

Thorsten Schulten
Karin Schulze Buschoff

Sector-level Strategies against Precarious Employment in Germany

Evidence from Construction,
Commercial Cleaning, Hospitals
and Temporary Agency Work

Abstract

This study focuses on describing and analyzing the concrete initiatives taken by trade unions and employers to combat precarious employment. It is based on an evaluation of recent data, research literature and policy documents as well as a number of interviews with experts from all four sectors. The study is also part of a wider European project called "Bargaining for Social Rights at Sector Level" (BARSORIS) which include studies from seven European countries (Denmark, Germany, Italy, Netherlands, Slovakia, Spain and the UK).

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Dr. Thorsten Schulten
PD Dr. Karin Schulze Buschoff
WSI in der Hans-Böckler-Stiftung
Hans-Böckler-Straße 39
40476 Düsseldorf
thorsten-schulten@boeckler.de
karin-schulze-buschoff@boeckler.de

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1 Introduction

The following paper contains a study of strategies against precarious employment in four sectors in Germany: construction, commercial cleaning, hospitals, and temporary agency work. All four sectors have been characterised by a growth in the number of precarious workers in recent years as a result of cost-cutting strategies adopted by firms and organisations that have been subject to increasing economic pressures, although the degree and forms of precarious work differ as between these sectors. One consequence has been that precarious employment has become a core issue in German industrial relations. In recent years, German trade unions have developed various initiatives to improve the conditions of precarious workers and limit the further spread of non-standard employment contracts. In some cases, these initiatives have been taken in cooperation with employers and employers' associations, and in others in the face of employer resistance.

This study focuses on describing and analysing the concrete initiatives taken by trade unions and employers to combat precarious employment. It is based on an evaluation of recent data, research literature and policy documents as well as a number of interviews with experts from all four sectors.¹ The study is also part of a wider European project called "Bargaining for Social Rights at Sector Level" (BARSORIS) which include studies from seven European countries (Denmark, Germany, Italy, Netherlands, Slovakia, Spain and the UK).² The whole project has been funded by the EU, European Commission DG Employment, Social Affairs and Inclusion, Social Dialogue, Industrial Relations (Agreement number. VS/2013/0403).

2 Precarious employment in Germany – an overview

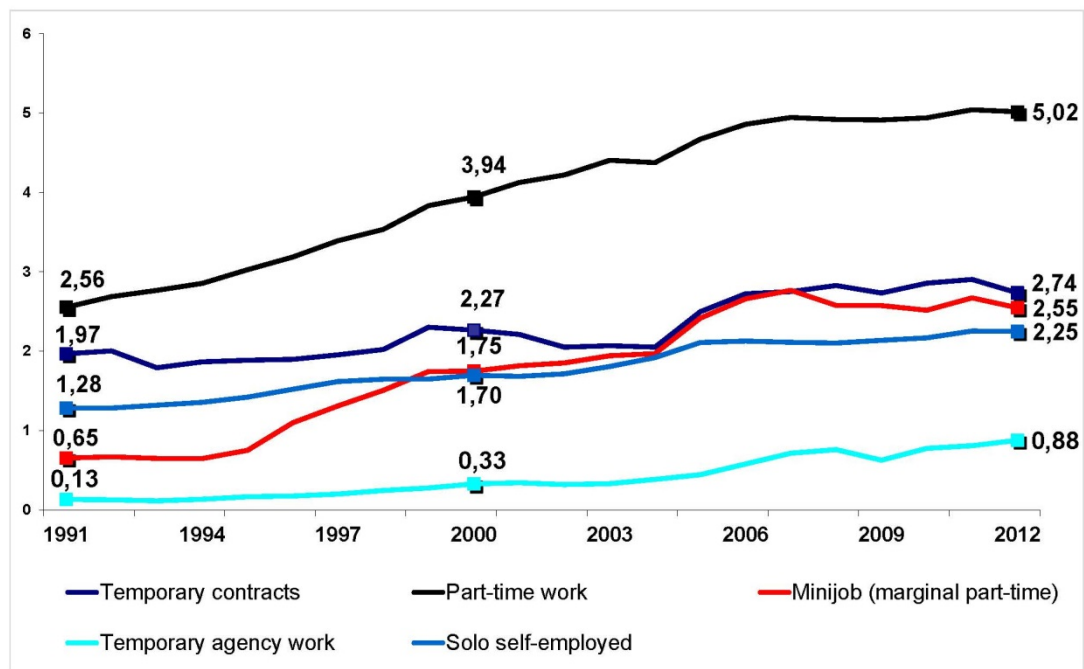
Since the early 1990s, there has been a steady rise in the number of employees in Germany working on non-standard forms of employment, defined as those that differ from the 'standard' model of a full-time employee with an indefinite contract of employment (Keller and Seifert 2013a, *Figure 2.1*). Between 1991 and 2012, the number of part-time workers almost doubled from 2.5 to more than 5 million employees. The same holds true for the so-called 'solo self-employed' (self-employed people who do not have employees), the number of which increased

¹ We are grateful to all experts who have supported this study with valuable insider knowledge and information.

² For more information on the BARSORIS project see: <http://www.uva-aias.net/409>.

from 1.3 to 2.3 million. Notable increases could also be observed for the number of employees on fixed-term contracts as well as for temporary agency workers. Finally, the labour market in Germany was also characterised by the rapid development of so-called 'Minijobbers': these are employees working part-time and earning less than 450 Euro per month. All in all, it is estimated that up to 40 per cent of all employees in Germany can currently be classified as having a non-standard employment status (Keller and Seifert 2013a).

Figure 2.1: Non-standard forms of employment in Germany, 1991-2012 (in million employees)



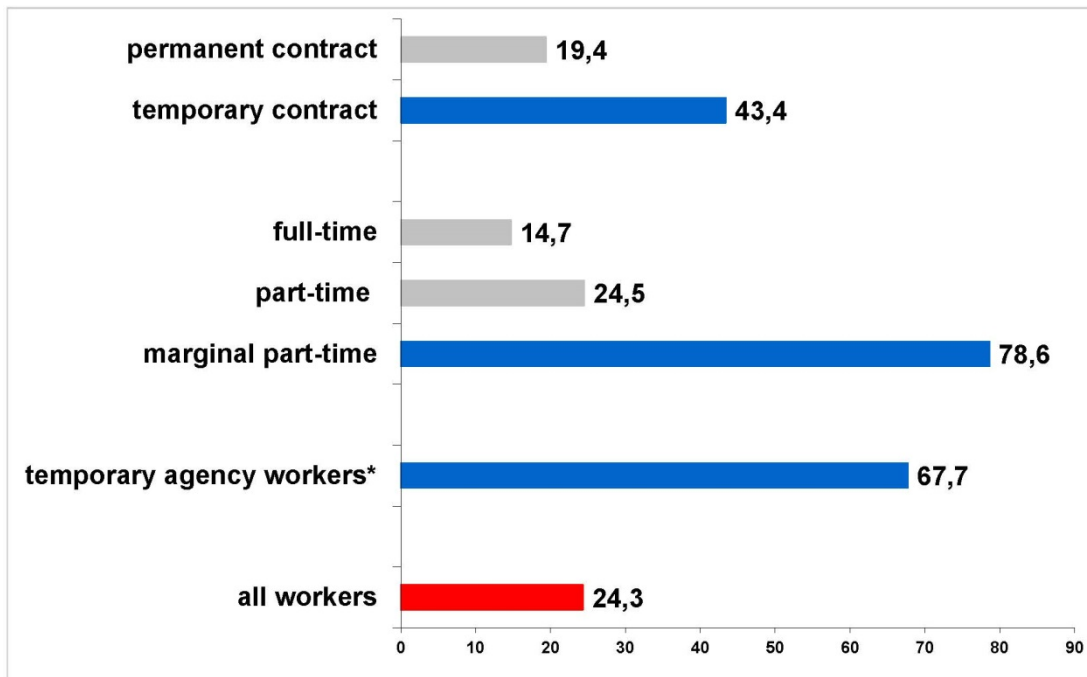
Source: Federal Statistical Office, Federal Employment Agency

There is no clear-cut distinction between 'non-standard' and 'precarious' employment. While the former focus more on formal employment status, the latter also involves dimensions such as pay, access to social security, the possibility to exercise some choice over issues such as when work is performed, job security, or career prospects (Bispinck and Schulten 2013). Although there are considerable overlaps, not all forms of atypical employment are necessarily precarious. Part-time work undertaken 'voluntarily', for example, might be seen as a non-precarious form of employment, especially if it takes place in a certain household context. On the other hand, there are also standard forms of employment that might arguably be seen as precarious, such as full-time employment in sectors with a high incidence of low pay.

As Germany has one of the largest low pay sectors in Europe, pay has been a core issue in the debate on precarious employment. In 2012, almost one quarter of all workers in Germany received hourly wages below the low-pay threshold of two-thirds of median earnings (Figure 2.2). However, the proportion was much higher for non-standard employees: 43.3 per cent of workers

with a fixed-term contract were below this threshold, as were 67.7 per cent of temporary agency workers, and as many as 78.6 per cent for Minijobbers.

Figure 2.2: Incidence of low pay in Germany, 2012
Workers with low pay in % of all workers of the respective group



* Data for 2010

Source: Kalina and Weinkopf (2014); Statistisches Bundesamt (2012)

For a long time, the dominant view in Germany was that the increase in non-standard or even precarious work was inevitable in order to make the labour market more flexible. In turn, the latter was seen as a precondition for improving competitiveness and promoting growth and employment. Consequently, former governments followed a policy of deregulating labour markets and loosening employee protection, which in turn facilitated the observable increase in precarious employment. In particular, the *Red-Green* Federal Government (1998-2005) implemented numerous legislative changes in the employment and social field in the early-2000s to make the labour market 'more flexible'. Among these were the now famous 'Hartz reforms' that led to a fundamental reconstruction of the German labour market. The explicit aim of these changes was to strengthen market forces on the assumption that this would be the best way to create more growth and jobs. The consequences of this far-reaching deregulation of the labour market have been growing social insecurity and the increasing salience of precarious employment.

The question as to whether or not precarious employment has really improved the performance of the German economy is one that has been strongly contested. While there is a widespread perception both within and outside of Germany that the labour market reforms of the 2000s

might have made a substantial contribution to reducing unemployment, more critical studies have shown that the main effect of deregulation has been to influence not the number but principally the quality of newly-created jobs (Sturn and van Treeck 2010; Knuth and Kaps 2014). Moreover, the increase in precarious employment and, in particular, the rapid growth in the number of low-wage earners, has been identified as the major source of the extremely moderate pay growth in Germany during the 2000s, one consequence of which has been the marked underperformance of the German domestic market in terms of the growth of demand (Schulten and Bispinck 2014).

More recently, there has been a growing awareness in Germany that labour market deregulation might have gone too far and needs to be somewhat reversed. The clearest sign of this was the passage of legislation in 2014 to introduce a national statutory minimum wage (Schulten and Bispinck 2014). Against the background of more favourable economic framework conditions, there has also been a growing debate on 'good' or decent work, focusing much more on the quality of jobs. Consequently, Germany has seen several initiatives against precarious work at national, sectoral and company level (Bispinck and Schulten 2013). The German trade unions, in particular, have been at the forefront of campaigns against precarious work and have called for a "reordering of the German labour market" (DGB 2014a).

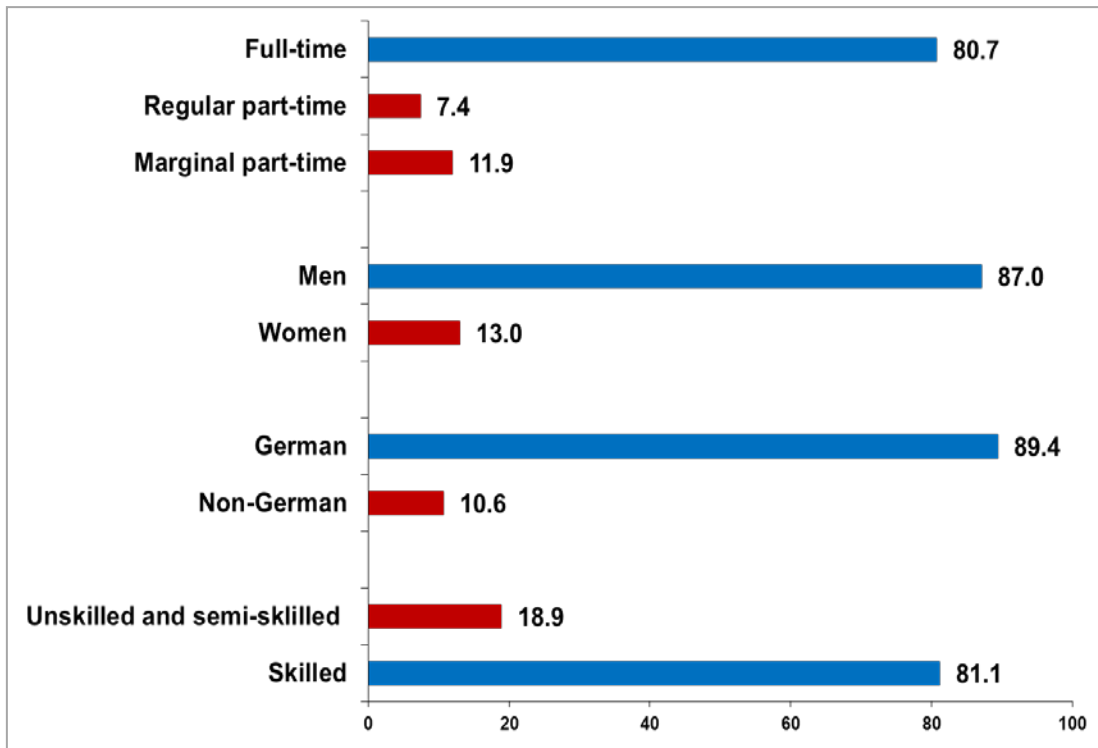
3 Construction

3.1 The economic profile of the construction sector

According to figures from the Federal Employment Agency, there were nearly 820,000 workers employed in the main construction industry (*Bauhauptgewerbe*)³ in Germany at the start of 2014 (Bundesagentur für Arbeit 2014a). In addition to that, another 1.1 million employees were working in the finishing trades (*Ausbaugewerbe*) – covering internal fitting, electrical installation, gas, heating and plumbing – so that the construction sector as a whole employed nearly 2 million workers. In 2013, the main construction industry represented about 4.7 per cent of German Gross Domestic Product (GDP), while the overall construction sector accounted for more than 10 per cent (Statistisches Bundesamt 2014c). In the following report, the term 'construction' will be used to refer to the main construction industry only.

3 This includes building construction and civil engineering, demolition and site preparation, roofing and scaffolding.

Figure 3.1: Structural composition of construction workers in Germany, 2014*
(in % of all construction workers)



* On 31 March 2014

Source: Bundesagentur für Arbeit (2014a), calculations by the authors

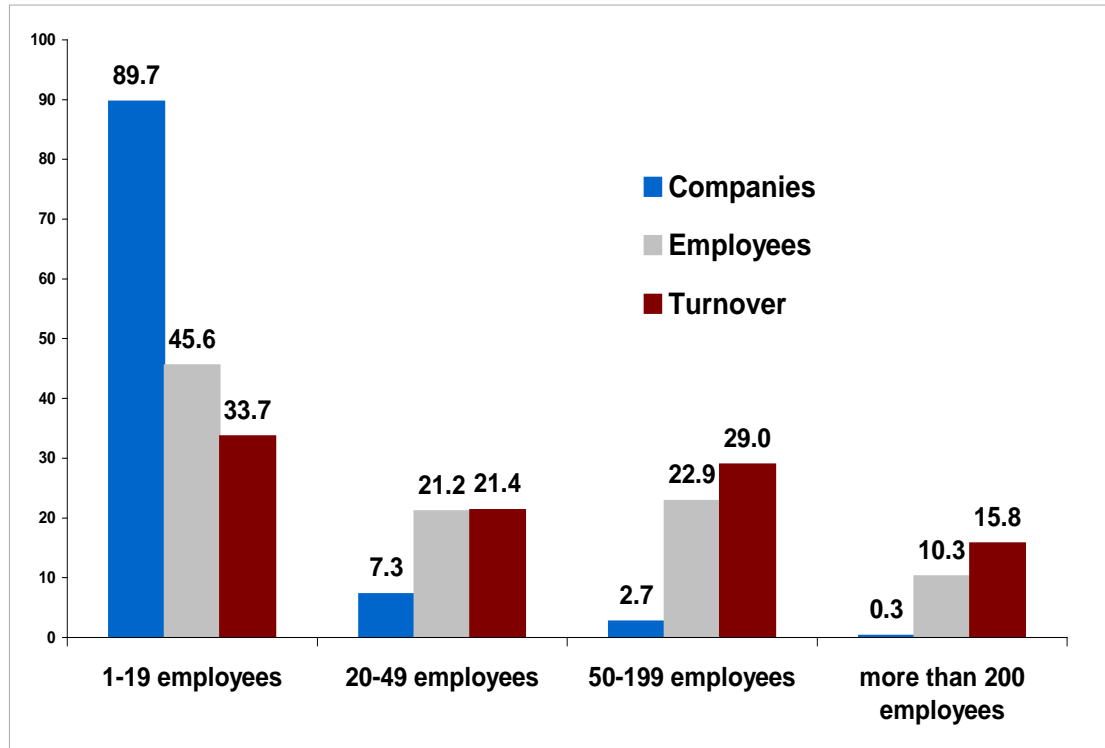
The structural composition of employment highlights six distinctive features of work in the industry (*Figure 3.1*). Firstly, it is a largely male-dominated sector: 87 per cent of all construction workers are men. Secondly, most construction workers have a full-time job, with only one fifth working part-time. Thirdly, the construction industry employs mainly skilled workers: just one fifth are unskilled or semi-skilled. Fourthly, about 11 per cent of construction workers are non-German, only slightly above the national average of 9 per cent (Bundesagentur für Arbeit 2014a). Fifthly, in 2012, only about 3 per cent of construction workers worked on a fixed-term contract, compared with 9.5 per cent in the economy as a whole (IAB 2013). Finally, there are almost no temporary agency workers in construction, as the German Temporary Employment Act still widely bans the use of agency work in the sector.⁴ To sum up, in formal terms most construction workers still have a standard employment contract.

