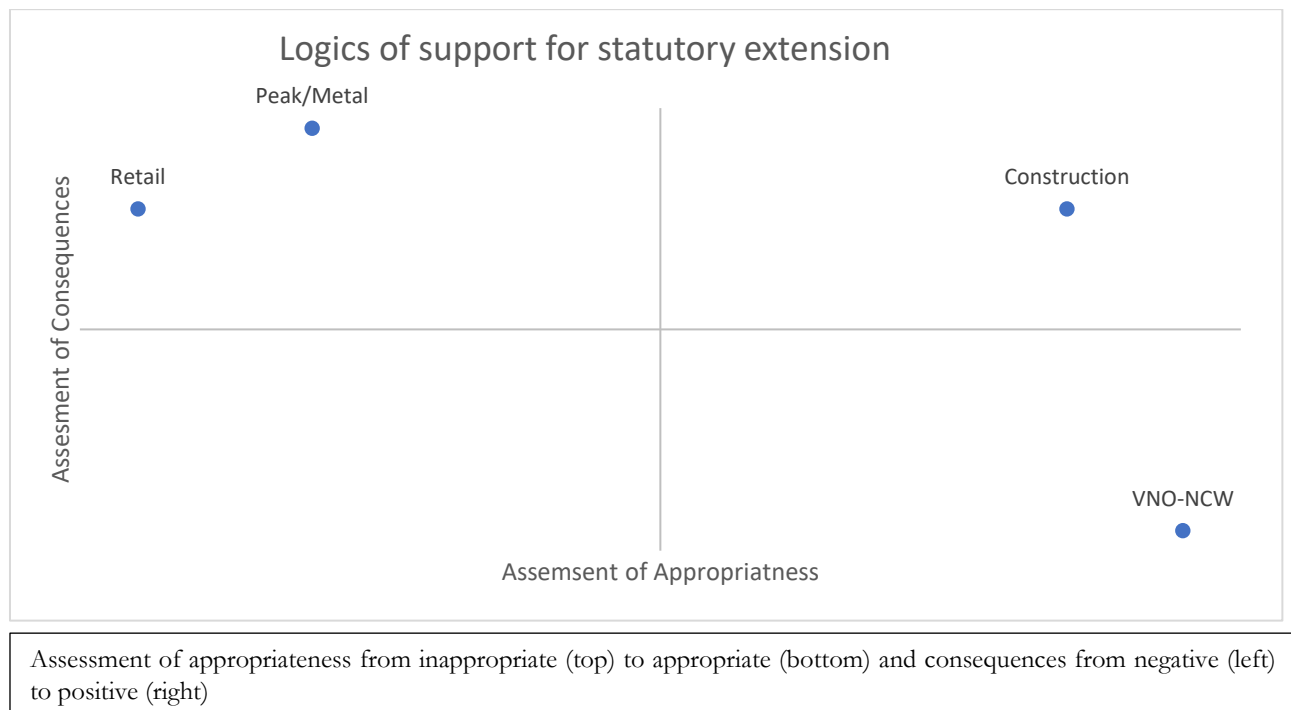
	<b>Peak/Metal</b>	<b>Retail</b>	<b>Construction</b>	<b>VNO-NCW</b>
<b>Rationales For Statutory Extension</b>	- Minimum wages in extreme situations	- Minimum wage competition	- Minimum wage competition - Social policy	- Wage competition - Social policy - Transparency - Normatively appropriate
<b>Rationales Against Statutory Extension</b>	- <i>Tarifautonomie</i> - Free riding	- <i>Tarifautonomie</i> - Free-riding Outdatedness of agreements	- <i>Tarifautonomie</i> - Free riding - Bureaucracy	- Don't know

Within Germany, there are also clear differences in how employers construct their positions. Peak/metal employers focus on the normative inappropriateness of extensions coupled with a fear of free riding and a relatively positive evaluation of wage competition (Int1-3). For retail and construction employer representatives, other sector-specific assessments play a more important role (Int4-7). In the construction sector, the assessment, that not extending would be detrimental for employment, wage levels and social policy weighed heavily. This leads to a balancing act between the perceived practical need to extend agreements for minimum wages and social funds against normative beliefs that oppose state intervention. The result is a position, in which support for extensions is strong for the current 'necessary' use, but broader extensions are rejected as they go beyond what is seen as necessary. In retail, representatives also deemphasized normative concerns and focused more on the consequences of extensions (Int4-5). They believe that wage competition is hard to counter in practice and strong concerns about inflexible agreements and dissatisfied members led them to oppose extensions primarily on pragmatic grounds. This created an outcome in which normative concerns were more toned down, but pragmatic concerns reinforced the rejection of extensions in the retail sector. Figure 2 shows how these two logics – the cognitive assessment of consequences and the normative assessment – factor into the construction of employers' positions.

On the appropriateness dimension, all German employers clearly share an opposition to extensions however this was most emphasised by metal/peak employers which is why they rank

higher here than the construction and retail sector. In contrast, the VNO-NCW clearly saw extensions as normatively permissible. German employers vary more strongly on the consequences dimension, in this regard the retail sector was clearly the most sceptical of extensions, with peak/metal employers coming a close second. In contrast, the construction sector assesses the consequences of extensions positively and comes close to the VNO-NCW. It should be noted that this is a static and schematic overview. When it comes to actual decisions on supporting or opposing a concrete extension request, this trade-off is more dynamic as the assessment of consequences changes from situation to situation. For instance, in cases of socially ruinous *Schmutzkonkurrenz* probably all German employers see a strong pragmatic need for extensions, while a widespread use of extensions is countered by strong normative aversions. In contrast, in the Netherlands, the assessment of consequences and norms is largely aligned and produces positions favourable to a widespread use of extensions.

