

Social Dialogue mapping

Description scheme for country overviews

GERMANY

Sources:

- 1/ Eurofound Working Life Profiles <https://www.eurofound.europa.eu/country/germany#actors-and-institutions>
- 2/ OSH WIKI https://oshwiki.eu/wiki/OSH_system_at_national_level_-_Germany
- 3/ ESENER-3 <https://visualisation.osha.europa.eu/esener#!en/survey/overview/2019>

Introduction on Social Dialogue in MS (1)

The concept of ‘organisational representativeness’ is unknown in the German system. The alternative concept is ‘collective bargaining capacity’ (Tariffähigkeit). It has a basis in the Basic Law (freedom of coalition), the Collective Bargaining Act and is governed by the rulings of the Federal Labour Court. Trade unions and employer organisations have the right to engage in collective bargaining if collective bargaining is designated a statutory task (Article 2 of the Collective Bargaining Act). Based on ruling by the Federal Labour Court, the main indicators of ‘collective bargaining capacity’ are organisational independence (of the opposite party and third parties), internal democracy and social strength (soziale Mächtigkeit) to push the opposite party to the bargaining table and to enforce the implementation of collective bargaining outcomes.

Trade Unions (1)

- **About trade union representation**

All workers – including civil servants – have the right to join a trade union. Self-employed workers may join a trade union, but under law are not considered ‘workers’ and are not organised by all trade unions.

The trade unions’ collective bargaining domain excludes civil servants, high skilled workers and managerial staff above negotiated pay levels (außertarifliche Angestellte) and in most cases self-employed workers. Also their domains typically do not extend to establishments and organisations managed under church law. The recent trend is a halt in membership decline.

- **Main trade union confederations and federations**

Long name	Abbreviation	Members	Year	Involved in collective bargaining (*)
Deutscher Gewerkschaftsbund (German Confederation of Trade Unions)	DGB	6,095,513	2015	No with one exception: mandated by DGB affiliates to engage in collective bargaining with employers of temporary agency work sector

Long name	Abbreviation	Members	Year	Involved in collective bargaining (*)
Industriegewerkschaft Metall (German Metalworkers Union)	IG Metall	2,273,743	2015	Yes
Vereinte Dienstleistungsgewerkschaft (United Services Union)	Ver.di	2,038,513	2015	Yes
Deutscher Beamtenbund und Tarifunion (German Civil Servants Union and Wage Union)	Dbb	1,294,402	2015	Yes
Industriegewerkschaft Bergbau Chemie Energie (Industrial Union Mining, Chemistry and Energy)	IG BCE	513,717	2015	Yes
Industriegewerkschaft Bauen Agrar Umwelt (Industrial Union Construction Agriculture and the Environment)	IG BAU	273,392	2015	Yes
Gewerkschaft Erziehung und Wissenschaft (Trade Union Education and Academia)	GEWGB	280,678 (source: oec kl-online.de)	2015	Yes
Christlicher Gewerkschaftsbund (Christian Trade Union Federation)	CGB	280,000	2015	No

Employers' organisations (1)

• About Employers' organisations

Section 9 of the German Basic Law (guaranteeing freedom of association) also applies to employer organisations. As with trade unions, employer organisations have the right to engage in collective bargaining if they are assigned to do so by their members and if collective bargaining is designated a statutory task (Section 2 of the Collective Bargaining Act). There are no further statutory regulations defining criteria for representativeness or any statutory requirement for an association.

The main development is the provision of membership without binding obligation to apply collective agreements. According to a ruling by the Federal Labour Court, employer organisations are allowed to do so, but these members may not influence the organisation on issues regulated by collective bargaining. According to a ruling by a regional labour court, craft guilds engaged in collective bargaining are prohibited to provide non-binding memberships.

• Main Employers' organisations

Long name	Abbreviation	Members	Year	Involved in collective bargaining (*)
Verband der Deutschen Arbeitgeberverbände (Employers' (con)federation)	BDA	50 sectoral employer organisations, 14 regional employer organisations	2016	No
Zentralverband des Deutschen Handwerks	ZDH	53 Craft Chambers; 37 professional organisations	2016	No
Vereinigung der kommunalen Arbeitgeberverbände	VKA	16 organisations	2016	Yes
Tarifgemeinschaft deutscher Länder	TdL	15 regional states	2016	Yes
Gesamtverband der Arbeitgeberverbände der Metall- und Elektroindustrie	Gesamtmetall	22 employer organisations	2016	Yes
Bundesarbeitgeberverband Chemie	BAVC	10 organisations	2016	Yes
Bundesverband Großhandel Außenhandel Dienstleistungen	BGA	23 regional organisations, 45 sectoral/professional organisations	2016	Yes

Social Dialogue on OSH (2)

• National level

The social partners play an important role in occupational safety and health in Germany: They take part, for example, in legislative procedures, the Joint German Occupational Safety and Health Strategy, (technical) committees, networks and the autonomous administration of the social accident insurance.

In the legislative process the social partners can be invited to hearings of the Bundestag and committees of the Bundestag (e.g. the Committee on Labour and Social Affairs of the Bundestag)^[44]. Furthermore, the National Occupational Safety and Health Conference (NAK) receives advice from three representatives from each of the umbrella organisations of the employers (employers associations) and workers (trade unions)^[42]. The social partners participate in the NAK meetings and they give advice in developing OSH objectives. The social partners do not have the right to vote in the NAK.