The German construction industry is largely dominated by small companies with fewer than 20 employees. In 2013, these represented almost 90 per cent of all construction companies and employed nearly half of all construction workers (*Figure 3.2*). In contrast to that, larger companies with more than 200 employees represented only 0.3 per cent of all construction companies

⁴ See also section 6 on temporary agency work.

and about 16 per cent of all construction workers. In total, there were only 27 construction companies with more than 500 workers (Statistisches Bundesamt 2014b).

Figure 3.2: Companies in the German construction industry, 2013 (in %)

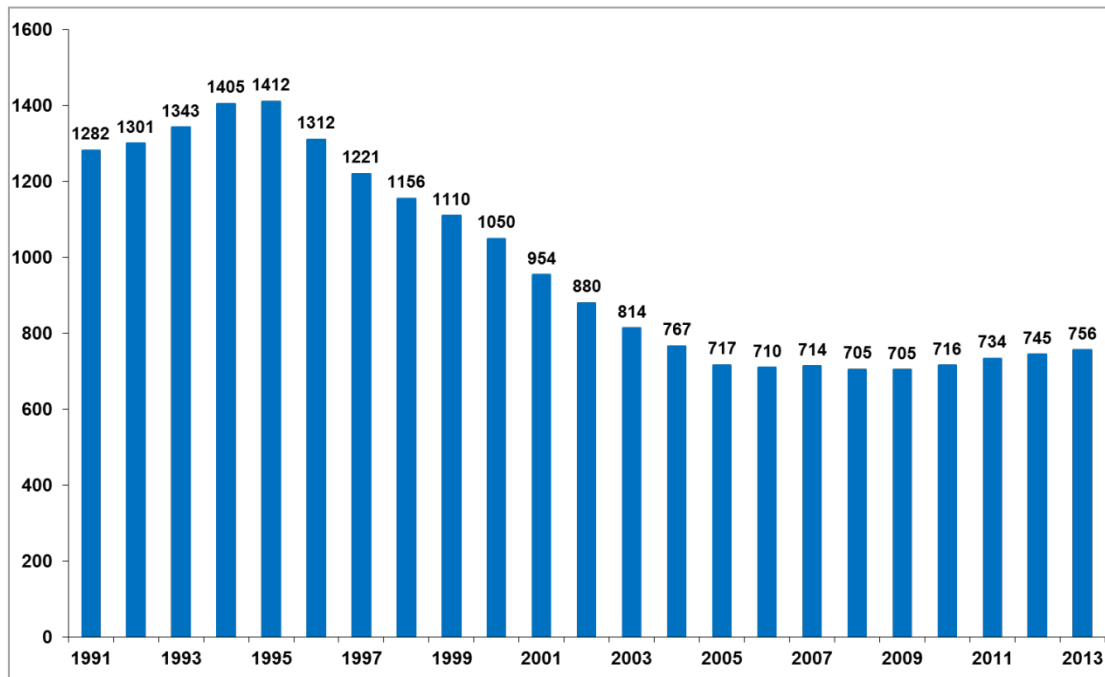


Source: Statistisches Bundesamt (2014b)

In the early 1990s, the construction industry experienced an extraordinary boom, especially in East Germany, as a result of German unification. From the mid-1990s, however, there was a sharp decline. According to the German Statistical Office, between 1995 and 2005 the number of construction workers was cut in half from about 1.4 million to little more than 700,000 (Figure 3.3).⁵ Since then, employment in construction has been stabilised with a slight recovery in recent years.

⁵ Due to different methods of data provision the employment figures provided by the German Statistical Office (Statistisches Bundesamt 2014b, 2014c) differ slightly from the figures of the Federal Employment Agency (Bundesagentur für Arbeit 2014a).

Figure 3.3: Employees in the German construction industry, 1995-2013
(in 1,000, annual averages)



Source: Statistisches Bundesamt (2014c)

While the number of employees in the industry has fallen considerably, there has been a significant rise in self-employment. Between 2002 and 2011, the number of self-employed workers grew from 119,000 to 175,000. In 2011, more than half of them (51 per cent) were so-called 'solo self-employed' and did not employ any other workers (Stephani 2013).

3.2 Industrial relations in the construction industry

There is only one union active in the construction sector, the Industry Trade Union for Building, Forestry, Agriculture and the Environment (Industriegewerkschaft Bauen-Umwelt-Agrar, IG BAU). In 2013, IG BAU had 288,423 members of which 77 per cent were male. IG BAU is affiliated to the German Confederation of Trade Unions (Deutscher Gewerkschaftsbund, DGB). On the employers' side, there are two main umbrella organisations: the Central Association of German Building Trades (Zentralverband des deutschen Baugewerbes, ZDB) which covers small firms and the handicraft sector, and the Central Association of the German Construction Industry (Hauptverband der Deutschen Bauindustrie, HDB) which represents the industrial sector, in particular larger firms and SMEs. Both organisations are 'federations of federations', whose members are formally independent federations covering the individual federal states.

Given the specific characteristics of the construction industry, the sector has also developed a distinctive industrial relations regime (Bosch and Zühlke-Robinet 2003; Bosch et al. 2011). The most notable feature is the existence of a rather centralised collective bargaining system with

nation-wide collective agreements providing the same conditions for all construction workers in Germany. Regarding pay, however, wage levels are still set somewhat lower in East Germany.

As the sector is largely dominated by small enterprises, both employers and trade unions have a strong interest in establishing a competitive regime for the industry that is able to avoid downward wage competition. Since 1996, employers and trade unions have also negotiated specific sector-wide minimum wages that were subsequently declared universally binding on all employees in the branch under the provisions of the German Posted Workers Law (*Arbeitnehmer-Entsendegesetz*, AEntG). This obliges companies from other EU countries that bring their own staff into Germany to pay at least the sector-wide minimum wage. From January 2015, the sectoral minimum wage for construction is € 11.15 per hour in West Germany and € 10.75 in East Germany. In West Germany there is also a second minimum for more skilled construction workers, which currently stands at € 14.05 per hour.

Another special feature of industrial relations in construction is the existence of sector-wide funds such as the holiday and wage equalisation fund (Urlaubs- und Lohnausgleichskasse, ULAK) and the supplementary pension fund (Zusatzversorgungskasse, ZVK). Both are based on nation-wide collective agreements that have been declared universally applicable, so that all construction companies in Germany have to contribute to these funds. Both funds are administered by SOKA-BAU, an institution jointly run by the employers' associations and the trade union (Wagner 2014).

In contrast to the far-reaching institutionalised co-operation between employers and trade unions at sectoral level, there is often a lack of institutions at company level. Due to the dominance of small firms, in 2013 only around 16 per cent of construction workers in the West were employed in a firm with a works council, in contrast to 69 per cent in manufacturing (Ellguth and Kohaut 2014: 294). This 'representation deficit' is significant because in Germany it is directly-elected works councils, rather than trade unions, that are the most important actors in implementing and monitoring compliance with collectively agreed wages and working conditions at workplace level.

3.3 Precarious employment in the construction sector

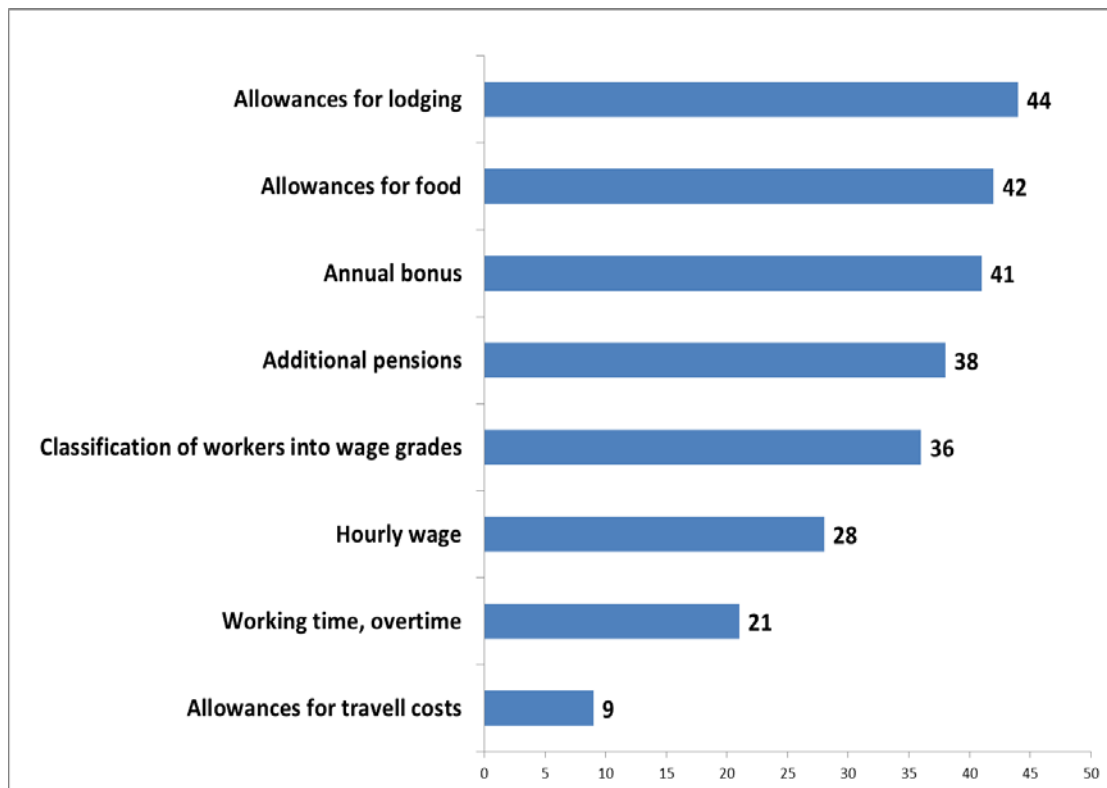
The rapid decline in the construction industry in the 1990s and 2000s together with the marked intensification of competition have placed great pressure on construction companies to reduce labour costs. It is against this background that the many companies have promoted precarious employment and working conditions in the German construction industry. Although most construction workers still have a standard work contract regulated by collective agreements, there have been at least four main factors behind the spread of precarious employment in construction.

First of all, there is a significant problem with the compliance and enforcement of collectively agreed wages and working conditions. Studies have found a wide-range of illegal employment practices such as (Bosch et al. 2011; Schulten et al. 2014):

- payment of wages below the generally binding sectoral minimum wage;
- false classification of more skilled workers, so that they are placed in a lower wage grade or even possibly receive only the sectoral minimum wage;
- the use of unpaid overtime, under which payments are correct on paper but de facto undermine agreed wage levels given the actual hours worked;
- the refusal to pay additional mandatory bonuses and payments (e. g. annual bonus, bonuses for board and lodging, allowances for travel costs etc.).

According to a survey of more than 1,000 construction workers (all members of the union IG BAU) offences against collectively agreed working standards are quite common in the German construction industry (*Figure 3.4*). More than 40 per cent of the surveyed workers reported that employers did not pay the collectively agreed amount for annual bonuses as well as for food and lodging allowances. About 36 per cent cited incorrect grading of workers into grades that were too low for their skills. And 28 per cent said that employers pay below the collectively agreed hourly wage and 21 per cent claimed offences against collectively agreed working time. Although the survey results are not strictly representative, they can be treated as a broad indicator of the spread of illegal employment practices in the German construction industry.

Figure 3.4 Offences against collectively agreed working standards in the German construction industry, 2008
(in % of all surveyed construction workers, n = 1019)



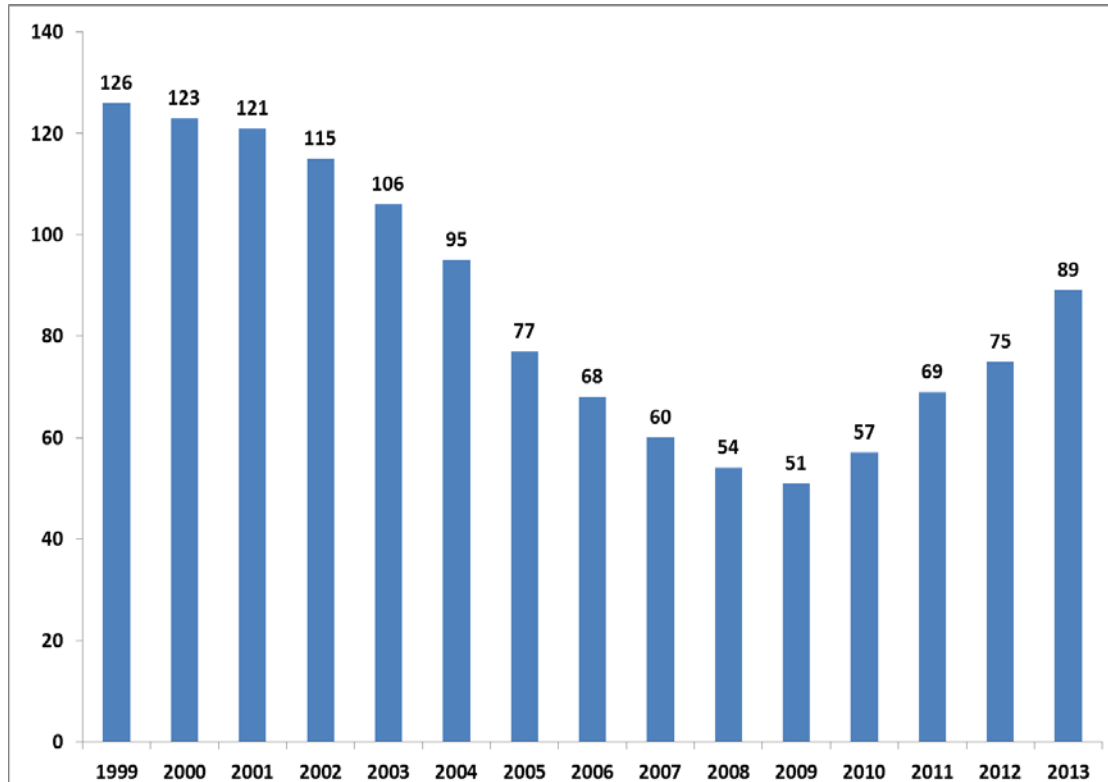
Source: Bosch et al. (2011: 86)

Secondly, the use of illegal employment practices are a particular issue for migrant workers, who are often unaware of agreed working conditions and are usually in a rather weak bargaining position (Eldring and Schulten 2012). Since the mid-1990s, there has always been a significant proportion of workers in German construction posted from foreign companies, in particular from Eastern Europe. In 1999, there were officially 126,000 posted workers in the German construction industry (*Figure 3.5*). During the first half of the 2000s, their number decreased in parallel to the overall decline in construction employment. However, in recent years the number of posted workers has once again grown much faster than overall employment and this group now accounts for some 12 per cent of all construction workers.

Originally posted workers were hired under the conditions of their country of origin, which were often very much below standards in Germany. Since the introduction of the Posted Workers Law in the mid-1990s, companies have been obliged to provide certain minimum conditions for posted workers, including a specifically agreed sector-wide minimum wage. These minimum conditions, however, are still significantly below the collectively agreed conditions for construction workers and pose a permanent threat to established standards. Moreover, several companies have exploited the weak bargaining position of posted workers and illegally undermined the minimum standards laid down in the Posted Workers Law (Balan 2011). Many companies

have “identified creative ways to avoid regulation, and posted workers are often not able to resist these malpractices due to fear of employer retaliation, structural limitations and isolation from union structures” (Wagner 2014: 14).