**Figure 2:** The Trade-Off Between Employers' Assessments of Appropriateness and Consequences



## **Employer Views of Collective Bargaining and Its Decline**

So far, we have seen that there are clear sectoral differences in the evaluation of statutory extension. The purpose of this section is to explore whether these differences are informed by different views of collective bargaining per se and of interpretations of its decline. I find that this is the case and that how employers evaluate these factors is a strong determinant of their position towards statutory extension, albeit in a different way than anticipated in the theoretical section. Unlike Kinderman (2005, 2014), I find that employers view collective bargaining predominantly positively and hardly differ in their commitment to it. However, I find that the three sectors analysed here all take very different views of what factors undermine coverage and what aspects of collective bargaining are problematic. These different interpretations of the disadvantages and decline of collective bargaining directly translate into the different evaluations of the consequences of extensions discussed above. To demonstrate this, I firstly discuss employers' evaluations of the pros and cons of bargaining, before moving on to their understanding of the causal mechanisms

of its decline. Finally, these views are summarized and the mechanism which binds them to employer's stance of statutory extension is proposed.

### **Evaluations of the Pros of Collective Bargaining**

All German employers expressed principal support for collective bargaining. For instance, the BDA views collective bargaining as a “success story” which guarantees “social peace and prosperity” and posits that “rightfully collective agreements and especially sectoral agreements are the dominant level of order” (BDA, 2017c: 1). Employers across all sectors like sectoral bargaining because it enables firstly sectoral self-regulation and secondly labour peace. As expected based on the literature by Thelen and Wijnbergen (2003), the labour peace aspects was particularly emphasized by the metal sector representatives which pointed out that this aspect was particularly important in the “connected landscape of the metal sector” because it ensures “peace throughout the entire supply chain(s)” (Int2). A third universally mentioned aspect was that collective bargaining eases bureaucracy and takes costly wage negotiations outside the firm. For instance, the BDA stated that bargaining “increases legal certainty and saves time and money” (Int1), while Metall NRW described agreements as a sort of “substitute employment contract”, which ensures that complex labour laws are being followed and bureaucratic pressures eased (Int2). Lastly, all employers mentioned that it enhances the predictability of wage developments (Int1-8).

A key difference between German and Dutch employers, however, was their perception of wage competition. Regarding this aspect, responses of German employers were mixed and only two representatives (Int4,7) explicitly referred to it while the rest simply did not mention it (Int1,2,5,7). The most explicit mention of the competition limiting advantage came from the HDE representative, who stated that agreements could create a level playing field if they were “convincing enough” (Int4). The second mention of the competition aspect came from the construction HDB representative who stated that ideally, everyone should participate in agreements, but that this was difficult given the declining coverage of agreements (Int4). What is interesting about these statements is that they both suggest that agreements ought to limit wage competition, not that they do. The focus on convincing agreements by the HDE representative is also peculiar because it is the same representative who thought that extensions could not effectively prevent wage competition (Int4). He instead seems to suggest that this could be achieved by traditional collective bargaining, if agreements become more attractive to employers. In contrast, the NRW construction representative focused more on the idea that agreements ideally cover everyone but cannot do so in practice (Int7). It goes hand in hand with the stance of construction employers to extend minimum wages and social funds to get around this issue. What was further interesting is that the BDA does not mention the competition aspect in its otherwise very exhaustive list of arguments for bargaining. Instead, its position paper confirms the suspicion in section one that the BDA (2017c) appreciates competition between different forms of bargaining.

### **Evaluation of the Cons of Collective Bargaining**

Turning to the disadvantages of collective bargaining, we again see some significant overlap with the position of the VNO-NCW, as German employers mentioned limits to flexibility as the major downside (Int8). For instance, the HDB representative stated that the major disadvantage was “the rigidity, one system for everybody that cannot work” (Int4), while the Südwestmetall representative pointed out that employers lack the ability to “adjust everything one hundred per cent towards their specific firm” (Int3). Additionally, employers also pointed to the large



differences in size and specialization of their members. They did so in similar fashion, emphasising that their association comprised, on the one hand, small firms e.g. “the kiosk in the city centre” (Int4), “small original equipment manufacturers” (Int2), “family-run carpenters” (Int7) and, on the other hand, large international firms such as “multinational construction companies” (Int7), “Aldi and Lidl” (Int4) and “the Fords”<sup>4</sup> (Int2). This focus on flexibility is somewhat unsurprising as theoretically it is the biggest disadvantage of multi-employer bargaining. What was less expected, however, is that the metal, retail, and construction sector extensively mentioned sector-specific concerns, (Int2-7).

Starting with the metal sector, both representatives notably emphasized increasingly strong wage demands by unions as problematic. According to employers, unions had recently forced them to make painful concessions because of their strong position to inflict strikes, which are increasingly costly because of the integrated nature of supply chains (Int2-3). Moreover, the representatives mentioned that the balance of power in industrial action has shifted towards unions because employers could no longer use lockouts as a result of legal restrictions and just in time manufacturing (Int2-3). They argued that this leads to a feeling of helplessness among members, despite the association’s “democratic process” (Int2). For example, the Metall NRW representative stated that a firm “far away from the big bargaining politics in Stuttgart” may wonder what was agreed and think “I have to pay for this” (Int2). This account resonates with the literature on the German metal sector, as it confirms the position of Thelen and Wijnbergen (2003) who have argued that the integrated nature of globalized manufacturing makes industrial employers more vulnerable to industrial action. They call this a paradox of globalization and hold that it is one of the reasons for declining membership in metal employer associations, although it needs to be said that membership is still relatively high at 43% of firms (Statistisches Bundesamt, 2014).