Moreover, the social partners are members of different technical committees, like the Committee on Hazardous Substances (Ausschuss für Gefahrstoffe, AGS) or the Committee for Biological Agents (Ausschuss für Biologische Arbeitsstoffe, ABAS)^[43]. These committees establish technical rules (Technische Regeln) and adapt them to current developments.

In the standardisation processes, the social partners take part in the Commission for Occupational Health and Safety and Standardisation (Kommission für Arbeitsschutz und Normung, KAN)^[44]. This commission is composed of five representatives from each of the employers, the trade unions, the State and the Federal States and there is one representative from each of the DIN (German Standards Institute) and the Association for the Promotion of Occupational Health and Safety in Europe (VFA) or the German Social Accident Insurance Association (DGUV).

Further activities of the social partners include the development of their own programmes, e.g. the initiative "Innovation und Gute Arbeit" ("Innovation and Decent work" of the Ver.di trade union)^[45], the establishment of surveys (e.g. the DGB-Index Gute Arbeit (DGB-Index Decent work))^[46] or the cooperation with the trade union associated Hans-Böckler Foundation^[47] and the employer associated "Institut für angewandte Arbeitswissenschaft" (ifaa)^[48].

• Sectoral level

The social dialogue at sectoral level also comprises the self-administration (Selbstverwaltung) of social accident insurance institutions^{[49][50]}. Within the self-administration, both employer and employees have an equal number of votes. In addition, the structure of the member companies (services, trade and industry) is reflected in the composition of self-administrative bodies^[51]. The self-administration's bodies are the representative committee (Vertreterversammlung) and the Executive Board (Vorstand). The members of these bodies are elected in six-yearly social insurance elections^[52]. Social insurance elections are used to appoint new members to the self-administrative bodies, which all insurance providers must establish under Section 31 (1) of Book IV of the German Social Code (Sozialgesetzbuch IV, SGB IV)^[53]. The insured workers and the employers elect their representatives in the representative committee. The members of the representative committee elect the Executive Board (with equal representation). The self-administration in the social accident insurance institutions:

- establishes the accident prevention regulations
- defines the risk tariffs (Gefahrentarife)
- determines the amount of contributions,

- elects the Executive Board
- determines the budget
- sets up conflict points, which consist of voluntary representatives of insured persons and employers[54].

Besides the social dialogue in the self-administration of the social accident insurance institutions, trade unions and employer's representatives in diverse sectors interact with each other. Fields of interaction are, for example, e-commerce, trade or occupational safety and health^[55]. On sectoral level employer associations and employee associations work together. The topics for cooperation and exchange are not fixed and depend on the needs of a specific branch. Trade unions with their high number of members have got the opportunity to observe health hazards earlier than one worker or a small group of workers can do. In addition, sometimes the trade unions have enough political power to obtain improvements even against the resistance of employers or politicians.

• Enterprise level

The Works Constitution Act (Betriebsverfassungsgesetz, BetrVG) regulates the participation of employees in company affairs. In companies with at least five eligible employees, work councils can be elected^[56]. The members of work councils can, but need not be trade union members. The work council represents all employees and their interests face to face with the employer. Furthermore, the work council has specific consultation and co-determination rights (Mitwirkungs- und Mitbestimmungsrechte), in particular, in social, human and economic affairs. The works council pays attention to the equal treatment of employees, in particular, to discrimination because of sex, sexual identity, race, religion, nationality, origin, age and disability.

Administrations of the State and the Federal States, municipalities and other institutions of public law are excluded from the Works Constitution Act^[57]. In these administrations, the Personnel Representation Act (Personalvertretungsgesetz) of the Bund and the Federal States are applicable.

Further laws for the social dialogue on company level are:

- One-Third Participation Act (Drittelbeteiligungsgesetz, DrittelbG) for one-third representation of employees in the board of directors in stock corporations (Aktiengesellschaften, AG), limited liability companies (Gesellschaften mit beschränkter Haftung, GmbH), partnerships limited by shares (Kommanditgesellschaft auf Aktien, KGaA), cooperatives (Genossenschaften) and mutual insurance companies (Versicherungsvereine auf Gegenseitigkeit) with more than 500 (but less than 2,000) employees[58]
- Co-determination Act (Mitbestimmungsgesetz, MitbG) for equal employee representation on the board of directors in stock corporations (Aktiengesellschaften), limited liability companies (Gesellschaften mit beschränkter Haftung, GmbH), partnerships limited by shares (Kommanditgesellschaft auf Aktien, KGaA) and cooperatives (Genossenschaften) with more than 2,000 employees[59]
- Montane Co-determination Act (Montanmitbestimmungsgesetz, Mont-MitbestErgG) for the equal employee representation in the board of directors in stock corporations (Aktiengesellschaften) or limited liability companies (Gesellschaften mit beschränkter Haftung, GmbH) with more than 1,000 employees in the field of coal, iron and steel[60]

- SE Participation Act (SE-Beteiligungsgesetz, SEBG) for the participation of employees in European Companies (Europäische Gesellschaft)[61]
- SCE Participation Act (SCE-Beteiligungsgesetz, SCEBG) for the participation of employees in European Cooperatives (Europäische Genossenschaften)[62]
- Law on Employee Participation in a Cross-border Merger (Gesetz über die Mitbestimmung der Arbeitnehmer bei einer grenzüberschreitenden Verschmelzung, MgVG) for the regulation of the participation of employees (workers) in companies resulting from a cross-border merger[63].