Figure 3.5: Number of posted workers in German construction industry, 1999-2013 (in 1,000)



Source: <http://www.bauindustrie.de/zahlen-fakten/statistik/arbeitsmarkt/entsandte/>

A third way to promote precarious employment in construction is the contracting out of services and the creation of differentiated production chains with various sub- and sub-sub-contractors (Wagner 2014). According to figures from the Central Association of the German Construction Industry, in larger construction companies with more than 500 employees sub-contractors account for 35 to 45 per cent of the overall production value. Moreover, even in smaller companies with 20 to 49 employees, sub-contractors contribute to about 20 per cent of the production value.⁶

The reasons for the use of sub-contractors in construction are manifold. It enables companies to provide rather specialised tasks, increases flexibility, and helps to save on labour costs. Subcontractors are often not covered by the sectoral agreement for the construction industry but by other agreements with lower standards in comparison (e. g. agreements for various construc-

⁶ See: http://www.bauindustrie.de/zahlen-fakten/bauwirtschaft-im-zahlenbild/_fakt_subunternehmertatigkeit-im-bauhauptgewerbe/

tion related trades) or even by no agreements at all. In addition, subcontracting often involves rather small companies where the enforcement and control of minimum working standards is much more difficult. The establishment of differentiated production chains also further intensifies competition between construction companies, which have to compete for orders from the main contractor. This imposes especially strong downward pressure on wages and labour costs at the lower end of the production chain (Haubner 2014).

Closely related to the process of subcontracting is the increase in bogus self-employment as a fourth area that contributes to increasing precarious employment in construction. While the overall number of employees in construction showed a strong decline, the number of self-employed in the construction sector increased continuously. In 2011, the percentage of self-employed in the overall construction sector, at about 20 per cent of the labour force, was almost twice as high as in the economy as a whole (Stephani 2013: 6). About half of the self-employed in construction are 'solo self-employed'. The strong rise in self-employment in construction is partly the result of changes in the German Trade and Crafts Code (*Handwerksordnung*) in 2004, which made it easier for skilled bricklayers, tilers, plumbers and carpenters to set up a self-employed business as a registered handicraft entity. Before this change, establishing such a business was only possible if the owner held a qualification as a 'Master Craftsman' (*Meister*) in their trade. This obligation was abolished in 2004.

As a result the number of registrations for new businesses in these sectors has risen steadily. Between 2004 and 2012 the number of registered handicraft tiling companies in Germany increased from about 12,000 to 68,000 of which 18,500 had a registered owner from Eastern Europe (IG BAU and ZDB 2013). In the city of Munich, for example, the number of tiling companies increased from 119 in 2003 to 1,432 by 2008. Some 90 per cent of the newly registered tiling companies were single person businesses with no employees (IG BAU 2009).

There is some evidence that regular employees have been replaced by bogus self-employed workers in the construction sector in order to circumvent the higher labour costs required under collective agreements (Gross 2009; Koch et al. 2011). Many of the new solo self-employed in construction originate from from Eastern Europe and – since they are not employees – are not subject to the minimum conditions set by the German Posted Workers Law. Therefore, the creation of a single person company has emerged as a legally permissible method of avoiding the sectoral minimum wage. For construction companies, it is often rather attractive to hire individuals with self-employed status as they do not have to pay either the minimum wage or social security contributions (Haubner 2014).

3.4 Strategies to combat precarious employment in the construction industry

IG BAU's strategy to combat the spread of precarious work centres on its concept of 'fair work' and advocacy of a new approach to regulation of the labour market in construction (IG BAU 2013a). According to the union, this requires both strengthening employees' and trade union rights as well as improved legal regulation of employment conditions. Based on the four main factors promoting precarious work in the industry, the following major initiatives and proposals have been suggested:

1. increasing compliance with collectively agreed standards;
2. improving minimum conditions for migrant workers;
3. regulating working conditions through the production value-added chain by means of the principle of general contractor liability and laws stipulating minimum employment conditions for public procurement;
4. combating bogus self-employment.

3.4.1 Increasing compliance with collectively agreed standards

According to the German Law on combating illegal employment (*Schwarzarbeitsbekämpfungsgesetz*), the German custom service has the task of observing and enforcing compliance with employment legislation and collective agreements, including the minimum standards determined by the Posted Workers Law (Schulten et al. 2014: 32ff.). The customs service has a special department called 'Financial Control of Undeclared Employment' (*Finanzkontrolle Schwarzarbeit*, FKS), which has the right to make unannounced workplace inspections. Both employers and employees are legally obliged to cooperate with the custom services, which have similar rights to the police.

The construction industry experiences by the largest number of company inspections in Germany of all industries. In 2013, the custom services visited more than 25,000 construction companies, some three quarters of all such visits across all sectors. In 1,638 cases the custom services initiated a criminal investigation. All in all, construction companies had to pay about 11.8 million Euros as fines for offences against agreed working standards (Schulten et al. 2014: 35).

There are also other initiatives by unions and employers to improve the enforcement of agreed conditions in construction. As early as 2004, IG BAU, the construction employers' associations and the custom services created an 'Alliance against illegal employment' in which all three parties meet regularly to exchange and pool knowledge about the development of working conditions in the construction industry and to discuss strategies to combat illegal practices. There are also similar alliances at regional and sometimes even at local level. For the custom services, tips from employees or competing employers are often an important source of information and can

trigger workplace inspections. The IG BAU trade union, has also called for a significant increase in the number of labour inspectors at the custom services in order to increase the number of inspections.

Apart from the regular labour inspections, trade unions and employers in construction also use their joint agency SOKA-BAU to monitor compliance with minimum employment standards. SOKA-BAU also awards certificates to construction companies that have demonstrated their compliance with collectively agreed working conditions. Companies can use this certificate, for example, as an attestation when tendering for public contracts (see below).

IG BAU also stresses the importance of ensuring the comprehensive regulation and documentation of working conditions in construction. This holds true, in particular, for working time, where various malpractices are often used to circumvent collectively agreed standards. IG BAU, therefore, has called for the introduction of an individual identity card for all construction workers, which should contain all important social security information and document working time and other working conditions. In the best case, this should be in line with a European-wide standard based on European regulation (Buelen 2015).

3.4.2 Improving working conditions for migrant workers

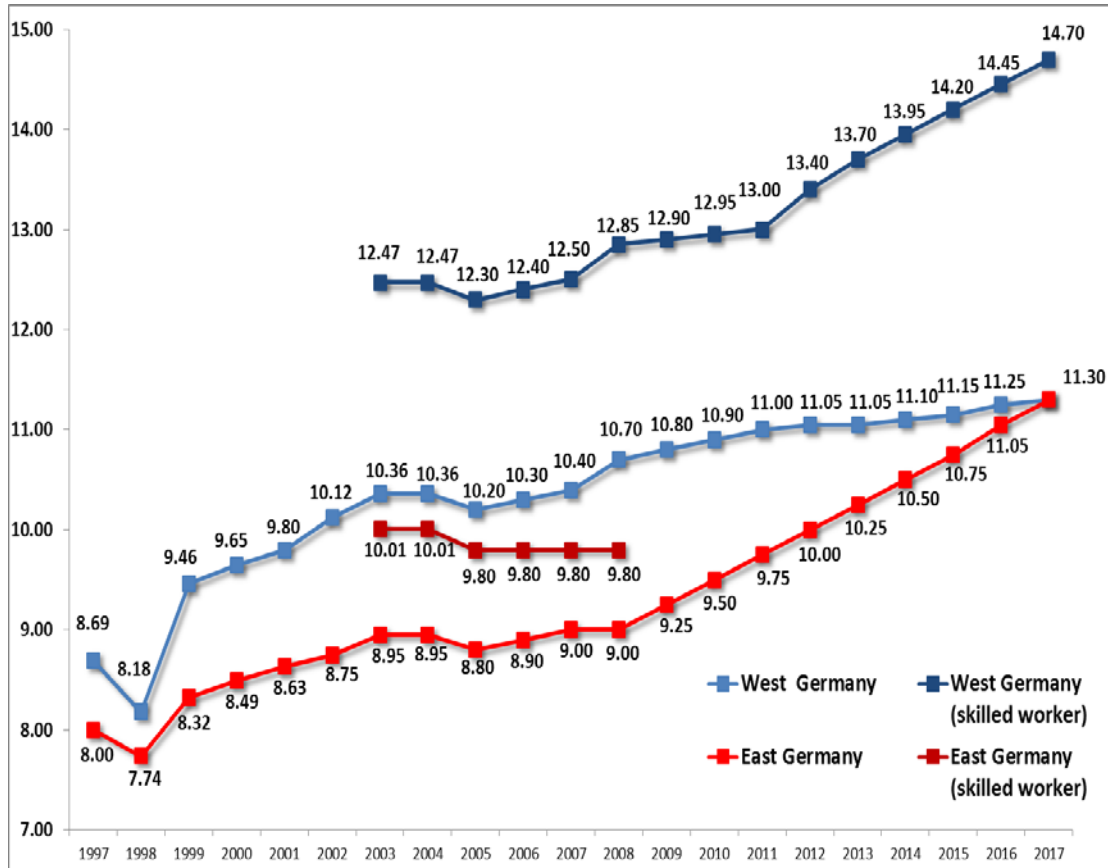
As the problems with precarious employment in construction are most common among migrant workers, many initiatives have also focused on this group of employees (Hardy et al. 2012). IG BAU has always argued that migrant workers should receive the same pay and conditions as local workers. From the early-1990s, the union was in the forefront in advocating a European regulation for posted workers to prevent companies using such workers to undermine local terms and conditions.

Following the adoption of the German Posted Workers Law in 1996, the construction sector was the first sector in Germany in which trade unions and employers concluded a collective agreement on sector-specific minimum wages that were subsequently declared to be generally binding, and therefore extended to the entire branch. Originally, the agreements included separate minimum wage rates for West and East Germany (*Figure 3.6*).⁷ From 2003, the parties to the agreement negotiated a second minimum wage level for more skilled workers. In East Germany, however, the second minimum wage level was abolished in 2009 because of strong pressure from construction employers. In practice, the remaining minimum wage is also now often the wage floor for more qualified workers (Bosch et al. 2011). In contrast, in West Germany the second minimum wage level continued in force. Since 2009, the first – basic – minimum wage has increased much faster in East than in West Germany. According to the current collective agreement in construction, the two rates should converge from the beginning of 2017 to establish a single basic rate for the entire country. Although the minimum wage was originally introduced

⁷ In fact there has always been a third minimum wage for the federal state of Berlin.

mainly for posted workers from low wage countries, it has now become a general sectoral wage floor for both local and migrant workers (Eldring and Schulten 2012).

Figure 3.6: Minimum wages* in the German construction industry, 1997-2017 (in Euro, per hour)



* Minimum wages declared universally applicable on the basis of the German Posted Workers Law
Source: WSI Collective Agreement Archive

Apart from determining legally binding minimum conditions on the basis of the German Posted Workers Law, there are various trade union initiatives to provide special services for migrant workers and to organise them within the union (Hardy et al. 2012). In the mid-2000s, the IG BAU trade union even tried to set up a separate union organization for migrant workers, the so-called European Migrant Workers Union, intended to provide more effective support for migrant workers and facilitate organizing them into union membership. However, the approach failed because the union was unable to attract a significant number of migrant workers and did not receive support from other construction workers' unions in Europe, which preferred to organise migrants within their own structures (Greer et al. 2013).

A more general approach to support migrant workers was developed in 2011 with the project 'Fair Mobility' (<http://www.faire-mobilitaet.de>). The project is run by the Confederation of German Trade Unions (DGB) and receives financial support from German Federal Ministry of La-

bour and the European Social Fund. Its main aim is to support migrant workers from Central and Eastern Europe and strengthen the enforcement of fair wages and working conditions. The project has set up local information centres in six major German cities (Berlin, Frankfurt am Main, Hamburg, Munich, Dortmund and Stuttgart) where migrant workers can obtain information and practical support on employment and social law in Germany. The information centres are run by the trade unions but closely cooperate with other organisations supporting migrants in Germany. Besides practical support for migrant workers, the Fair Mobility project also aims to raise public awareness for the specific problems of migrant workers in Germany.

3.4.3 General contractor liability and public procurement laws

In order to combat illegal employment practices and to strengthen the enforcement of working conditions through the production chain, in 2002 the German government introduced the principle of 'general contractor liability' (*Gesamunternehmerhaftung*) for the German construction industry, according to which the main contractor is liable for the social security contributions or accident insurance premiums of its sub-contractors, should they not pay these (German Social Code No. 4, § 28e). Originally, this applied only from a contract value of 500,000 Euros, but this was reduced to 275,000 Euro in 2009 (Bundesregierung 2012).

The general contractor liability principle has also been introduced into the German Posted Workers Law. Under this, main contractors are responsible for ensuring that the appropriate sectoral minimum wage is paid by their sub-contractors, including foreign companies with posted workers. Finally, the general contractor liability principle can also be found in many German public procurement laws.

In view of the fact that a significant proportion of contracts in construction come from public institutions and undertakings, since the late 1990s German unions have called for pay and social clauses to be included in public procurement. Most federal states in Germany (*Länder*) now have their own public procurement laws under which public contracts may only be given to companies which apply the minimum working conditions laid down in the Posted Workers Law (Schulten et al. 2012). If companies breach this obligation, they run the risk of being temporarily excluded from all public contracts. Public procurement laws have therefore served as an important policy instrument for enforcing compliance, especially with minimum wages.

3.4.4 Tackling the problem of bogus self-employment

For a long time German trade unions did not see the self-employed as a target group. This attitude started to change during the 2000s with the growing number of solo self-employed, who often represented a form of bogus self-employment and were used by companies to undermine existing employment standards. Many German unions have now changed their policy and try to support or even organise the solo self-employed (Bispinck and Schulten 2013). In construction, IG BAU has opened its organization to recruitment of the self-employed, but as yet has only very

few self-employed members and does not have separate representation arrangements for this group.

Currently, IG BAU's policy on solo self-employment focuses on three main points. Firstly, the union has called for an improvement in the social security regime for self-employed workers. Most do not have access to the public social security system and need to conclude their own private insurance and carry the full cost of this. The unions have advocated a fundamental reform, in which contracting firms would take on a share of the social security contributions of their self-employed workers.

Secondly, IG BAU, together with the Central Association of German Building Trades (ZDB), has called for the reintroduction of the obligation for those setting up a number business in a construction-related trade to hold a 'Master Craftsman' certificate (IG BAU and ZDB 2013). Both parties see this as a crucial step in stopping the further spread of bogus self-employment in construction.

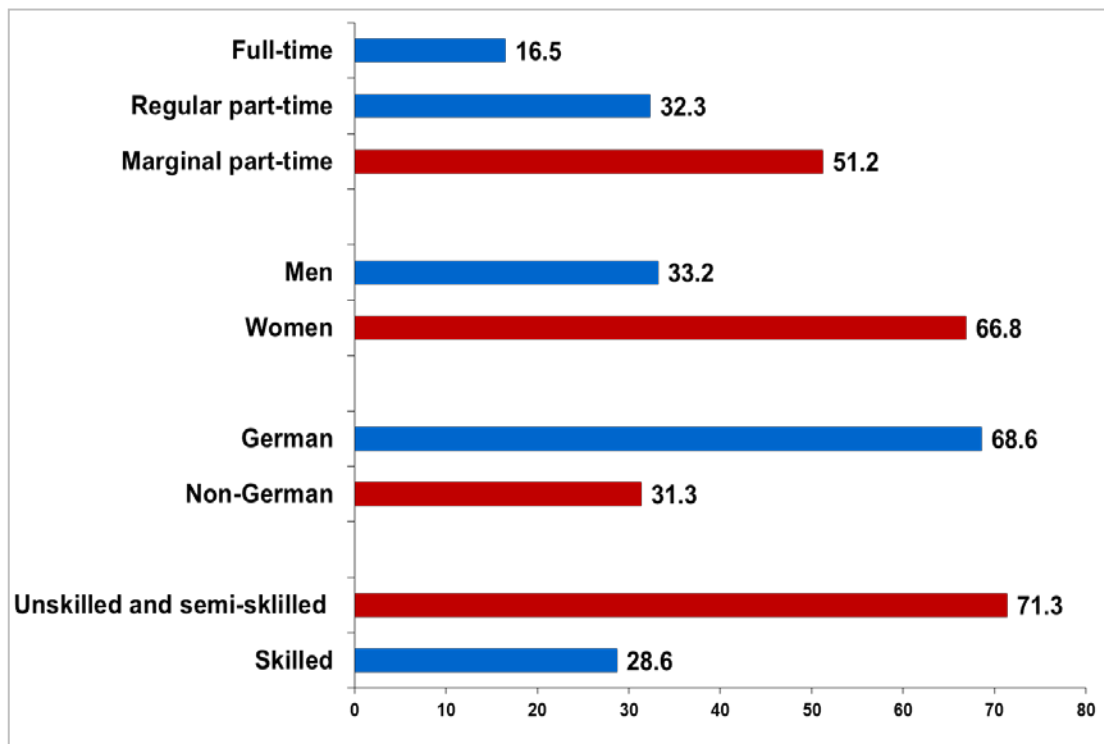
Thirdly, the union has called for a obligatory control of single person companies in construction by the public authorities (IG BAU 2013b). In addition, it wants a better legal definition of bogus self-employment and higher fines for companies that make use of it. Finally, works councils in the construction companies should be granted a right of co-determination over the use of sub-contractors (IG BAU 2013a).