In the construction sector, interviewees highlighted differences in regional economic performance and wage levels as a sectoral concern as well as the presence of cheap foreign competitors (Int5-6). Regionally different wage levels are the result of the bargaining structure of the construction sector, which in its agreements sets different wages for former West and East Germany (Int6). This difference is historically rooted but it was nonetheless seen as a potential problem for the competitiveness of West German firms by the NRW representatives as East German wages are lower and wages paid out depend on a company’s location not the location of a construction site (Int6). This in addition to the presence of cheap foreign competitors who often use posted workers likely contributes to the assessment that wage competition is a problem in the construction sector.

In the retail sector, both the HDE and HV NRW representatives expressed fears that the outdated nature of retail agreements could alienate existing association members and make it difficult to recruit new ones (Int4-5). For instance, the HV NRW representative stated that when there is “divergence between firm-level reality and the content of agreements, they can become a hindrance for employers” (Int 5). The findings for the retail and construction sector thus reaffirm the salience of these sector-specific assessments shown in Figure 2.

### **Interpretations of Declining Bargaining Coverage**

As shown below, these sectoral concerns also shape the perception of the decline in bargaining coverage. Before we turn to these, it is, however, worth to look at how employers viewed this

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<sup>4</sup> Ford of Europe is based in Cologne

decline more generally. In general, interviewees across all sectors, mentioned a broader social and cultural shift towards individualism or as the Metall representative framed it, a more “I-related society”, as a prime reason for declining coverage (Int1-7). The BDA and Metall NRW representatives both linked this to the general decline of social organizations, such as “churches, political parties, sports clubs, and trade unions” (Int1-2). Furthermore, all employers also mentioned changes in the economic landscape, such as the emergence of new and thus unorganized sectors, mergers and bankruptcies and foreign subsidiaries as factors impacting coverage levels (Int1-7). Thus, employers to a large degree perceive the decline of coverage as grounded in structural changes of the socioeconomic environment in which they operate. This shows that at least to some degree employers view decline as a complex phenomenon that cannot easily be countered by changes in policy. Given their perception of statutory extension as encouraging free riding and the power of structural changes, it appears logical that they do not see extensions as sufficient to hold these trends. However, in addition to this general perspective, there were again interesting sectoral differences with important implications for the evaluation of statutory extension.

In line with their comments on the disadvantages of sectoral bargaining, metal sector representatives argued that members left out of frustration with the increasing complexity of agreements and rising real wage levels (Int2-3). The Südwestmetall representative argued that this was evident in the fact that following the Pforzheim agreement, which introduced hardship and opening clauses, the decline in membership became less severe (Int3). It is, unclear how such dissatisfaction could be rectified by statutory extension if anything employers would probably view it as undermining the flexibilization achieved in the Pforzheim agreement.

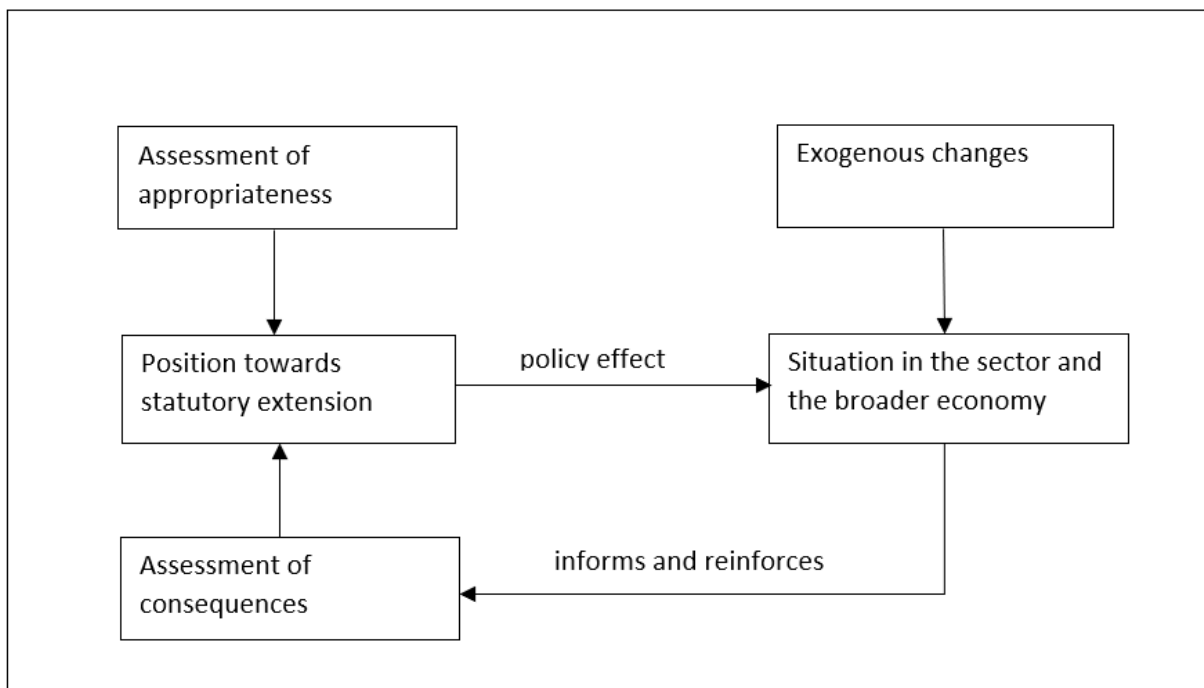
The link between sector-specific disadvantages of bargaining and perceptions of coverage decline was also apparent in the construction and retail sector. In the case of the former, employers pointed out that a reason for members leaving the association is regional wage competition. As employers try to save wage costs partially because they find themselves in competition with East German firms, which in turn face strong competition from Central and Eastern European firms (Int6-7). In the latter, both the HV NRW and HDE saw dissatisfaction with existing agreements and difficulties of attracting new members on their basis as a primary cause of declining coverage (Int4-5). In addition, they pointed out that, there were two major waves of exits. One wave following the end of statutory extension, and the other wave when the FIT reform talks failed (Int4). These accounts show that the sector-specific views of downsides of bargaining and their perception of the causal mechanisms underlying its decline are tightly coupled. Furthermore, the respective focus on the outdatedness of agreements in retail and wage competition in construction clearly link into their perception of the consequences of statutory extension shown in Table 2.