4 Commercial Cleaning

4.1 The economic profile of industrial cleaning

According to figures provided by the Federal Employment Agency, there were more than 940,000 workers employed in cleaning commercial buildings and facilities in Germany at the start of 2014 (Bundesagentur für Arbeit 2014a). The structural composition of this workforce also highlights a number of distinctive features of the cleaning sector: we focus on five here (*Figure 4.1*). Firstly, it is predominantly female: two-thirds of all cleaning workers are women. Secondly, there is a relatively high proportion of non-German workers, who account for around one third of the sector's workforce. Thirdly, more than 70 per cent of all jobs in cleaning are deemed to be un- or semi-skilled. Fourthly, more than half of all cleaning employees work only on a 'marginal' part-time basis: that is, they work subject to a special tax and social security regime under which they may not earn above € 450 Euro per month. In contrast to that, only a minority of the sectors' workforce, some 16.5 per cent, have a full-time job. Finally, a high proportion of cleaning workers are on fixed-term contracts (Bosch et al. 2011: 133f.).

Figure 4.1: Structural composition of cleaning workers in Germany, 2014*
(in % of all cleaning workers)



* On 31 March 2014

Source: Bundesagentur für Arbeit (2014a), calculations by the authors

Since the late 1990s, the number of cleaning workers has risen continuously while the volume of working hours has remained relatively stable (Bosch et al. 2011, 2012). This reflects the marked shift in cleaning employment towards part-time and marginal part-time work.

The majority of cleaning workers are either employed by commercial cleaning companies or by companies and organisations that have not outsourced the cleaning of their facilities to external companies. According to data from the German Statistical Office, at the end of 2012 there were just over 20,000 enterprises with around 580,000 employees in the sector (*Table 4.1*). This makes commercial cleaning (*Gebäudereiniger-Handwerk*) the largest of those branches designated as *Handwerk* in Germany, sometimes referred to as the 'craft' or small trades sector (Bundesinnungsverband der Gebäudedienstleister 2014).

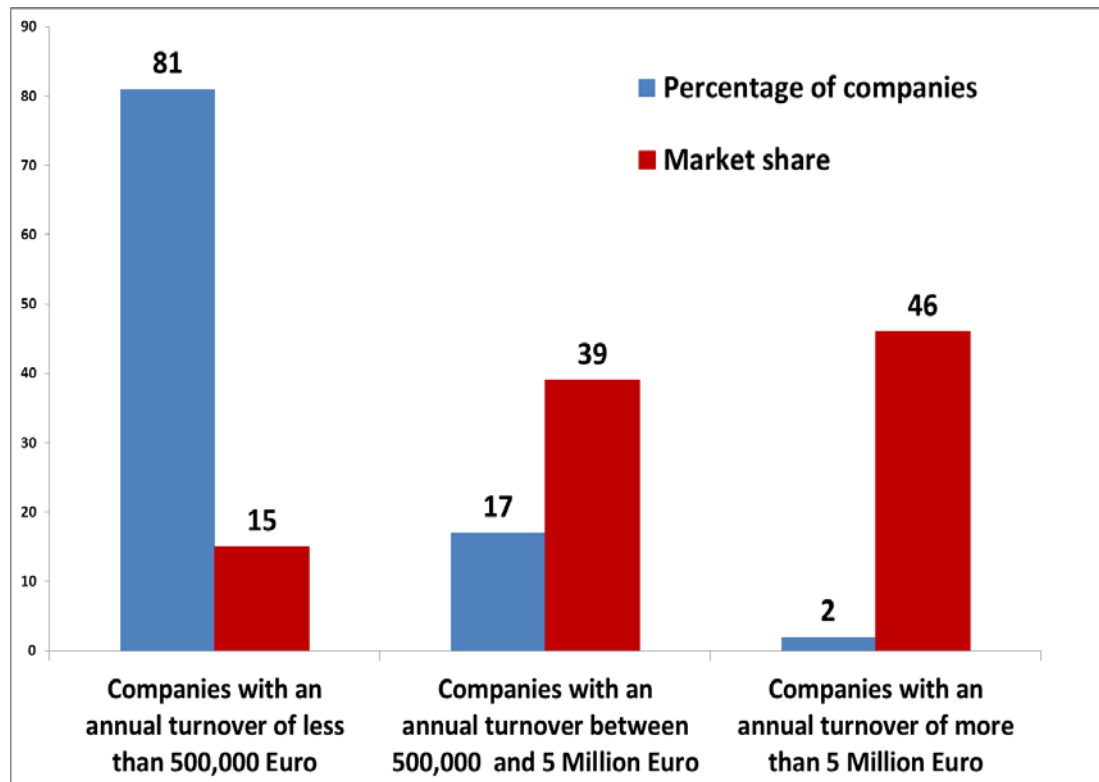
In 2012 and 2013, commercial cleaning had a turnover of more than € 13 billion, 17 per cent higher than the turnover registered in the crisis year of 2009. However, the official figures still underestimate the importance of the sector as they do not cover small companies or single-person business with an annual turnover of less than € 17,500 Euros. The latter have grown in importance following the liberalisation of regulations on the craft occupations in 2004. Under this change, opening a business in the commercial cleaning sector no longer requires a formalised craft qualification.

Table 4.1: Key figures of the German commercial cleaning sector

	Enterprises	Employees	Turnover in Billion Euro
2008	14,276	549,591	11.4
2009	15,746	540,248	11.1
2010	17,059	587,485	12.4
2011	18,022	601,205	12.9
2012	20,097	581,041	13.2
2013			13.7

Source: Bundesinnungsverband der Gebäudedienstleister (2014) based on official data

As in other European countries, the market for commercial cleaning is rather polarised with a large number of small and medium-sized companies but with a large share of turnover accounted for by a few large providers (*Figure 4.2*). About 80 per cent of all companies in commercial cleaning have an annual turnover of less than € 500,000: however, these account for only about 15 per cent of the market. In contrast to that, just 2 per cent of companies have an annual turnover of more than € 5 million but these account for 46 per cent of the market. In between these two poles, 17 per cent of companies are medium-sized and have a market share of 39 per cent.

Figure 4.2: Structure of the German commercial cleaning sector, 2012 (in %)

Source: Bundesinnungsverband der Gebäudedienstleister (2014)

The development of commercial cleaning in Germany has been heavily influenced by the fact that the majority of companies have outsourced their cleaning services. According to a study by the employer and trade association for commercial cleaning, 79 per cent of all the cleaning of buildings and 92 per cent of window and glass cleaning had already contracted out by the mid-1990s (Bundesinnungsverband der Gebäudedienstleister 1996). The growth potential for the sector is therefore rather limited, leading to the market being characterised by fierce – and cost-led – competition (Grömling 2010).

Moreover, the highly competitive market in commercial cleaning puts client companies in a rather strong position, and leaving the cleaning providers with only little leeway for price setting. Smaller cleaning companies in particular are often not able to pass on higher costs (such as those resulting from wage increases) to their clients as higher prices (Bosch et al. 2011: 171). On the contrary, client companies often try to push down prices for cleaning in order to improve their own cost performance. As commercial cleaning is a highly labour intensive sector, there is constant pressure for companies to gain competitive advantage through cutting labour costs (Weinkopf et al. 2013).

4.2 Industrial relations in the commercial cleaning sector

Employers in commercial cleaning are represented by the Federal Guild Association for Commercial Cleaning (*Bundesinnungsverband des Gebäudereinigungshandwerks, BIV*), which represents some 2,500 affiliated firms accounting for 87 per cent of turnover in the sector. The BIV is both a trade association and an employers' organisation. The most important trade union for the branch is the Trade Union for Construction, Forestry, Agriculture and the Environment (*IG Bauen-Umwelt-Agrar, IG BAU*): in 2012, IG BAU organised around 61,000 cleaning workers (Nölle 2012). IG BAU is affiliated to the German Confederation of Trade Unions (*Deutscher Gewerkschaftsbund, DGB*).

For some decades, employment conditions in commercial cleaning have been regulated by sector-wide collective agreements (Bosch et al. 2011, 2012). These include a framework agreement, which regulates areas such as holidays, additional bonuses, pay scales etc., as well as pay agreements setting applicable wage levels. Both agreements have been declared to be generally binding under the German Collective Agreement Law (*Tarifvertragsgesetz*), so that all companies in the sector are required to comply with their terms and conditions. In view of the large number of small and medium-sized companies in the sector, as well as the very competitive market structure, both employers and trade unions have an interest in such a system for sector-wide regulation in order to create a level-playing field and limit downward competition on wages and other labour costs.

In addition to the extension of the collective agreement noted above, since 2007 employers and trade unions have also negotiated specific sector-wide minimum wages that were subsequently declared binding on all employments in the branch under the provisions of the German Posted Workers Law (*Arbeitnehmer-Entsendegesetz, AEntG*). This obliges companies from other EU countries that bring their own staff into Germany to pay the sector-wide minimum wage. From January 2015, the sectoral minimum wage for cleaning in buildings is € 9.55 per hour in West Germany and € 8.50 in East Germany. There is also a second – higher – minimum wage covering window and glass cleaning: this is € 12.65 in the West and € 10.63 in the East.

4.3 Precarious employment in commercial cleaning

Given the high importance of labour costs in determining overall costs in this branch, commercial cleaning firms have passed competitive pressures on to their workforces and de facto promoted the rapid spread of precarious employment. The most obvious sign of this is the extraordinarily high number of so-called 'mini-jobbers' who have largely replaced employees with regular employment contracts. In addition to that, cleaning workers are often subject to intense work and time pressures, yet receive what constitutes low pay. Moreover, the widespread use of performance-related pay systems has often led to a situation where cleaning worker even do not receive the collectively-agreed sectoral minimum wage.

4.3.1 The widespread use of mini-jobbers

Commercial cleaning is among those sectors in Germany with the highest proportion of mini-jobbers. More than half of all cleaning workers have just a marginal part-time contract. Nearly 40 per cent of all mini-jobbers use their cleaning work as a second job in addition to other regular employment (Bundesagentur für Arbeit 2014a). Between 1999 and 2009, the number of mini-jobbers increased by 55.4 per cent while the overall workforce in cleaning grew only by 15 per cent. As a result there was a significant displacement of regular jobs (Riedel 2012).

For the cleaning employers, hiring mini-jobbers has at least two advantages. Firstly, they are cheaper. Even when mini-jobbers receive the same wage as regular employees, the employer can save on labour costs as they only have to pay a reduced rate of social security contribution. Secondly, mini-jobbers can be used much more flexibly. In office buildings, for example, which represent the major client for commercial cleaning (Grömling 2010), the main work has to be done in a relatively short time period after office hours. As mini-jobbers can only work a limited number of working hours per day, they fit well into these particular sector-specific requirements.

Marginal part-time employment can be regarded as highly precarious since it is associated with rather low incomes (currently up to a maximum of € 450 per month), low social security contributions and, as a consequence, low retirement benefits later in life. Mini-jobbers are often used to circumvent collectively-agreed standards (Voss and Weinkopf 2012). Although, in principle, they have the same employment rights as regular employees, in practice they are often not treated equally and experience poorer pay and conditions (Hohendanner and Walwei 2013).

Marginal part-time employment has also largely failed as a labour market instrument, (Bäcker and Neuffer 2012). Contrary to some optimistic expectations, it has also not been proved to be an interim stage on the way back to regular employment. Instead, and especially for women, marginal employment has often led to a career trap in which opportunities for advancement as well as the individual access to social security systems have been blocked (DGB 2014b).

4.3.2 Pay and working time arrangements

Another dimension of precariousness in the commercial cleaning sector originates in the regulation of pay and working time. Although there are sector-wide and generally applicable minimum wages, the levels at which they are set are still low and are often undermined by piece-work or performance-based pay systems (Riedel 2012). For example, pay for cleaning workers may be determined not by the number of hours they work but how many rooms or a defined area they have cleaned. In such cases, if workers are not able to clean within the working time allowed, they are often forced to do unpaid overtime. As a result these workers may receive a wage that is below the sectoral minimum when calculated on an hourly basis for the time they have worked. A particular form of such performance-related pay systems is the so-called 'object wages' method (*Objekt-Löhne*), under which the cleaning companies agree to pay a lump sum for a

specified ‘object’ (Bosch et al.2011). Again, since the cleaning can often not be completed within the agreed working time, unpaid overtime has to be carried out.

All in all, more than half of all cleaning workers are either ‘often’ or at least ‘sometimes’ working with quantitative work targets, time schedules or requirements for minimum performance (Table 4.2). Since the late-1990s, these performance related pay systems have grown significantly.

Table 4.2: Cleaning workers with quantitative work targets, time schedules or requirements for minimum performance (in % of all cleaning workers)

	1999	2006	2012
<i>Often</i>	36,0	46,0	40,8
<i>Sometimes</i>	7,1	7,9	12,7
<i>Rarely</i>	10,5	11,8	10,4
<i>Never</i>	45,8	34,3	35,8

Source: BIBB/BAuA Erwerbstätigenbefragung, calculations by the authors

Furthermore, there is also the problem that within a working day many cleaning workers will work on several objects so that they have to travel from one building to another. According to the collective framework agreement for industrial cleaning (*Rahmentarifvertrag für das Gebäudereinigerhandwerk*, RTV), these travel times should count as work time and be paid. In practice, however, employers often pay only for the time when workers are actually cleaning a certain object (Riedel 2012). There is also the particular problem that the work arrangement for workers that are employed at various objects are not synchronised so that there could be extended periods of non-work between jobs. According to the collective framework agreement in cleaning, these so-called ‘work-free’ intervals are generally unpaid.

4.3.3 Work intensity and work load

The widespread use of performance-related pay systems in the commercial cleaning sector has led to a significant increase in work intensity. According to a representative employees’ survey carried out by the Federal Vocational Training Institute (*Bundesinstitut für Berufsbildung* – BIBB) and the Federal Work Safety and Occupational Medicine Agency (*Bundesanstalt für Arbeitsschutz und Arbeitsmedizin* – BAuA) more than half of all cleaning workers are either ‘often’ or at least ‘sometimes’ under performance and time pressures (Table 4.3). A relatively high number of cleaning workers also complain about psychological stress due to time and work pressures (Millmann 2014).

Table 4.3: Cleaning workers with performance and time pressure (in % of all cleaning workers)

	1999	2006	2012
<i>Often</i>	19,7	27,9	29,5
<i>Sometimes</i>	18,3	17,6	25,6
<i>Rarely</i>	25,9	18,8	15,4
<i>Never</i>	36,1	34,7	29,5

Source: BIBB/BAuA Erwerbstätigenbefragung, calculations by the authors

4.4 Strategies against precarious employment in commercial cleaning

In general, work in the commercial cleaning sector has a rather bad public image and low level of social acceptance. It is mainly associated with poorly-qualified and 'dirty' work, which fits well with all kinds of precarious employment. In order to improve the conditions of cleaning workers, in the mid-2000s, trade union IG BAU started a broad campaign to improve the public standing of workers in the sector. Under the slogan 'I clean Germany' (*'Ich putze Deutschland'*) the union highlighted the value and importance of individual cleaning workers in various areas (IG BAU 2007). At the same time, a campaign was also launched to strengthen the self-confidence of cleaning workers. Inspired by the famous US 'Justice for Janitors Campaigns', IG BAU has tried to mobilise the professional pride of cleaning workers to take industrial and political action against precarious employment.

These strategies have focused on

- safeguarding and raising collectively-agreed minimum wages;
- setting standards for work and service quality;
- limiting non-standard employment and, in particular, marginal part-time und temporary employment;
- better enforcement and control of compliance with collective agreements.

4.4.1 Safeguarding and raising collectively-agreed minimum wages

Since cleaning is a labour-intensive industry, there has always been a strong pressure on wages, as companies might be tempted to get competitive advantages by lowering labour costs. In order to create a certain level-playing field, both employers and trade unions have for a long time supported the extension of the sectoral collective agreements. In 2007, they have also agreed on a sector-wide minimum wage that has been extended under the German Posted Workers Law to cover also companies from other EU member states.

Table 4.4: Collectively agrees minimum wages in commercial cleaning* (per hour, in Euro)

	Cleaning in buildings			Window and glass cleaning		
	West	East	<i>in % of West</i>	West	East	<i>in % of West</i>
1 July 2007	7.87	6.36	80.8			
1 March 2008	8.15	6.58	80.7	10.80	7.84-8.34	72.6-77.2
30/9/2009- 9/3/2010	<i>No minimum wages</i>					
10 March 2010	8.40	6.83	81.3	11.13	8.66	77.8
1 January 2011	8.55	7.00	81.9	11.33	8.88	78.4
1 January 2012	8.82	7.33	83.1	11.33	8.88	78.4
1 January 2013	9.00	7.56	84.0	11.33	9.00	79.4
1 January 2014	9.31	7.96	85.5	12.33	10.31	83.6
1 January 2015	9.55	8.50	89.0	12.65	10.63	84.0

* Minimum wages are universally applicable on the basis of the German Posted Workers Law

Source: WSI Collective Agreement Archive

Since its introduction in 2007, the sectoral minimum wage for cleaning in buildings has remained at a rather low level (*Table 4.4*). As part of its comprehensive image campaign, in 2007 IG BAU announced that it wanted to lift cleaning out of the low wage sector. Over the medium term, the aim was that all cleaning workers should earn at least €10.00 per hour (IG BAU 2007). Since the late 2000s, IG BAU has carried out its collective bargaining campaigns under the slogan 'Cleanliness has its Price' ('*Sauberkeit hat ihren Preis*') and has called for a significant increase in minimum wages in the sector. As an expression of this, since 2011 IG BAU has no longer submitted claims for a certain percentage rise in the minimum wage but has started to demand absolute increases expressed in cash terms.

As a result, IG BAU has been able to secure increases that were often above the average rate of increase of collectively agreed pay, consequently raising pay levels in the sector in relation to other branches. This holds true, in particular, for the minimum wage in East Germany, which was about 20 per cent below that of West Germany in 2007; by 2015, this difference had fallen to about 10 per cent (*Table 4.4*). In 2011, employers and trade unions also reached an agreement according to which East Germany should catch up with West German wage levels at the latest by 1 January 2019.

Finally, in 2009 IG BAU defended the sector-wide minimum wage by organising the first national strike in cleaning (Dribbusch 2009). Since both parties were not able to reach a new collective agreement before the old one had expired, there was a certain period between September 2009 and March 2010 where there was no universally applicable minimum wage in cleaning. During

that period many cleaning companies reduced their wage levels and hired new personnel on much lower rates (sometimes even below € 5 per hour). This interim period showed very clearly that without a universally applicable minimum wage there would be enormous downward pressures on wages. As this has been in the interest of neither the employer nor the unions, they finally found a compromise and continued with the practice of extending collective wage agreements to all employers in the sector.

4.4.2 Setting standards for work and service quality in commercial cleaning

Given the widespread use of piece-work or performance-related pay systems in cleaning, there is a great need to define a reasonable relation between work performance and working time. The latter has also strong implications for the quality of cleaning services, as high levels of work and time pressure might also lead to poor service.

In order to promote quality standards, some cleaning companies have founded an association that awards quality seals in industrial cleaning. The 'RAL Gütegemeinschaft Gebäudereinigung' (<http://www.gggr.de/>) currently has 50 affiliated companies employing some 40,000 workers and representing an annual turnover of € 430 million. All certified member companies have committed themselves to observe certain quality standards and to be regularly controlled by independent inspectors. As part of the quality certificate, member companies also made a commitment to pay their workers in line with the collective agreements.

The trade union IG BAU and the RAL Gütesiegel Gebäudereinigung have also jointly launched a campaign under the slogan 'Cleanliness takes Time' ('*Sauberkeit braucht ihre Zeit*'). This aims to promote reasonable regulations on performance and working time. Both parties have worked out detailed performance catalogues on the time needed to clean a certain number of square meters in different kind of buildings (for example, offices, schools, kindergartens, hospitals etc.) (IG BAU 2010b; RAL Gütegemeinschaft Gebäudereinigung 2011).

4.4.3 Limitation of non-standard forms of employment

As the vast majority of cleaning workers do not have a standard employment contract, one of IG BAU's major aims is to limit the use of non-standard forms of employment, and in particular the use of marginal part-time employment. Here the principal aim of IG BAU is to scrap the special legal status of mini-jobbers and remove the financial incentives for employers to use this form of employment. IG BAU supports the approach of the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund*, DGB) for a comprehensive reform of marginal part-time work (DGB 2012). IG BAU has also called for the stringent enforcement of equal treatment for mini-jobbers regarding all the benefits and regulations laid down in the collective agreements that are often not complied with in practice (Riedel 2012: 67).

Apart from mini-jobbers another focus of IG BAU activity is the large number of cleaning workers working on fixed-term contracts, often with a short-term duration of only six months. Ac-

cording to the union, nearly half of the workforce at the five largest cleaning companies is on such temporary contracts. Hardly any newly hired cleaning workers are placed on an indefinite contract (IG BAU 2014). As well as this general call for new legal restriction on temporary employment, it has specifically aimed for a ban on a special form of fixed-term contract under which workers are hired to clean only in a certain building. In these cases, the worker automatically loses their job if the contract between the cleaning company and a particular client is terminated (*Die Welt*, 15 August 2014).

4.4.4 Better enforcement and control of compliance with collective agreements

Finally, a crucial element in improving the working conditions of cleaning workers is securing better enforcement and control of collective agreements. The institution responsible for controlling compliance with collective agreements is the '*Finanzkontrolle Schwarzarbeit*' (FKS), a special division within the custom service established to monitor illegal employment. In recent years, the FKS has frequently controlled cleaning companies and has found offences against the sectoral minimum wages in about 10 per cent of all cases (Schulten et al. 2014: 35). One common form for circumventing the minimum wage provisions is inaccurate or even false registration of working time, so that the workers formally receive the minimum wage but de facto will have worked unpaid overtime. One union demand is therefore for an obligation on employers to keep accurate time records (Riedel 2012: 65).

Moreover, in 2008 the employers, the trade union and the customs service created an 'alliance against illegal employment in commercial cleaning' ('*Bündnis gegen Schwarzarbeit und illegale Beschäftigung im Gebäudereiniger-Handwerk*'). The aim of the alliance is to identify the specific forms of illegal employment in the sector and improve the cooperation between all parties involved to secure better compliance with collective agreements.

Apart from the national control system exercised through the custom services there are also further control institutions at regional level. In the federal state of Hamburg, for example, there is an independent control and advice agency for commercial cleaning (*Prüf- und Beratungsstelle für das Gebäudereiniger-Handwerk e. V.*, <http://www.pbst.de/>) which can direct potential clients looking for reliable and certified cleaning companies to providers. As an institution of voluntary self-regulation, this agency monitors cleaning companies on employment rights and human resource issues. It awards a '*Prüfsiegel für Gebäudereiniger*'; a seal of approval for companies that meet its standards and are regularly inspected.

Finally, the control of working condition in cleaning has also become part of public procurement policy as many clients are public authorities. A large number of German federal states have adopted regional procurement laws that allow public contracts to be granted only to those companies which comply with collectively agreed minimum standards. Some federal states have even established their own control institutions especially for public procurement (Schulten et al. 2010).

5 The hospital sector

5.1 The economic profile of the hospital sector

At the end of 2013, Germany had 1,996 hospitals with around 501,000 beds (for the following see: *Table 5.1*).⁸ Hospital capacities in Germany have been steadily declining since the early-1990s. The total number of hospitals fell by more than 17 per cent while the number of beds decreased even faster, by about 25 per cent. At the same time there was a continuous rise in the number of hospital admissions, paralleled by a drop in the average length of stay from 14 days in 1991 to 7.5 days in 2013.

Table 5.1: The German hospital sector – key figures 1991 and 2013

	1991	2013	Change 1991/2013
Number of hospitals	2,411	1,996	- 17.2%
Number of beds	665,565	500,671	- 24.8%
Hospital admissions	14,576,613	18,787,167	+ 28.9%
Average length of stay	14.0 days	7.5 days	- 46.3%
Number of employees			
total	1,111,625	1,164,145	+ 4.7%
full-time equivalents	875,816	850,099	- 2.9%

Source: Statistisches Bundesamt (2014d), Calculations by the WSI

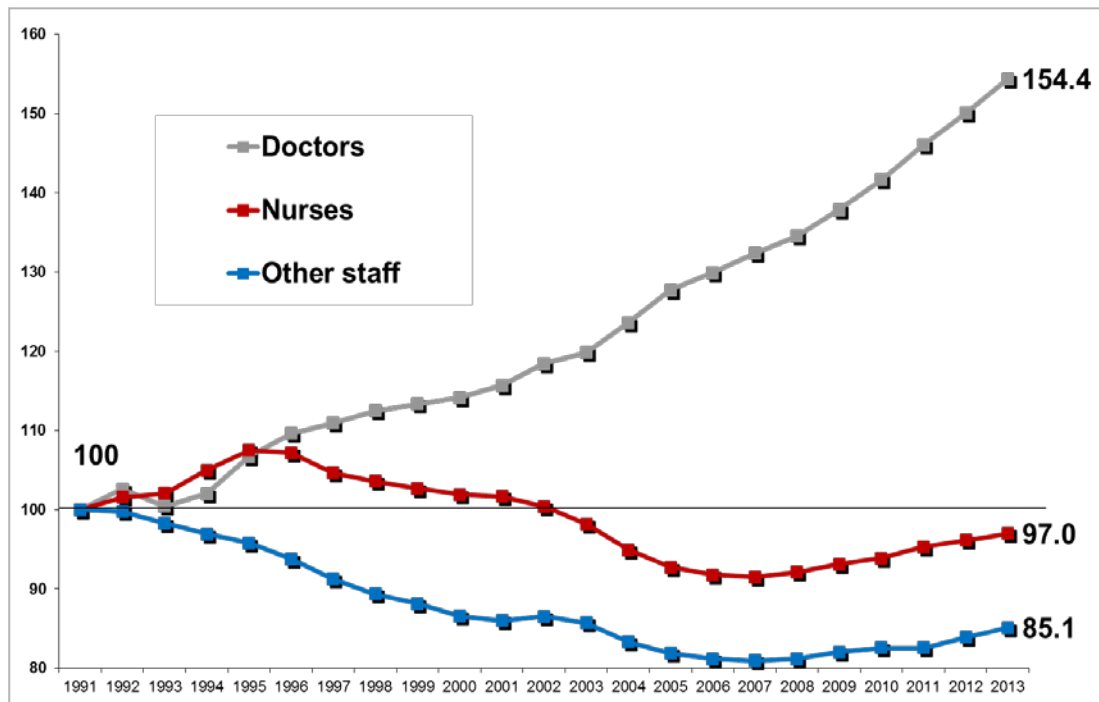
There are around 1.16 million employees working in the German hospital sector. These account for just over a fifth of all employees in the German health sector, which in total employed some 5.2 million staff in 2012 (Statistisches Bundesamt 2014e). Given the increasing number of part-time hospital workers, overall employment in hospitals measured in full-time equivalents amounts to about 876,000 full-time jobs.

Up until the second half of the 2000s, there was a steady fall in the number of employees in hospitals, with only a slight recovery in more recent years. The strongest decline was among non-medical service employees, who have often been contracted out to other companies. There

⁸ The German Federal Statistical Office issues annual hospital statistics which include basic data on all hospitals in Germany (see for the most recent issue: Statistisches Bundesamt 2014d). Hospitals are legally obliged to provide certain information on a regular basis, as these statistics are a major source drawn on for national hospital planning. For more information on the structure and the methodology of German hospital statistics see: Bölt and Graf (2012).

was also a significant decline in the number of nurses, while doctors were the only group of hospital employees that experienced a sustained increase in numbers (*Figure 5.1*).

Figure 5.1: Employees in German hospitals, 1991-2013 (in full-time equivalents, 1991 = 100)



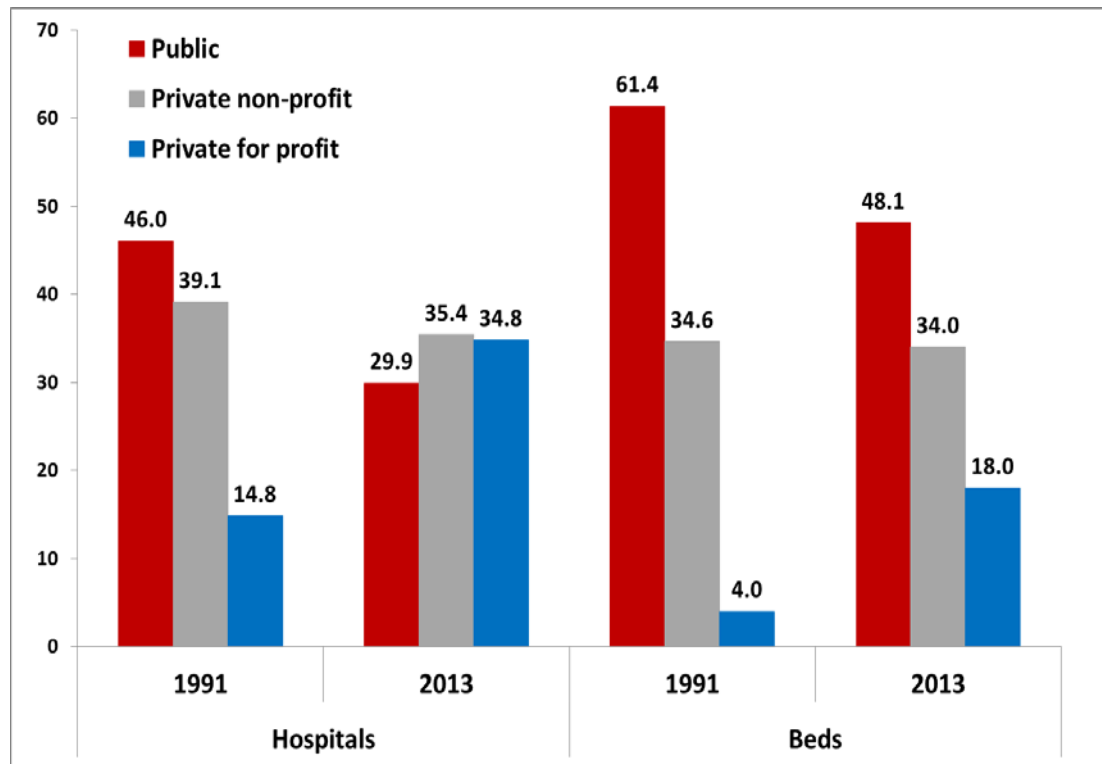
Source: Statistisches Bundesamt 2014d, Simon 2014, Calculations by WSI

Over the past two decades, the German hospital sector has been faced by a process of commercialisation and privatisation (Böhlke et al. 2009; Mosebach 2009; Schulten and Böhlke 2012). The commercialisation of hospital services has been mainly enforced through a fundamental change in the mode of hospital financing. Up until the early-1990s, financing all operational costs were financed in line with the 'cost coverage' principle, according to which the health insurance funds, which collect revenue in the form of social insurance contributions, reimbursed almost all actual expenditures incurred by hospitals. Since then a number of healthcare reforms have, first, capped hospital budgets and subsequently shifted hospital financing to the so-called Diagnosis Related Group (DRG)-system, under which the costs of a hospital admission are no longer reimbursed on the basis of per diem costs but according to a uniform flat-rate payment determined by a cost schedule for that patient's Diagnosis Related Group, irrespective of the actual treatment and costs incurred by the individual hospital.

The abolition of full cost-based reimbursement, the establishment of capped budgets and the introduction of the DRG system meant that, for the first time, it became possible for German hospitals to make large-scale profits or deficits. It also established a new regime of cost competition between different hospital providers and created the preconditions that allowed for a wave of hospital privatisations and the emergence of some new private for-profit hospital corpora-

tions. For several municipalities the privatisation of public hospitals that were in financial deficit has become an important instrument for tackling their wider budgetary problems.

Figure 5.2: Providers of German hospitals and hospital beds, 1991 and 2013 (in % of all hospitals and hospital beds)



Source: Statistisches Bundesamt 2014d, Calculations by WSI

Up until the early-1990s the German hospital sector was mainly divided into a public and a non-profit segment with only a few private clinics (*Figure 5.2*). In 1991, 46 per cent of all hospitals in German were in public ownership and mainly run by municipalities and regional districts or, in the case of the large university clinics, by the German Federal States (the *Länder*). Around 39 per cent belonged to the non-profit sector. This is mainly dominated by the two major Christian churches (Protestants and Catholics) but also involves some other welfare organisations. The proportion of private hospitals stood at only 15 per cent and was mainly accounted for by small specialised clinics. By 2013, however, the proportion of public hospitals had dropped below 30 per cent, while the proportion of private hospitals had more than doubled from 15 per cent to 35 per cent. No other country in Europe has seen such a marked process of hospital privatisation than Germany (Schulten and Böhlke 2012).

The picture is somewhat different if rather than the number of hospitals the distribution of the number of hospital beds is considered. Here, public hospitals still provide the largest share, at 48 per cent of the total: 34 per cent of beds are in non-profit providers and 18 per cent in private

hospitals. Most of the larger hospitals, and in particular university clinics, remain largely in public ownership.

5.2 Industrial relations in the hospital sector

The threefold division of hospital providers in Germany has also led to the emergence of three different industrial relations regimes (Brandt and Schulten 2008). First of all, public hospitals are still very much linked with the public sector industrial relations regime, with all its particular features. Most municipal clinics, for example, are still covered by the national public sector collective agreements. Secondly, most non-profit hospitals adhere to the specific industrial relations regime that operates within the Christian denominations: this is characterised by a special legal status and is not fully covered by German labour law. In particular, industrial relations within the churches are usually not covered by collective agreements but by special provisions not determined by collective bargaining. For a long time, these provisions generally closely followed the public sector collective agreements, but more recently the correspondence has become looser.

The private for-profit hospitals have also developed their own industrial relations regimes. After privatisation, the companies usually withdrew from the public sector agreements. In some of the larger private hospital corporations there are nation-wide company agreements that cover the whole of these undertakings while other private hospitals have only workplace agreements for individual clinics. A minority are also not covered by any agreement. Apart from different regulations for the different hospital providers, there are also different agreements for doctors, who are mainly represented by the occupational trade union the *Marburger Bund*, and for the remaining hospital staff, who are mainly represented by the trade union *ver.di*, which organizes across the entire service sector, private and public.