### **Linking the Problems of Collective Bargaining to Statutory Extension**

Overall, there is thus clear association between the employer views discussed in this section and employer positions on statutory extension. The reason for this is, however, not that German employers view collective bargaining more negatively than their Dutch colleagues do. In fact, they mostly take similar views, with the notable exception of their perception of wage competition. Instead, the association observed here is more relevant for intra-German differences because it appears that employers’ assessments of the consequences of statutory extension which can either counter or reinforce their normative beliefs about the appropriateness of extensions are strongly informed by their perception of the problems that collective bargaining faces in their sector.

Schematics are again useful to understand this proposed link which is shown in Figure 3. What I intend to show here is that how employers assess exogenously induced changes in their sector varies significantly. In construction, the rise in posted workers and regional wage differences led wage competition to be a highly salient issue in the sector which can be limited by extensions. In contrast, peak and metal employers predominantly view declining coverage as a result of structural changes, rising wages, and inflexibility. From the perspective of metal employers, who believe that flexibilization is key to regaining members, statutory extension would likely increase rather than reduce employer flight. In the retail sector, a similar dynamic is at play. The intensification of competition led to a desire to adapt agreements by, for instance, liberalizing agreed working time rules and opening hour restrictions. Employer representatives believe that the lack of success of these ambitions are at the heart of employers' dissatisfaction with collective bargaining and consequently that it would be untenable to continue extensions on the basis of these agreements. Or to put it in more general terms the way employers perceive the changing situation in a sector and their initial reaction strongly impacts their perception and feeds back into their evaluation of consequences of extensions. In contrast, the normative assessment hardly changes in substance but does become more or less important depending on the salience that employers attribute to practical concerns.

**Figure 3:** The Relationship Between Employers' Perceptions of Statutory Extension and Collective Bargaining



### **Chapter III: Employer Politics of Statutory Extension in Practice**

Chapter II has already provided a tentative answer to the research question at hand, however, this is only based on the stated preferences of employers, which is problematic for three reasons. Firstly, even though interviews were checked against official documents, they do not constitute a representative sample. Secondly, it is a well-known phenomenon in the social sciences that stated and revealed preferences can differ systematically (Toshkov, 2016). Thirdly, it is so far unclear that the proposed explanatory link can contribute to our understanding of real-world developments in Germany. Based on a review of the established literature and the conducted interviews, this chapter addresses each of these concerns by testing if the proposed explanation is congruent with three high profile cases in which employers have opposed the reform or use of statutory extension. The first case looks at the 1996 posted workers law and seeks to explain why peak employers blocked the first extension request under this act, even though it was supported by construction employer associations. The second case discusses the end of extensions in retail and zooms in on why retail associations in North Rhine-Westphalia changed their position towards extensions in 2000. Finally, the third case focuses on why the BDA opposed the 2014 *Tarifautonomiestärkungsgesetz*.

The analysis of these cases strongly confirms the findings of Chapter II. I find again that peak employers oppose statutory extension for primarily normative reasons and believe that it increases free riding. It is further demonstrated that they do not appreciate strong limits to wage competition. As will be seen, the different developments in retail and construction are also in line with the findings in Chapter II. The construction case shows that while construction employers principally share the norms of *Tarifautonomie*, they believe it to be pragmatically necessary to use statutory extension within their sector due to the tangible economic benefits that their members derive from it. The developments in the retail case further demonstrate the salience retailers attribute to the lack of reform of bargaining agreements and in more detail how this has led them to abandon statutory extension. Furthermore, the interviews conducted for this thesis shine new light on each of these cases. In the construction case, they allow me to discriminate clearly between competing explanations proposed in the literature, while in the retail case they allow for a better understanding of the internal politics of employer association. Lastly, they also contribute to a deeper understanding of the position taken by the BDA towards the *Tarifautonomiestärkungsgesetz*, which so far has been taken for granted in the literature. The cases are reviewed here in chronological order and each case begins with a description of main developments, followed by a discussion of current explanations and analysis of the interviews with stakeholders.

#### **Employer Politics of the Posted Workers Directive**

In the early 1990s, a series of ECJ rulings clarified that companies from one member state could temporarily post workers to another member state under the EU's freedom of services provision, while also confirming that member states could take measures to limit wage competition by extending bargaining agreements to posted workers (Menz, 2003). The ensuing rapid increase in the number of posted workers, particularly in the construction sector, presented EU employers with a new dilemma, namely, how to react to rising low wage competitors. These developments also reinforced the issue of statutory extension in the public debate, as trade unions demanded that governments extend collective bargaining to posted workers (Menz, 2003). Eventually, the political debate led to the 1998 EU posted workers directive but was preceded by various national responses in EU member states. This includes Germany, where the situation was seen as particularly pressing because extensions did not cover posted workers, there was no statutory minimum wage and high

unemployment started to put pressure on state and sectoral social security systems (Menz, 2003; Schlachter, 2017). While the German government initially and unsuccessfully sought a quick European solution during its 1994 Council presidency, it eventually put forward the posted workers act as a national response strategy in 1995 (Schlachter, 2017). The proposed law was strongly supported by the union federation and construction trade union (Menz, 2003). On the employer side, the BDA and export sector representatives strongly lobbied against the proposal, while construction employers took a conciliatory stance, welcoming the re-regulation of posted workers (Menz, 2003; Asshoff, 2012). The final law presented a compromise: its scope was limited to minimum wages and working conditions and it initially only applied to the construction sector (Menz, 2003; Schlachter, 2017). Furthermore, to extend an agreement to posted workers under this law, the social partners would first have to apply to extend it nationally, following Article 5 TVG, which requires the consent of the bargaining committee, before the ministry of labour could extend it to posted workers by decree (Ulrich, Preis; Ulber, 2014; Schlachter, 2017).

When the construction unions and employer associations applied for an extension under this new provision in 1996, their attempt was blocked by the employer side in the bargaining committee made up of representatives from the BDA, Gesamtmetall and the textile association Gesamttextil (Schlachter, 2017). The reason given by the BDA was that the agreed minimum wage of 18,60 Deutschmarks was too high and that separate minimum wages for East and West Germany should apply (Menz, 2003; Mabbett, 2016; Schlachter, 2017). Following renegotiations, the construction sector agreed on revised minimum wages of 17,00 Deutschmarks for West and 15,20 Deutschmarks for East German states, which was again initially rejected by the bargaining committee (Menz, 2003; Schlachter, 2017). In response, both construction employer associations temporarily left the BDA and a final compromise was only reached after mediation between the BDA and construction unions in the office of the minister of labour (Asshoff, 2012). This compromise foresaw a time-limited extension of minimum wages and working conditions until the 31.05.1997 (Schlachter, 2017).

The existing academic literature has outlined three rationales for the position taken by the employer side in the bargaining committee. Scholars stressed, firstly, economic concerns of the BDA about the wage level (Menz, 2003; Mabbett, 2016; Schlachter, 2017), secondly, a deeper ideological opposition to regulating posted workers through minimum wages (Menz, 2003; Asshoff, 2012) and, thirdly, a structural bias towards the export sector by the BDA (Mabbett, 2016). The first interpretation is well developed in the literature and founded on the fact that the BDA communicated to member associations that it would not accept higher wages than 15 Deutschmarks for West and 13,80 Deutschmarks for East Germany (Menz, 2003, 546). The BDA justified this approach by expressing concerns that a higher wage level could adversely affect employment and create spillover effects (Menz, 2003; Schlachter, 2017). In contrast to this first interpretation, the second explanation, that the BDA was ideologically opposed is, if at all elaborated upon, grounded on the basic opposition by the BDA to the introduction of the law and minimum wages in general (Asshoff, 2012). While the third interpretation by Mabbett (2016) links this fundamental opposition to the interest of the export sector which lobbied strongly against the law. Sadly, the relationship between ideological opposition and economic objections has so far remained unexplained in the literature. This is a matter of concern given that both interpretations are not contradictory and could jointly determine employer positions e.g. the BDA defends its ideological stance through an economic rationale or the reverse. In the absence of such a clarification, scholars currently prioritize the short-term economic arguments.

The interviews conducted, however, shine a new light on developments, given that both construction sectors interviewees stressed that the BDA blocked extensions as a matter of principles, with wage levels serving as an auxiliary argument. For instance, the ZDB representative, when asked about the reasons for the BDA veto, stated that “I believe it had *ordo* regulatory policy (*‘Ordnungspolitische’*) reasons, we were one of the first sectors to get a minimum wage [which was] extended and thus like a law, which everybody on German construction sites had to follow” (Int6). When asked if the BDA position had changed she elaborated further: “The BDA takes a very liberal position and from an *ordo* regulatory policy view, minimum wages and extensions are of course devils work, and as an employer association, one would in principle agree- but in the real world you sometimes have to adapt” (Int6). The ZDB representative thus clearly suggested that for the BDA the question of whether to extend or not to extend was a question of appropriateness and that it sought to avoid setting a precedent for state intervention. This was further confirmed by the HDB representative who held that “today it [the debate about extensions] is about the wage level, not the system as it was back then” and indicated that this was also due to the fact that the statutory minimum wage did not yet exist (Int7). Interestingly, he also made clear that “there is still potential for conflict around statutory extension” and indicated that the BDA continues to seek a halt to the proliferation of statutory extensions throughout the wage scale (Int7). He did so by pointing out that the BDA is critical of the two (skilled and unskilled) minimum wages in the construction sector as it fears that “if you have two minimum wages, you quickly have four and who has four might get eight and that is the entire wage scale” (Int7).

The interviews conducted for this thesis, in contrast to the dominant view in the existing literature, thus deemphasise the importance of the wage level in the stance of the BDA; the importance of which is highly debatable in any case, given the fact that the domestic construction union wage stood well above the extended construction minimum wage initially demanded by bargaining partners (Menz, 2003). Instead, the interviews suggest that the conflict over posted workers was rather a matter of principle for peak employers sought to prevent setting a precedent for sectoral minimum wages. This explanation is well in line with the results of Chapter II, as it confirms that the BDA is principally, highly sceptical of statutory extensions for normative reasons and seeks to limit its scope to one minimum wages. Furthermore, the ZDB representative’s statement that employers in principle would see statutory extension as “devils work”, but in the real world need to adapt to the situation in their sector echoes the trade-off between a logic of consequences and one of appropriateness that I proposed above.