The diversified structure of industrial relations in the German hospital sector makes it rather difficult to secure equal conditions for all hospital workers. In view of the growing competition between hospital providers, there is also a need to establish a level-playing field in order to prevent downward pressure on working conditions. The private for-profit hospital corporations, in particular, originally set out to undermine existing standards by withdrawing from established collective agreements (Brandt and Schulten 2008; Böhlke et al. 2009). As a consequence, the trade unions have tried to coordinate collective bargaining between all hospital providers and establish the public sector conditions as the benchmark for all hospitals (Gröschl-Bahr and Stumpfögger 2008).

5.3 Precarious employment in the hospital sector

The commercialisation and privatisation of hospital services has had significant consequences for all the industrial relations regimes in the sector (Greer et al. 2013). Since labour costs still

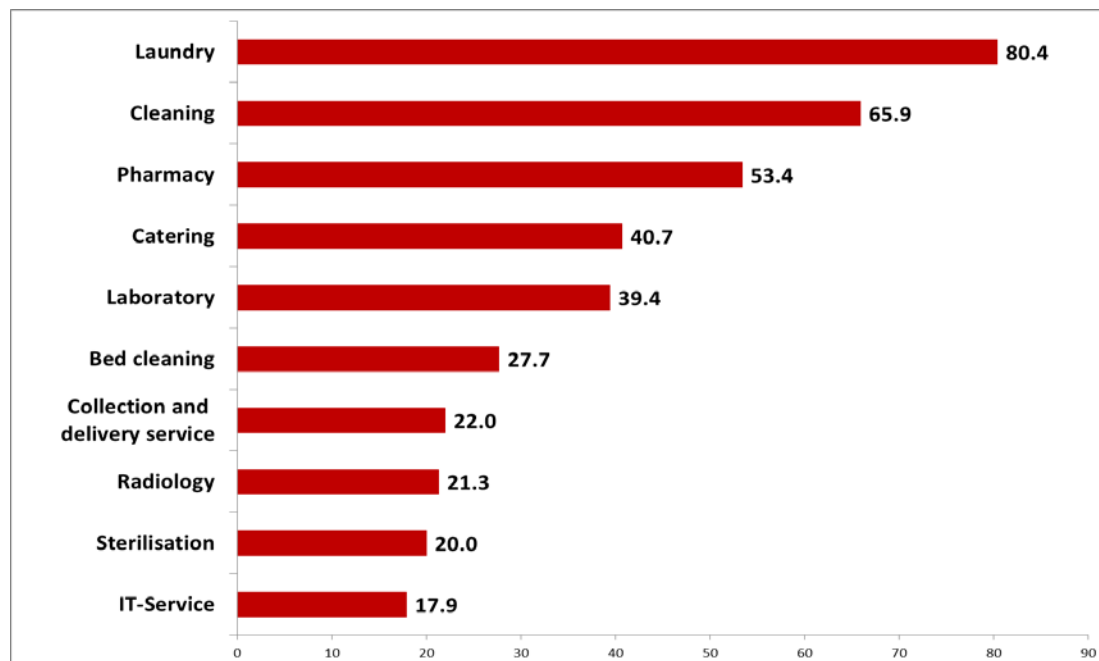
account for about 60 per cent of the overall costs in hospitals (Statistisches Bundesamt 2013), they have been very much the focus of hospitals' restructuring strategies that are aimed at improving their financial performance.

Hospitals have resorted to one of three basic strategies to lower labour costs, all of which potentially can lead to a marked increase in precarious employment:

1. Contracting out of hospital services
2. Use of temporary agency work
3. Reduction of core hospital staff

Since the 1990s, contracting out of services has become a widespread strategy among German hospitals. According to the annual hospital survey of the Deutsches Krankenhausinstitut, a large majority of hospitals have now outsourced laundry and cleaning services (*Figure 5.3*). A significant proportion have also contracted out pharmacy, catering and laboratory services. In the case of other services, such as bed cleaning, collection and delivery, IT-services but also medical services such as radiology or sterilisation, outsourcing is practised by a growing minority of hospitals.

Figure 5.3: Proportion of German hospitals contracting out services, 2013 (in % of all hospitals)



Source: Blum et al. (2013: 43)

There are at least three different forms of outsourcing. Firstly, the classical form is that hospitals simply contract with a number of external companies. The second form is that hospitals cooperate with an external facility management or service company, which delivers a package of different services using their own staff or further subcontractors. Finally, hospitals can create

their own in-house service companies. The latter have become widespread, in particular among larger hospitals (Lünenedonk 2012). For example, Helios Kliniken GmbH, which is the largest private hospital corporation in Germany, has about 68,000 employees of whom some 10,000 are employed in separate Helios service companies (Behruzi 2014).

By far the most important reason for hospitals to contract out services is to cut labour costs (Blum et al. 2013: 45). External firms usually have much lower labour cost since they are either covered by different collective agreements or often not covered at all. In areas such as laundry, cleaning or catering the labour cost differences between the hospitals and external firms can be up to 25-30 per cent (Lünenedonk 2012: 11). The same holds true for hospitals' in-house service companies, which are also often not covered by collective agreements, leading de facto to the establishment of a two-tier employment system within the hospital sector. The trade union ver.di has published a comparison of average monthly pay for different service professions in hospitals as determined by the public sector collective agreement against the actual pay at a services company of a municipal hospital in Leipzig, the differences sum to between 261 and 969 Euro, or between 17 and 40 per cent (Table 5.2). Most employees in the hospital's service company received a monthly salary that is clearly below the low-wage threshold in Germany.

Table 5.2: Average monthly pay for a full-time employee, 2012

	Collective agreement for municipal hospitals (TVöD) in Euro	Actual pay at the St. Georg Wirtschafts- und Logistikgesellschaft in Leipzig in Euro	Difference in Euro	Difference in %
Dietician	2,408	1,439	969	40.2
Cook	2,408	1,439	969	40.2
Ambulance	2,113	1,285	828	39.2
Driver with a licence to carry passengers	2,308	1,441	867	37.6
Paramedic	2,113	1,521	592	28.0
Scullery	1,546	1,281	265	17.1
Delivery service	1,546	1,285	261	16.9
Canteen	1,546	1,285	261	16.9
Cook's mate	1,546	1,285	261	16.9

Source: ver.di (2012)

Furthermore, the example of a logistic worker hired by Asklepios Logistics GmbH, a wholly-owned services subsidiary of Asklepios Kliniken Hamburg GmbH, a private company operating hospitals in Hamburg, shows that differences in labour costs are not only due to differences in

basic pay but also in other working conditions (*Table 5.3*). Comparison of working conditions at the service company, which is not subject to collective bargaining, with those set by collective agreement at the hospital,, shows that Asklepios is able to save up to 40 per cent in labour costs. Employees at the services company not only receive a much lower basic wage but also are not paid premium payments (for overtime and shifts) or bonuses and have less holiday.

Table 5.3: Working conditions of a logistic worker at Asklepios Logistics Hamburg GmbH, 2013

	Asklepios Logistics Hamburg GmbH	Collective agreement for hospitals in Hamburg (TV KAG)
Wage per hour	9,24 €	13,72 €
Annual bonuses	None	2.061,66 €
Premiums	None	25 %-135 %
Holidays	5 weeks	6 weeks

Source: Ver.di Hamburg (2013)

All in all, the process of contracting out has been accompanied by a significant deterioration in working conditions and a growth in precarious employment. According to ver.di, many of the employees working for the four in-house service companies owned by Asklepios in Hamburg are low paid and often employed on fixed-term contracts (ver.di Hamburg 2013).

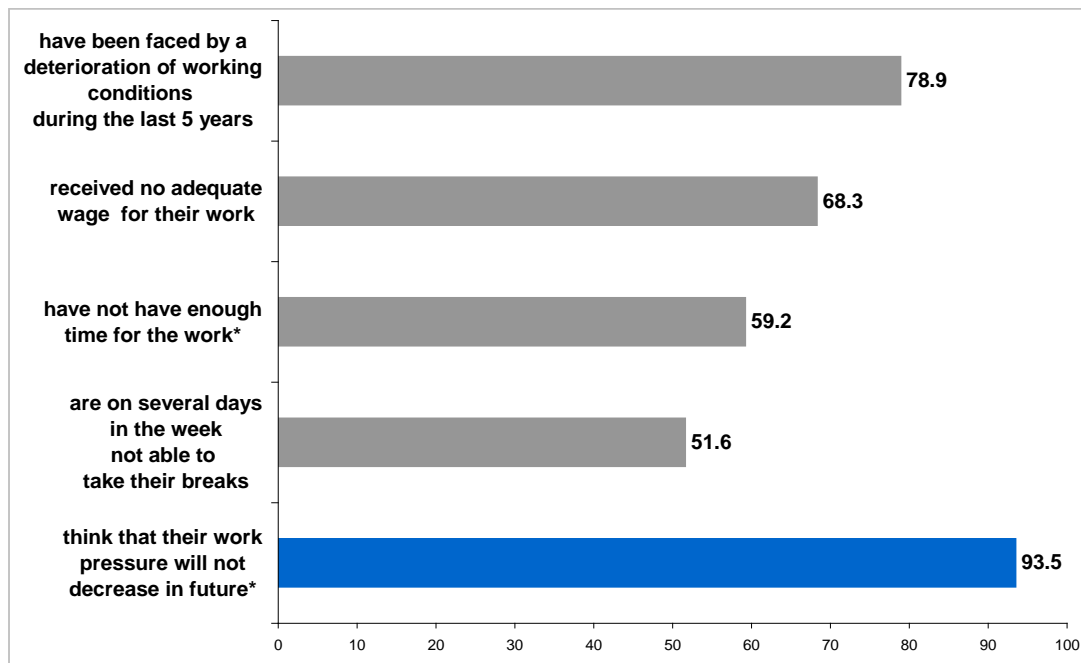
Another form of precarious employment in German hospitals has been developed through the increasing use of temporary agency workers (Bräutigam et al. 2010). In 2013, German hospitals made use of 19,400 non-doctoral employees (measured in full-time equivalents) who had not been directly hired by the hospital but had come mainly from temporary work agencies. Although temporary agency workers in hospitals still count for less than 3 per cent of the overall work force, this is a rapidly changing situation as their number has increased by almost 60 per cent in only five years (Statistisches Bundesamt 2014d). Some hospitals have even created their own in-house temporary agencies in order to provide more flexible and less costly staff (Fabritius 2009). Although temporary agency work can be found among a wide range of hospital services, it has become especially important for care work, as understaffing in this area has often made it difficult to provide even the basic service (Bräutigam et al. 2010).

Finally, the increasing pressure for hospitals to reduce their overall costs has led to a significant reduction in staff, not only among employees providing ancillary services but also for core care personnel (Simon 2012; see also *Figure 5.1*). As hospital admissions have continued to increase steadily, and patient care has become much more intense due to the reduced average length of stay, nurses' working conditions have deteriorated very considerably and have also become increasingly precarious.

According to a recent study on working conditions in German hospitals, nearly 80 per cent of all nurses think that their working conditions have deteriorated over the past five years (Bräutigam

et al. 2014; for the following see also *Figure 5.4*). There are two major issues behind this assessment: pay and work pressures. On pay, more than 68 per cent of all nurses asked felt that they were not paid adequately for the work they did. According to another study, the average monthly pay of a hospital nurse stood at around € 2,735 in 2013, significantly below average pay in other sectors, such as manufacturing (Bispinck et al. 2013). In order to give nurses and other care staff greater recognition, the trade union ver.di has called for every qualified nurse to earn at least € 3,000 per month (ver.di news No.7/2014).

Figure 5.4: Survey on nurses in German hospitals, 2012-2013 (in % of all surveyed nurses)



* Survey on this issue includes also doctors and other medical service employees

Source: Bräutigam et al. (2014)

Furthermore, nearly 60 per cent of all nurses think that they do not have enough time to do their job, while more than half are frequently unable to take their breaks. Both are clear indicators of strong work pressures resulting from understaffing. Work pressure is also a major reason for the sharp increase in part-time work among hospital nurses (Simon 2012). In 2013, almost half of all hospital nurses (48.7 per cent) were working part-time (Statistisches Bundesamt 2014d). The deterioration of working conditions in hospitals finally led employees to express rather pessimistic expectations for the future. More than 90 per cent of all medical staff surveyed (including doctors, nurses and other medical services) believed that work pressures would not decrease in the foreseeable future.

5.4 Strategies against precarious employment in hospitals

During the 2000s, trade unions in German hospitals set two main priorities (ver.di 2011; Greer et al. 2013). Firstly, unions should try to ensure that the growing number of private-for profit hospitals would be covered by collective bargaining and provide similar conditions to those laid down in the public sector collective agreement. Trade unions also started to question the special industrial relations status of Church-related companies and tried to negotiate genuine collective agreements in non-profit hospitals. While the unions generally been quite successful in establishing collective bargaining in private clinics, genuine agreements still remain an exception in Church-related hospitals.

The second priority was a call for more public financial resources in hospitals. Together with the hospital providers' organisations and other medical professions they ran a campaign under the slogan "Away with the cap!" (*"Der Deckel muss weg!"*), which called for the removal of the cap on hospital budgets. In 2008 more than 130,000 hospital employees took part in a demonstration in Berlin, the largest demonstration ever in that sector. The campaign has proved highly successful, leading to the Federal government setting up a special financial programme to improve care in hospitals (*'Pflegesonderprogramm'*) for the period 2009-2011 that in total has provided about 1.1 billion Euros, allowing the creation of about 15,300 new care jobs (GKV 2013). This new programme has enabled hospitals to at least partially compensate for the loss of care workers during the 2000s (Simon 2014).

More recently, the unions have started to focus more on strategies against precarious employment in the hospital sector. Three main campaigns can be identified:

1. For collective agreements to be concluded in hospitals' in-house service companies to ensure better working conditions, if not necessarily equal to those of core hospital staff;
2. For the closure of in-house temporary work agencies in hospitals;
3. Combating work pressures on employees and for higher staffing levels through the introduction of legal minimum requirements for hospital staff.

5.4.1 Collective agreements in hospitals' in-house service companies

In view of the growing importance of hospitals' in-house service companies, in 2009 the trade union ver.di initiated a special project for the nationwide co-ordination of union work in these companies.⁹ The central aim of the project is to improve the working conditions of service company workers and, in the longer term, to undo the two-tier employment systems that have been established in German hospitals. The project involves activity in 186 service companies. The first step for ver.di has been to strengthen its power base by promoting strategic organizing cam-

⁹ For current information of ver.di activities in the hospitals' services companies see the special web page: <http://gesundheit-soziales.verdi.de/branchen/servicebereiche>.

paigns to recruit new members. Since the start of the project in 2009, the union has been able to gain nearly 4,000 new members in these companies (ver.di 2014).

Once the union has consolidated a power base in a company, it has then set up local collective bargaining committees and called on the employer to begin negotiations for a new collective agreement. Despite the fact that many employers initially rejected such demands, the union has been able to conclude a number of new collective agreements. Although no systematic evaluation of these agreements has yet been carried out, ver.di regularly reports on new agreements in its quarterly information bulletin on hospitals *Infodienst Krankenhäuser*.¹⁰

Most new collective agreements in hospital service companies have led to substantial improvements in pay and conditions; however, these agreements still provide for standards below the levels of the hospitals' core workforces. There have been also a small number of instances in which the union has been successful in dismantling the existing two-tier employment system. The latter has recently been the case, for example, in the city of Fürth, where the union was able reach an agreement under which all the employees of a service company will be re-hired by the municipal hospital under conditions which come close to those of the public sector collective agreement (ver.di Bayern 2014). The agreement was the result of the mobilisation of union members in both the municipal hospital and the service company, in which ver.di was able to influence the local public debate in the municipality.

5.4.2 Closure of hospitals' in-house temporary work agencies

In comparison to the setting up of hospitals' in-house services companies, an even more radical approach has been seen in the establishment of in-house temporary work agencies, which became widespread in the second half of the 2000s (Fabritius 2009). The mode of operation of these in-house agencies can be described as follows. Newly recruited staff are no longer hired by the hospital itself but by the hospital's employment agency which then assigns its staff exclusively to the parent hospital. Originally, this system was used mainly for non-medical services but has subsequently been applied to almost all groups of hospital employees with the exception of doctors.

As far as terms and conditions of employment are concerned, these in-house temporary employment agencies usually apply the sectoral collective agreement for temporary work agencies.¹¹ The latter, however, provides much lower standards than the agreements in the public sector: for example, public sector pay rates tend to be up to 30 per cent above the rates for agency work. The unions, therefore, view such in-house work agencies as a clear case of misuse

¹⁰ The various issues of this information bulletin can be downloaded from <https://gesundheit-soziales.verdi.de/service/publikationen/++co++b07f35e6-1f65-11e2-b271-52540059119e>.

¹¹ See also section 6 on temporary agency work.

of the regulations on temporary agency work, as the sole aim of such agencies is to circumvent existing collective agreements to push down wages and other labour costs.