### **The End of Statutory Extension in Retail**

The interviews also shed new light on developments in retail, one of the most heavily investigated cases in the existing literature. Until the mid-1990s statutory extensions were almost universally applicable in the retail sector, in which it covered the entire wage scale and working conditions (Behrens, 2011; Haipeter, 2017). This tradition of statutory extension was based on a consensus between employer associations and unions that retail as a highly cost competitive sector required limits to wage competition (Bispinck, Kirsch and Schäfer, 2003, p.314). This reasoning was also reflected in the application for extensions which were frequently issued by employers (Bispinck et al., 2003 p. 314). This consensus, however, came to an end in the mid-1990s, when retail employer associations expressed that they were no longer interested in a continuation of statutory extensions (Haipeter, 2017). Consequent union attempts to continue the practice were rejected by peak

employers in the state bargaining committees, leading to a gradual end of extensions on a state by state basis between 1995 and 2002 (Behrens, 2011).

The end of statutory extension clearly raises the question why employers changed their mind and has received a good degree of academic attention, which predominantly focuses on the case of Germany's most populous state North Rhine Westphalia where extensions ended in the year 2000 (Behrens, 2011: 175-186; Thelen, 2014: 53). Apart from Behrens (2011) – who studies the rise of opt-out memberships, scholars are, however, not primarily concerned with the motivation of retail employers. Instead, they have used this case to illustrate theories of dualization (Thelen, 2014: 53) or concerned themselves with its economic consequences (Bispinck, Kirsch and Schäfer, 2003; Kalkowski, 2008; Dummert, 2013; Haipeter, 2017). Nonetheless, these studies outlined a comprehensive set of factors that can explain the shift in employer preferences. Firstly, they emphasise that competition in the retail sector intensified from the early 1990s onwards, as a result of stagnant turnovers, which triggered various changes to business practices designed to enhance productivity (Bispinck, Kirsch and Schäfer, 2003). It is argued that this structural development created an increasing demand for flexibility and incentives to lower wage costs (Bispinck, Kirsch and Schäfer, 2003; Haipeter, 2017). As outlined in Chapter II, employers initially reacted to this by seeking to substantially renegotiate bargaining agreements with the aim to increase flexibility (Kalkowski, 2008; Haipeter, 2017). Negotiations which continue to this day as unions and employers have failed to make significant progress. Scholars have argued that employers were increasingly frustrated with the reform process of collective agreements, which in turn led to an increasing desire among the HDE's membership to allow for deviation from disliked agreements by abandoning statutory extension (Kalkowski, 2008; Dummert, 2013; Haipeter, 2017). An explanation that is in line with the official reasoning of the HDE which justified its refusal to extend future agreements by arguing that one could no longer extend outdated agreements (Behrens, 2011; Thelen, 2014).

A third factor, which widely features in the literature, is that the end of extension was preceded by a split that occurred in the employer camp in the late 1990s (Kalkowski, 2008; Behrens, 2011; Haipeter, 2017). The BAG – which had long co-existed with the main employer association HDE as a business association representing large companies – announced that it would negotiate its own bargaining agreements (Behrens, 2011: 175-186). Simultaneously, the BAG announced that it was no longer interested in statutory extensions and introduced opt-out memberships in its statutes (2011: 175-186). Furthermore, it abolished requirements which limited membership to large companies, which opened it up to the HDE's core membership base of SMEs which were previously excluded from joining the BAG (Behrens, 2011: 175-186). It thus entered direct competition with the HDE by offering – potentially dissatisfied – HDE members an alternative (Behrens, 2011; Haipeter, 2017). Behrens (2011) argues that this forced the HDE to follow the BAG's lead a year later by similarly abandoning extension and introducing opt-out membership. Furthermore, the BAG's emergence made it harder to meet the 50% criterion necessary for extensions and to convince the bargaining committee to approve requests if the HDE had attempted to continue the practice (Behrens, 2011; Haipeter, 2017).

During the interviews conducted with retail representatives, both agreed that the abandonment of statutory extension was the result of rising dissatisfaction with existing bargaining agreements. However, their accounts on how this triggered a change in policy varied significantly. The HDE representative strongly emphasized association politics and the emergence of the BAG as the decisive factor. He outlined that the BAG took the policy that they no longer wanted to

engage in “the reform “argy-bargy” and instead thought to end extensions while introducing opt-out membership (Int4). He also recalled that the BAG aggressively started advertising this model to employers which put significant pressure on the HDE and “risked an implosion of the association landscape” (Int4). Consequently, he argued the HDE took the decision to end statutory extension and introduce opt-out memberships to “alleviate pressure from the tank” (Int4). In contrast, the HV NRW played down the division between the HDE and BAG (Int5). He argued that BAG representatives, especially in the lead up to the bankruptcy of the association, often claimed that the HDE was seeking to continue extensions and that the BAG was the “only bulwark against that” (Int5). However, he held that actual divisions over bargaining policy were small, given that both HDE and BAG also negotiated identical agreements in the end (Int5). Instead, the HV NRW representative argued that there was already a growing disillusionment with existing agreements before the split (Int5). This eventually resulted in an internally driven change of policy. He stated that the BAG may have changed its policy position slightly earlier but that this did not directly influence the HDE’s decision.

The literature and interviews thus suggest that retail employers initially reacted to an increase in competition by demanding measures designed to increase flexibility in extended agreements. The lack of progress in these negotiations led to mounting dissatisfaction among employers, which first led to divisions within the HDE, before the case of dissatisfied employers was taken on by the BAG, which demanded flexibility through opt-out memberships. The HDE could have attempted to continue statutory extension despite the BAG’s opposition but changed its policy before such a confrontation could occur. Whether the change in the policy of the HDE was driven by external pressure from the BAG or internal pressure, however, is not completely clear. On the one side, it is undoubtedly true that the BAG intensified the situation and pioneered opt-out memberships in the retail sector. On the other side, extensions in some states had already ended prior to the emergence of the BAG as an independent bargaining partner, suggesting that dissatisfaction was already mounting internally (Behrens, 2011). No matter what the precise balance of these factors they, nonetheless, suggest that the reform process was a highly salient issue in employer politics. This is very much in line with the general views of retail employers outlined in Chapter II, in which it emerged that the retail sector sees a lack of reform as a major downside of sectoral agreements. From this point of view, adopting a policy of opt-out memberships and abandoning extensions appears to be a logical policy to resolve these concerns as it allows dissatisfied members to deviate from existing agreements by opting out of disliked agreements, while maintaining association membership (Behrens, 2011).

### **The Case of the *Tarifautonomiestärkungsgesetz***

The last case in this chapter concerns employers’ positions towards the 2014 *Tarifautonomiestärkungsgesetz*. The signature policy of this law was the introduction of a statutory minimum wage, initially set at 8,50. In addition, the act also significantly reformed the rules governing statutory extension in two ways. Firstly it abolished the sectoral limitations to the posted workers law, thus providing an easier extension mechanism of minimum wages and working conditions to all sectors (Ulrich, Preis; Ulber, 2014; Bosch and Weinkopf, 2015). Secondly, it eased the formal requirements for extension under article 5 TVG, by replacing the requirement that agreements cover 50% of employers, with a requirement that they have reached overwhelming significance (Bosch and Weinkopf, 2015). Although these changes stopped short of some union demands, it was clearly the aim of this policy to ease and encourage greater use of the statutory



extension mechanism (Bosch and Weinkopf, 2015). The introduction of the *Tarifautonomiestärkungsgesetz* was preceded by a long and highly salient political debate, which specifically focused on the merits of the minimum wage. While its introduction was a signature policy of the SPD and DGB in the 2013 election campaign, it was vehemently opposed by the FDP and the BDA (Schlachter, 2017). The BDA's vocal opposition to this salient measure makes this an ideal case to investigate employer's scepticism towards statutory extension.

The political economy literature on the *Tarifautonomiestärkungsgesetz*, which is relatively small in contrast to the volumes of studies addressing the economic consequences of a minimum wage, has outlined several explanations why the act came into being. These studies, however, primarily focus on industrial trade unions and left-wing political parties. This is because until the mid-2000s industrial unions and social democrats were also sceptical of the minimum wage but have since shifted their views (Mabbett, 2016; Marx and Starke, 2017). Scholars interpreted this as either in line with the dualization view, which holds that a cross-class coalition of core employers and unions benefits from deregulation in the periphery (Marx and Starke, 2017) or as a path-dependent development based on Germany's tradition of low state intervention (Mabbett, 2016; Schroeder, Kristin, and Michaela, 2016). Consequently, they are focused on why unions changed their mind and what brought the state in and depart from the assumption that employers oppose minimum wages and statutory extension. Therefore, Marx and Starke (2017: 2) group employer and union opposition together when framing their research question by stating that "in the past, strong resistance came not only from market liberals and employers but also from trade unions and social democrats who vigorously defended the principle of autonomous wage setting". The article elaborates that social partners particularly feared that it would lead to increasing state intervention in the future and disincentivises membership in unions and employer associations (Marx and Starke, 2017), a fear initially echoed by industrial unions according to Schroeder et. al. (2016). Mabbett (2016: 1241) provides a second reason for employer opposition, arguing that employers were highly resistant "with few embracing the possibility of regulating competition through wage fixing and resisted statutory intervention". These explanations from the literature are clearly coherent with the views of peak employers in Chapter 2. Moreover, they are also mirrored in the interview conducted with the BDA and official BDA documents.

The interviewed BDA representative argued that the law weakens bargaining autonomy as it limits both the negative and positive freedom of coalition (Int1). The former as the lowering of requirements for extension increase the risk that employers will be bound by agreements, they do not wish to participate in. He saw the positive freedom of coalition weakened because the minimum wage invalidates voluntary agreements that set wages at a lower rate. He argued that these factors could disincentivise unions and employers from engaging in bargaining (Int1). The BDA's consultation document submitted to the Bundestag strikes a similar tone, as "protecting the autonomy of bargaining partners" is the title of the first section of the paper (BDA, 2014). Furthermore, addressing reforms of statutory extensions, the paper states that the act is "capable to substantially ease the extension of bargaining agreements. This weakens the autonomy of bargaining partners." It outlines that it does so by weakening the readiness of employers and unions to negotiate autonomously, ultimately endangering the acceptance of collective agreements and the *Tarifautonomie* in Germany (BDA, 2014). Importantly, the paper also provides clarification that the BDA does not view a pre-emption of competition as desirable and rejects the use of statutory extension for that matter. For instance, the BDA states that statutory extensions should help to

fight social disruptions and are not an instrument for the dictation of minimum standards for competition by the state” (BDA, 2014: 3).