Two prominent examples of such in-house temporary work agencies have attracted a good deal of public attraction. One was an agency company belonging to the university clinic of Essen, which is run by the federal state of North Rhine-Westphalia, and the other was an agency company at the municipal hospital in Bayreuth, which is operated by the city of Bayreuth.¹² In both cases, the hospitals established their separate in-house agency companies in the mid-2000s. Within a few years, almost all new staff, aside from doctors, in the hospital were recruited through the agency, with terms and conditions as laid down by the collective agreement for temporary agency workers. Moreover, hospital employees hired on fixed-term contracts were offered new contracts only with the agency. Since the agency workers were exclusively deployed in the parent hospital, this created a two-tier employment system under which hospital employees doing the same job were treated differently in terms of pay and other working conditions.

In both cases, the trade unions together with the staff council at the hospital started a broad campaign against the two-tier employment system and called for the closure of the employment agencies. The union protests and demonstrations were highly successful in gaining the attention of the media, which reported widely on the replacement of regular employees by agency workers, leading to a broad public debate on the “misuse” of temporary agency work.¹³ Against that background, the unions were able to put pressure on the local authorities and state governments, which then passed the pressure on to hospital managements. Finally, in 2011 in both cases the hospitals’ in-house work agencies were closed and the affected employees hired as regular hospital employees under the conditions set by the public sector collective agreements (Szymaniak 2011; Eberlin 2012).

5.4.3 Campaign for legal requirements on minimum hospital staff

The current most prominent union campaign against precarious employment in hospitals is run under the slogan “Cut the pressure!” (*“Der Druck muss raus”*) and is focused on work pressure and understaffing.¹⁴ In February 2013, the ver.di organised a so-called “personnel check” whereby the union visited more than 200 hospitals all over Germany on a single day and asked staff about how many additional employees they considered would be needed to maintain the

12 For Essen see: http://www.uk-essen.de/personalrat/?page_id=397. For Bayreuth see: Eberlin (2012).

13 The debate was further promoted by spectacular misuse cases in other sectors such as the case of the former drugstore chain “Schlecker” (see section 6).

14 There is a special webpage for that campaign with various information: <http://www.der-druck-muss-raus.de/>.

services at the required standard. Based on this, ver.di calculated that there is a shortage of 162,000 full-time hospital employees in Germany (Paschke 2013).

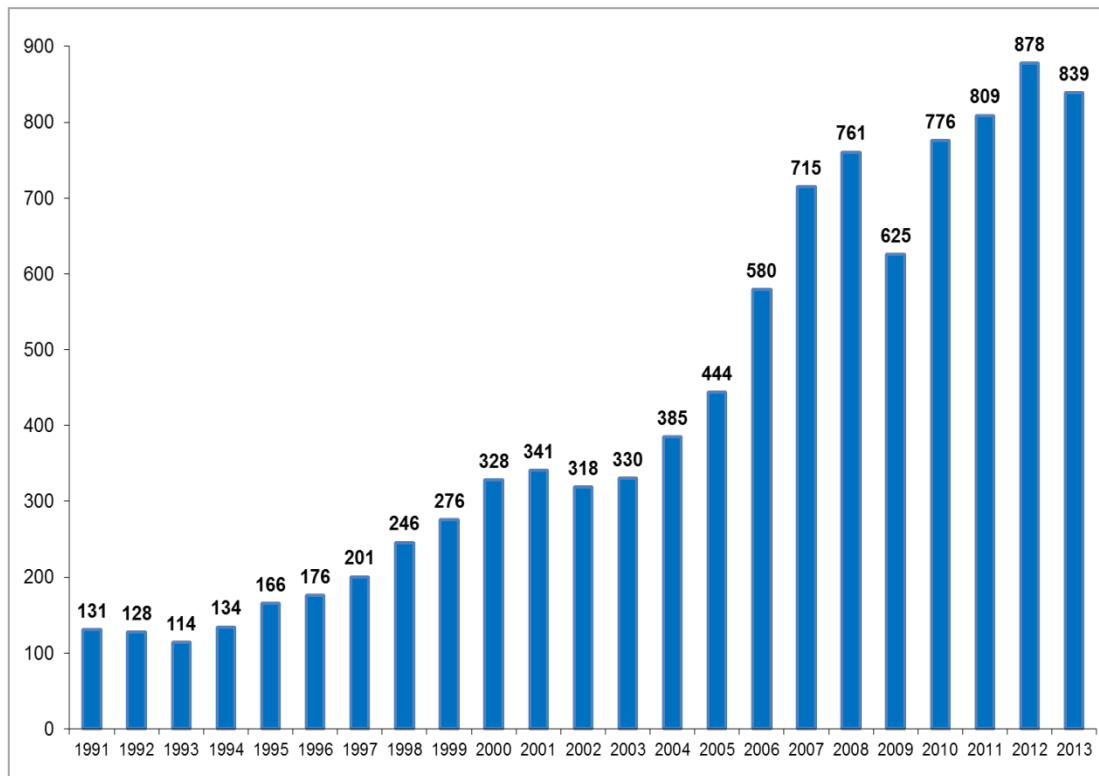
Drawing on the relatively successful preceding campaign for more public financial resources for hospitals, the new union campaign basically calls for a minimum level of hospital staffing to be set by law (ver.di 2013a). The demand for legal minimum staffing levels has also now been widely discussed within other health care organisations as well as by all the major political parties (Simon 2014). The need for additional staff in hospitals has even been officially recognised in the coalition agreement between the parties making up the current Federal German government. In 2014, a working group was set up by the Federal government and governments of the constituent federal states with a remit to draw up a concrete reform plan by the end of 2014 for the future financing of German hospitals and the provision of an adequate number of hospital employees.

Ver.di has also continued its campaign and called for additional jobs in hospitals at regional and local level. In June 2014, the union registered a notable success when it concluded a groundbreaking collective agreement at the Berlin university clinic Charité, where for the first time the union was able to include provisions under which a hospital was obliged to create new jobs. Charité agreed to hire in the short term 80 additional nurses as well as to set up a joint commission with employee representatives to identify further needs for additional staff (ver.di Berlin-Brandenburg 2014). The union hopes that this agreement will set a precedent for other hospitals.

6 Temporary agency work

6.1 The economic profile of temporary agency work

According to the German Federal Employment Agency, in 2013 there were about 839,000 temporary agency workers working in around 17,700 local agencies (Bundesagentur für Arbeit 2014b). There was a rapid growth in temporary agency work (TAW) in the second half of the 2000s when the number of agency workers almost doubled. After a substantial decrease in the crisis year of 2009, TAW rose strongly again, peaking in 2012 before a slight fall in 2013 (*Figure 6.1*).

Figure 6.1: Temporary agency workers in Germany, 1991-2013 (annual average, in 1,000)

Source: Bundesagentur für Arbeit (2014b)

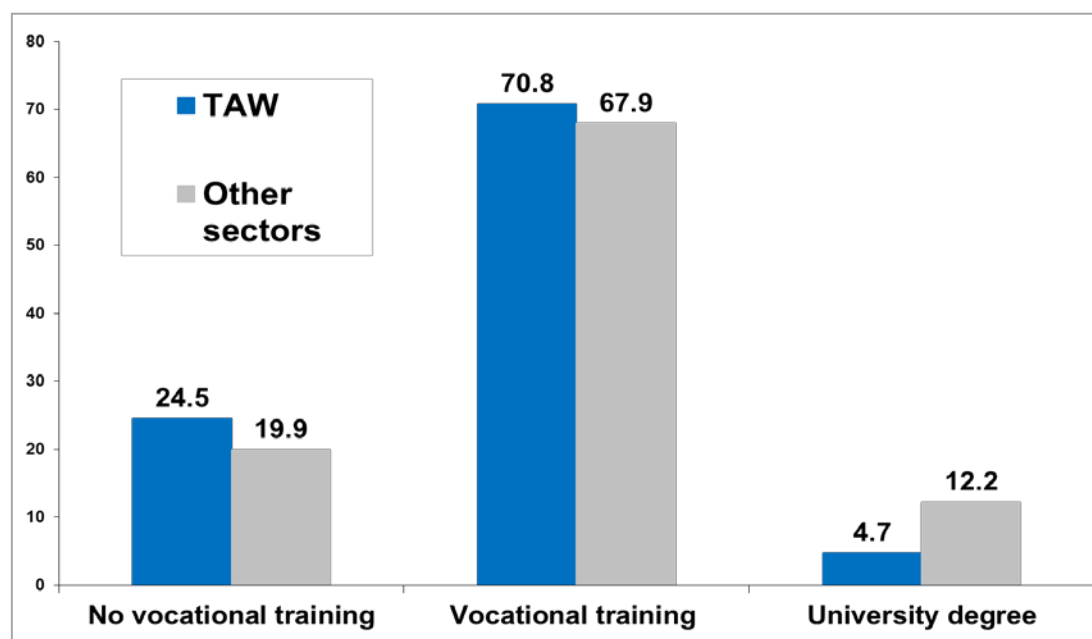
The overall significance of TAW is still rather limited as it accounts for only about 2.5 per cent of insurable employment in Germany. However, there is a strong sectoral concentration of TWA (*Table 6.1*). Around 30 per cent of all agency employees work in the metalworking industry, rising to as much as 38 per cent for male agency workers. TAW is particularly important in the German automobile industry: according to the metalworkers' trade union IG Metall, the industry employs around 100,000 agency workers in addition to a regular workforce of 763,000 employees (IG Metall 2013b). In many car manufacturing plants agency workers often represent between 10 and 15 per cent of the overall workforce, while in some extreme cases, such as the BMW plant in Leipzig, the percentage has risen to 30 per cent on occasions (Lill 2014).

Table 6.1: Temporary agency workers by sex and sectors (effective: 31 December 2013, in %)

	Total	Men	Women
Metalworking	30.5	38.0	13.0
Construction	4.5	6.3	0.5
Other Manufacturing	15.4	15.5	15.1
Transport & Logistics	22.9	25.4	17.2
Other Services	24.2	12.2	52.1
Total	100	100	100

Source: Bundesagentur für Arbeit (2014b), calculations by the authors

Apart from the metalworking industry, a relatively large proportion of male agency employees also work in the transport and logistic sector. By contrast, more than half of female agency workers are employed in the service sector, and in particular in business services, and health and social services. Overall, temporary agency work is still a relatively male dominated sector, with men accounting for around 70 per cent of all agency workers in Germany (Bundesagentur für Arbeit 2014b, 2014c).

Figure 6.2: Qualifications of temporary agency workers in Germany (Average over the period 2000-2012, in %)

Source: Haller and Jahn (2014)

Regarding agency workers' skills and qualifications, there is a slight over-representation of low skilled employees (*Figure 6.2*). Nearly one quarter of all agency workers (24.5 per cent) has had no vocational training in comparison to one fifth (19.9 per cent) in all other sectors. Highly quali-

fied workers, such as university graduates, are clearly underrepresented in TAW. The great majority of agency workers, some 70 per cent, have completed formal vocational training and, as a consequence, TAW occurs across a wide range of skilled occupations.

The significant growth in the number of agency workers in the 2000s has – at least in some sectors – also led to a more fundamental change in the role and significance of TAW (Holst et al. 2009; Holst 2014; IG Metall 2012). Whereas TAW was previously mainly a means for companies to deal with seasonal fluctuations, more recently it used increasingly as a permanent tool to save on labour costs. According to studies by the IAB, the research institute of the German Federal Employment Agency, at least half of all newly created agency jobs have led to a displacement of regular employment (Jahn and Weber 2013).

6.2 The legal framework for temporary agency work

Temporary agency work in Germany is regulated by the Temporary Employment Act (*Arbeitnehmerüberlassungsgesetz*, AÜG), initially passed in 1972. Originally, an employer could only use the same agency worker for a maximum period of three months. From the mid-1980s onwards, these provisions restricting the maximum period of assignment were gradually extended and were abolished entirely in 2003 (*Table 6.2*). The same holds true for the original ban on agencies ‘synchronising’ the duration of their employment contract with the employee and the assignment period for the user company: this was also abolished in 2003. Moreover, it became permissible for temporary employment agencies to hire workers on a fixed-term contract and for agency employees to be assigned for consecutive periods to the same user company. Overall, there has been a substantial relaxation of the legal restrictions on TAW in recent decades. In particular, the 2003 amendments to the Temporary Employment Act, which were part of a broader package of labour market deregulation known as the Hartz reforms (Knuth and Kaps 2014), made it much more attractive for both temporary employment agencies as well as user companies to take on agency workers. Consequently, this reform was critical in triggering the marked expansion of TAW.

The growing number of temporary agency workers in Germany has also led to an ongoing debate on the treatment and conditions of these workers. In 2002, a provision was introduced into the Temporary Employment Act according to which agency workers should have the right to get the same pay and treatment as regular employees from the 13th month of an assignment at the same user company. In 2003, the reform of the Temporary Employment Act extended this principle to apply from the first day of an assignment at a user company. However, the act also allows for deviations from this principle, provided this is stipulated in a collective agreement.

Table 6.2: Changes in German Temporary Employment Act

In force since ...	Major changes
1972	<ul style="list-style-type: none"> • Original adoption of the Temporary Employment Act
1 January 1982	<ul style="list-style-type: none"> • Ban of temporary agency work in construction
1 May 1985	<ul style="list-style-type: none"> • Extension of maximum period for hiring TAW from 3 to 6 months
1 January 1994	<ul style="list-style-type: none"> • Extension of maximum period for hiring TAW from 6 to 9 months
1 April 1997	<ul style="list-style-type: none"> • Extension of maximum period for hiring TAW from 9 to 12 months • Permission to synchronise hiring by the agency with the assignment at the user company in case of the first hiring • Permission for agencies to hire workers on a fixed term contract without citing a specific reason • Permission for consecutive hiring periods at the same user company
1 January 2002	<ul style="list-style-type: none"> • Extension of maximum period of assignment on TAW from 12 to 24 months • Equal pay and treatment from the 13th months of hiring in the same user company
1 January 2003	<ul style="list-style-type: none"> • Abolition of a maximum period for hiring TAW • Abolition of all restrictions to synchronise the hiring at the agency with the assignment at the user company • Relaxation of the ban for TAW in construction • Equal pay and treatment for all TAW as long as no other provisions are determined by collective agreements
1 January 2012	<ul style="list-style-type: none"> • Introduction of a sectoral minimum wage for TAW • Introduction of a 'revolving-door-clause' which forbids the re-hiring of former regular staff on worse terms than agency workers • Obligation for user companies to inform agency workers about vacant posts • Implementation of the EU Directive on Temporary Agency Work
planned by the current government	<ul style="list-style-type: none"> • Reintroduction of a maximum period for hiring TAW of 18 months • Equal pay and treatment from the 9th month of hiring in the same user company

Source: Bundesagentur für Arbeit (2014c); Haller and Jahn (2014)

The fact that the differences in pay and conditions between regular and agency workers have remained relatively wide, or even increased in some sectors (see below), has reignited a critical discussion on TAW in more recent years, culminating in some re-regulation of the sector. Three important changes were introduced in 2012. Firstly, a generally binding sectoral minimum wage for TAW was established (see Section 5.4.2), Secondly, a so-called 'revolving-door-clause' was

introduced which forbids the re-hiring of former regular staff on poorer terms as agency workers for a period of six months after such the termination of their previous regular employment. Thirdly, it was made obligatory for user companies to inform agency workers about any vacant posts in order to increase their chances of obtaining a regular job. Finally, the current German Christian (CDU/CSU) and Social Democrat (SPD) coalition government has already agreed to re-introduce a maximum assignment period of 18 months. Furthermore, it also wants to introduce the principle that agency workers should be entitled to equal pay and treatment with regular employees at the same user company from the ninth month of their assignment without any scope for this to be weakened by any collectively agreed arrangement.

6.3 Temporary agency work as precarious employment

In Germany, TAW is widely regarded as a non-standard or atypical form of employment (e. g. Keller and Seifert 2013b). During the 1970s and 1980s, the public reputation of TAW was very low and it was accepted only as an instrument for use in very exceptional cases. The German trade unions even called TAW a ‘modern form of slavery’ and demanded a legal ban (Linne and Vogel 2003). The attitude towards TAW started to change in the 1990s when, against the background of growing mass unemployment, there was a growing belief that TAW might help the unemployed to get a new job through offering a ‘bridge’ into regular employment.

However, the public image of TAW has remained basically negative. It is still very much regarded as a form of precarious employment as assignments at each user company are often very short and agency workers usually receive much poorer working conditions than regular employees. More recently, the public acceptance of TAW has also fallen still further, because its overall impact on employment has been proved at least ambiguous, given that agency workers are often used to substitute for regular employees (Jahn and Weber 2013).

6.3.1 Instability and insecurity of TAW

One major reason for the fact that TAW is widely regarded as constituting precarious employment is its often high degree of instability and insecurity. One central indicator is that TAW is often characterised by the short duration of assignments (*Table 6.3*). Nearly half of all agency assignments last for fewer than three months. A significant proportion even have a duration of less than one week (Bundesagentur für Arbeit 2014c). Only about one fifth of all agency workers work for longer than one year at the same user company. Since 2000, the duration of TAW assignments has remained relatively stable with only a very slight decrease in the number of short-term agency assignments. There is also a close relation between the required qualification and the duration of a temporary assignment. Less-skilled TAW usually has a much shorter duration than more qualified work (Haller and Jahn 2014).