The account of employer opposition found in the existing literature and the reasoning outlined in the BDA interview and consultation document is thus in line with the findings of Chapter II, again demonstrating that peak employers see the principal *Tarifautonomie* as an important good. Like the BDA representative’s interview responses, this defence of the autonomy of bargaining partners in the BDA’s position paper is framed in predominantly normative terms. The case also confirms that peak employers fear that extensions could disincentivise membership in associations in line with their stated preferences in Chapter II. Lastly, the statements of the BDA and Mabett’s (2016) account indicate that employers do not see regulation of competition through extended minimum wages as desirable, but rather favour competition between different forms of bargaining agreements which is also in line with the findings of the posted workers case.

In a nutshell, it is thus clearly apparent that how employers state their preferences and how they act in the real world is tightly coupled. Furthermore, in particular, the retail and construction cases show that when the preferences of employer associations are taken seriously, they can help us better understand real-world developments. This is because both sectors were similarly facing an intensification of competition in the 1990s, however, the construction sector quickly decided to counter it by an expansion of extensions. In contrast, the retail sector initially sought a reform of agreements when this failed it led to an open division in the employer camp which facilitated the end of statutory extension.

## **Conclusion**

This thesis began with the research puzzle that, contrary to the expectations of much of the established literature, Germany has seen a significant erosion of collective bargaining in recent years, while similar developments have not taken place in most other continental European economies. As shown here, this is because, unlike Germany, these countries extensively use statutory extension or equivalent mechanisms to shore up their bargaining systems. In turn, whether countries do so or not is to a large degree determined by the preferences of employer associations. In Germany, employers have strongly opposed such measures. In contrast, employers in neighbouring countries have consistently supported them. This thesis thus sought to uncover why German employers have taken this *Sonderweg* and what views underpin their position?

Using the Dutch VNO-NCW as a baseline, I demonstrated that firstly, unlike their neighbours, German employers across all sectors have a strong normative aversion to extensions because they view it as an inappropriate form of state intervention in their autonomy. The historically rooted doctrine of *Tarifautonomie*, which German employers view as a cornerstone of Germany's constitutional order underpins this view. Secondly, German employers also take a different view of wage competition, which they consider normatively appropriate and in the case of the BDA even as economically desirable. Thirdly, some German employers fear that greater use of extensions will further undermine the membership in employer associations. These views explain why German employers are by default averse to the use of statutory extension. However, this does not inevitably lead to opposition to extensions as the analysis of intersectoral differences showed. Instead, when employers face highly salient problems, that they believe can be addressed through statutory extension, they will overcome this basic aversion but only in so far as they consider it necessary. A clear illustration is the case of the construction sector, in which the presence of posted workers and regional wage differences made wage competition a highly salient issue, which led retail employers to pragmatically take a similar view to their Dutch counterparts and demand extensions of minimum wages. Historically, the retail sector took a similar position, but when competition intensified employers increasingly viewed agreements as a hurdle to increase competitiveness and demanded a fundamental reform. As the reform process stalled, the issue became increasingly pressing and even led to an open split in the retail employer camp. As a result, retail employer associations today rule out any extension, unless there is fundamental reform, and allow members to circumvent 'outdated' rules by opting out of collective bargaining. In the metal sector, which has no tradition of bargaining, the opposition to it is reinforced by the idea that employers are leaving associations out of a dissatisfaction with high wages and inflexibility. For this sector, the solution is decentralization of bargaining and greater possibilities to opt out rather than to extend wages, which they interpret as reinforcing existing rigidities. As shown in the case studies in Chapter 3, these findings are aligned with the real-world behaviour of German employers and the existing German industrial relations literature.

At this time, however, the results should nonetheless be taken with a grain of salt. While I am confident that the views of the three German sectors discussed here and those of the VNO-NCW are accurate, it yet remains to be seen whether similar positions can explain why employers in other countries use extensions sparingly.

A last but important implication of this thesis is that it has demonstrated that employer associations facing similar structural developments and institutional configurations such as the BDA and VNO-NCW or the ZDB and HDE, nonetheless, can take radically different positions, based on different economic and normative ideas. These ideas, in turn, send collective bargaining

in both countries down very different paths. This is important to realize because it demonstrates that norms and ideas can have an effect in their own right. This often gets lost in the political economy literature, which frequently prioritizes structural and materialist explanations (Blyth, 2001, 2002). Future researchers of employer associations would do good to more often consider ideational explanations because as one employer representative put it: associations are not just interested in members and influence but “also have a basic political orientation” (Int5).

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## **Appendix: List of Interviews**

The interviews were coded in this way to allow for a clustering of sectors.

1. Interview Int1, Head of Department Wage and Bargaining Policy, BDA, 07-08-2018.
2. Interview Int2, Deputy Chief Executive, Metall NRW and Member of the General Management, Unternehmen NRW 03-05-2018
3. Interview Int3, Managing Director, Südwestmetall and Managing Director, Arbeitgeber Baden Württemberg, 27-07-2018
4. Interview Int4, Managing Director Labour, Education, Social and Bargaining Policy, HDE, 14-06-2018
5. Interview Int5, Chief Executive, HV-NRW 23-05-2018
6. Interview Int6, Head of Department Press and Public Relations, ZDB, 02-05-2018
7. Interview Int7, Managing Director of Social Policy, Bauindustrieverband NRW, 14-05-2018
8. Interview Int8, Coordinator of Social Affairs, VNO-NCW, 23-11-2018
9. Interview Int9, Trade Union Secretary for Cologne, Verdi 17-05-2018
10. Interview Int8, spokesperson on bargaining policy in the metal and electronics sector, IG Metall NRW, 01.08.2018