Table 6.3: Duration of temporary assignments in user companies (in % of all temporary agency assignments)

	Duration in months ...					
	0-3	4-6	7-9	10-12	13-18	More than 18
2000	52.2	17.9	8.3	5.9	7.1	8.6
2001	53.0	18.0	8.3	6.3	5.5	8.9
2002	53.1	17.3	7.6	6.3	5.7	10.0
2003	51.0	18.1	8.7	5.9	5.3	11.0
2004	51.5	16.9	8.8	5.7	5.1	12.0
2005	52.3	15.7	8.0	5.2	5.4	13.5
2006	48.4	16.0	8.6	5.8	7.1	14.2
2007	47.8	16.4	8.4	6.0	8.5	12.8
2008	51.0	18.3	9.5	6.1	5.7	9.5
2009	51.2	15.2	8.2	5.8	6.3	13.2
2010	47.4	16.1	9.0	6.7	7.0	13.8
2011	47.1	16.8	9.1	6.4	n. a.	n. a.

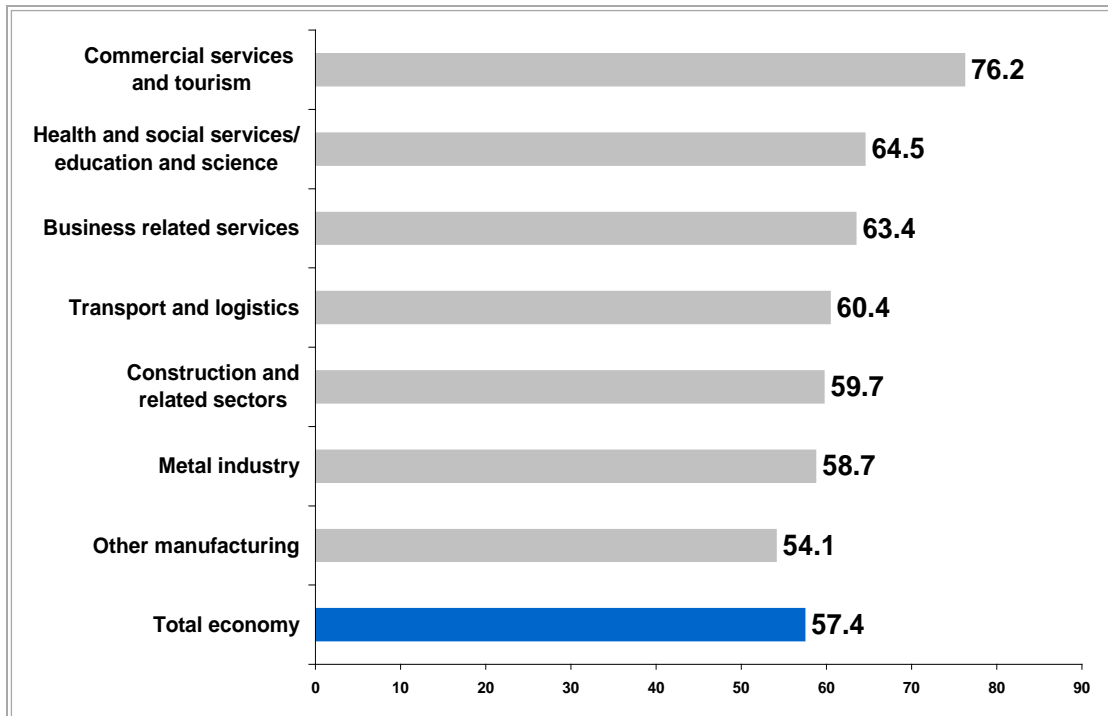
Source: Haller and Jahn (2014)

The extremely high level of fluctuations in TAW goes along with high job insecurity for agency workers. The risk of becoming unemployed is nearly five times greater for agency than for regular workers (Bundesagentur für Arbeit 2014c). There is also some evidence that because of the high instability and insecurity associated with TAW, agency workers have a much higher health risk (Becker et al. 2012; Techniker Krankenkasse 2013). Finally, for most agency workers TAW has not created a bridge to regular employment. The chances of an agency worker getting a permanent job are estimated to be only about 1 in 14 (Lehmer and Ziegler 2010).

6.3.2 Pay gap between agency workers and regular employees

Various studies have shown that on average German agency workers experience low pay (for an overview: Jahn and Pozzoli 2013). According to figures provided by the German Federal Employment Agency, there is a large pay gap between agency and regular workers (*Figure 6.3*). At the end of 2013, an agency worker received on average only 57.4 per cent of the remuneration of a regular employee. These differences in pay were most pronounced in manufacturing industry, where the pay gap was more the 40 per cent, followed by the service sector, with pay gaps of between 30 and 40 per cent.

Figure 6.3: Pay gap for temporary agency workers in 2013*
(Average monthly gross median wage of full-time agency workers in % of average monthly gross median wage of all full-time workers)



* On 31 December 2013

Source: Bundesagentur für Arbeit (2014c), Calculations by the authors

Some of this pay gap can be explained by the fact that agency workers are on average less qualified and do less qualified jobs than regular employees. There is, for example, a strong overrepresentation of agency workers in the low wage sector. According to figures from the German Structure of Earnings Survey from 2010, 67.7 per cent of all agency workers were working in the low wage sector in comparison to 20.6 per cent of all workers (Statistisches Bundesamt 2012). However, studies that have taken into account the structural differences between agency and regular workers have still identified a remaining pay gap of between 15 and 25 per cent (Jahn and Pozzoli 2013).

6.4 Strategies against precarious employment

6.4.1 Restrictions and limitations on the use of TAW

Given that TAW is widely regarded as an intrinsically precarious form of employment, there have been always demands for it to be prohibited or at least for much stronger restrictions. There is, for example, a widespread view that TAW should not be used as an instrument for wage dumping and to displace regular employees.

One prominent case of TAW which strongly influenced the German public debate was the former drugstore chain Schlecker (the company became bankrupt in 2012). In 2009, the company received a lot of media attention, after it had closed down various local shops and made the staff redundant, while at the same time opening new shops and re-hiring the same staff on worse terms via a temporary agency that belonged to the Schlecker company. The Schlecker case prompted a broad public debate on the “abuse” of TAW which, as indicated above, was also found in many other areas such as public hospitals (see chapter 4). The debate finally led to a change of the Temporary Employment Act in 2012 which forbids so-called ‘revolving-door effects’ through a restriction on the hiring of former staff through temporary agencies. It is now forbidden to hire an agency worker who had worked as a regular employee for the user company during the last six months.

Apart from that, there have been various attempts to limit the use of TAW, in particular, in the metalworking industry. The German metalworkers’ union *IG Metall* has concluded a number of workplace agreements at user companies that restrict the proportion of agency workers as a percentage of the total workforce, limit the duration of their assignments, and improve their prospects for moving into regular employment (Krause 2012; Meyer 2013). Such agreements exist, for example, in many car manufacturing plants, such as the Daimler-Benz plant in Stuttgart, where the proportion of agency workers has been limited to 8 per cent (Lill 2014). A similar agreement was concluded at the aircraft manufacturer Airbus: this restricts the use of agency workers and other workers with fixed-term contracts initially to 20 and later to 15 per cent (Krause 2012). At the leading driveline manufacturing company ZF Friedrichshafen, a workplace agreement sets a maximum number of 380 agency workers (out of 8,700 employees in total), with the total length of assignments limited to a maximum of 6 months for production workers and 24 months for technicians and engineers in higher salary groups.

6.4.2 Collective agreements on TAW

Besides limiting the use of TAW, German trade unions have focused on improving the working conditions of agency workers. For a long time, most temporary agencies were not covered by collective bargaining. The situation changed dramatically in 2003, following the revision of the Temporary Employment Act, as it was only possible to deviate from the principle of equal pay and equal treatment between agency and regular workers where the relevant provisions were determined by collective agreement. This meant that, the agencies suddenly had a great interest in concluding new agreements for the sector.

For the trade unions, however, the situation has been much more ambiguous. On the one hand, the unions have always stuck to the principle of equal pay and equal treatment. On the other, they had a strong interest in being able to regulate the working conditions of agency workers by means of collective agreements. There is still a minority within the unions who are strongly in favour of withdrawing from all collective agreements covering TAW in order to enforce the legal principle of equal treatment. However, the majority have opted to conclude collective agree-

ments with the temporary agencies. Since 2003, all trade unions affiliated to the Confederation of German Trade Unions (*Deutscher Gewerkschaftsbund* – DGB) have jointly concluded collective agreements with the largest employers' associations in the TAW sector, the *Bundesarbeitsgeberverband der Personaldienstleister* (BAP) and the *Interessenverband Deutscher Zeitarbeitsunternehmen* (iGZ). Although direct collective bargaining coverage in the TAW sector now exceeds 90 per cent, since 2011 there has also been a sector-wide minimum wage determined by a branch-level collective agreement that has been declared as generally binding on all employers in the sector under German statutory provisions. In 2014, this sectoral minimum wage stands at € 8.50 per hour in West Germany and € 7.81 in the East.

Trade unions have justified the conclusion of collective agreements in TAW with four main arguments (IG Metall 2013a; ver.di 2013b). Firstly, the unions argue that only collective agreements establish a clear enforceable right to certain working conditions while the Temporary Employment Act contains no clear provisions on how the principle of equal treatment should be implemented. Secondly, the equal treatment principle can only be fulfilled if the agency worker is assigned to a user company; in contrast, the collective agreements concluded for the sector provide a general guarantee of certain working conditions. Thirdly, without specific collective agreements for the sector there is no sector-wide minimum wage that is also binding on employment agencies in other EU countries that post employees to Germany. Finally, there is always a danger that temporary agencies might conclude collective agreements with 'yellow' unions. There has been some experience of this in the 2000s when a so-called 'Christian trade union' concluded collective agreements that provided for terms and conditions that were clearly below what had been negotiated by DGB affiliates. In the meantime, the German Labour Court has since stripped this union of its right to negotiate collective agreements on the grounds that it failed to meet the criteria for being a viable and independent trade union.

6.4.3 Collective agreements at the user companies

The conclusion of collective agreements with temporary agencies did not succeed in reducing the gap in pay and other conditions between agency and regular workers. In 2008, the metalworkers' union *IG Metall*, therefore, launched a broad campaign for equal pay and equal treatment of agency workers in the metal industry (*Initiative Leiharbeit fair gestalten: Gleiche Arbeit – Gleiches Geld*, <http://www.gleichearbeit-gleichesgeld.de>). Subsequently, other unions, such as the services union, ver.di, (<http://www.hundertprozentich.de/>) and the chemical and energy workers' union (IG Bergbau, Chemie, Energie, IG BCE, <https://www.igbce.de/themen/leiharbeitswerkvertraege/>) have developed similar initiatives.

The aims of these campaigns were threefold: Firstly, they wanted to highlight the abuse of TAW and put pressure on the government to amend the Temporary Employment Act to make it into a more stringent equal treatment regulation. Secondly, they aimed to provide practical support for

agency workers and to organise them into unions. Thirdly, they tried to approach the user companies, where trade unions were often in a much stronger position.

One major result of that campaign was that IG Metall, the trade union in the metalworking industry, was able to conclude more than 1,200 workplace agreements on TAW over a period of four years (Meyer 2013: 294). These so-called "*Besser-Vereinbarungen*" have significantly improved working conditions at user companies by stipulating certain supplements that user companies must pay in addition to the minimum rates in the TAW collective agreement for agency workers or even by introducing an obligation for equal pay after a certain period of time. In 2010, IG Metall also finally managed to conclude a first sector-wide collective agreement in the steel industry which stipulates that employers must commit themselves to pay agency workers at the same rate as the pay of workers starting regular employment at the company they are contracted to (Dribbusch 2011).

Following the example of the steel industry, in the 2012 collective bargaining round the issue of TAW became a core topic for union bargaining agendas. The unions called on the employers in various sectors to agree special provisions for agency workers in user companies. Finally, between November 2012 and July 2013 new collective agreements on TAW were concluded in eleven sectors – among them important branches such as metalworking and the chemical industry (*Table 6.4*).

The main issue in these agreements is determining the sector-specific supplements for agency workers which user companies have to pay (Spermann 2013). These are calculated on the basis of the collective agreements with the temporary agencies and usually increase in line with the length of time that agency workers have been working on an assignment at a user company (*Table 6.4*). In the metalworking industry, for example, an agency worker in a lower pay grade will receive a supplement of 15 per cent in addition to the rate in the agency collective agreement from the 7th week of employment, 20 per cent from the 4th month, 30 per cent from the 6th month, 45 per cent from the 8th month and 50 per cent from the 10th month. After ten months the agency worker will reach a pay level which comes close that paid for a regular worker.

**Table .4: Collectively agreed pay supplements for temporary agency workers
(Date of enactment between November 2012 and July 2013)**

Sector	Wage grade	Supplements in % according to length of assignment at the user company				
		from 7th week	from 4th month	from 6th month	from 8th month	from 10th month
Chemical	E1 - E2	15	20	30	45	50
	E3 - E5	10	14	21	31	35
	E6 - E9	0	0	0	0	0
Metalworking	E1 - E9	15	20	30	45	50
Printing	E1 - E5	8*	15	20	35	45
	E6 - E9	0	0	0	0	0
Railway	E1 - E2	4	6	8	12	14
	E3	3	4	6	9	10
	E4 - E5	4	6	8	12	14
	E6 - E9	0	0	0	0	0
Wood and plastic	E1 - E9	7	10	15	22	31
Potash and rock salt mining	E1 - E2	7	9	13	17	20
	E3 - E4	3	5	7	9	11
	E5	3	5	8	9	10
	E6 - E9	0	0	0	0	0
Rubber	E1 - E2	4	7	10	13	16
	E3	3	4	6	9	10
	E4 - E6	4	7	10	13	16
	E7 - E9	0	0	0	0	0
Plastic processing	E1 - E2	7	10	15	22	25
	E3 - E4	4	6	9	13	15
	E5	3	4	6	9	10
	E6 - E9	0	0	0	0	0
Paper processing	E1 - E9	4*	8	12	16	20
Paper manufacturing	E1 - E5	4	8	12	16	20
	E6 - E9	0	0	0	0	0
Textile and clothing	E1 - E9	5	10	15	20	25

* from the 5th week

Source: WSI-Collective Agreement Archive 2014

For the unions the new collective agreements on sector-level supplements for temporary agency workers represent a major step forward in improving the working conditions of agency workers. However, there is still a gap between this and full equal treatment. Moreover, these agreements are limited to agency workers in the sectors for which additional pay has been negotiated. Therefore, German unions are continuing to call for a change in the Temporary Employment Act to secure equal pay and equal treatment of agency workers without any exceptions.

7 Conclusion

Over the past two decades, Germany saw a significant growth in precarious employment. This was mainly the result of new cost-cutting strategies pursued at company level that were facilitated by labour market de-regulation. Although this trend could be observed across virtually the whole economy, each sector produced its own particular forms of precariousness depending on its economic development, pattern of employment and work organisation, and the specific regime of industrial relations in the sector. There are, for example, major differences between sectors in how non-standard employment is used, as well as the various dimensions of precariousness, such as low pay, high work intensity etc. Despite some similarities, strategies to limit or avoid precarious employment also show some significant differences between sectors. This holds true, in particular, for the question as to whether strategies focus on the general political sphere and emphasise regulatory changes or concentrate more on sector-specific solutions through collective bargaining.

In this study we have analysed the development of precarious employment in construction, commercial cleaning, hospitals, and temporary agencies. All four sectors are rather labour-intensive, with labour costs consequently playing a major role in companies' cost competitiveness. As competitive pressures grew in all these sectors, companies' strategies focused on cost-cutting approaches that included and promoted the increasing use of precarious employment as a – typically – 'less expensive' option. The reasons behind these increasing competitive pressures are manifold. Traditionally, the market in construction and commercial cleaning has been highly competitive due to the dominance of small and medium-sized companies. Further, and growing, pressures have also been exerted by contractors and client companies, which themselves are increasingly searching for the cheapest offer. Moreover, the scope for further market growth is rather limited, leading to the dominant pattern in these sectors of fierce inter-company competition.

For temporary work agencies, the main pressure has also mainly come from client companies, which – particularly in manufacturing – have started to use agency workers not only to meet their needs for flexibility but also as a general cost-cutting instrument, replacing regular employees. Finally, in hospitals pressure has mainly originated with the state, which hopes to reduce health spending by privatising and commercialising health services. In addition, privatisa-

tion policies have led to a growing profit-oriented segment in hospitals, further intensifying competitive pressures in the sector.

Table 7.1: Sources of and strategies against precarious employment in Germany

	Construction	Commercial Cleaning	Hospitals	Temporary agencies
Economic framework	<ul style="list-style-type: none"> - Labour intensive industry - Dominance of SMEs - Strong decline during the 2000s 	<ul style="list-style-type: none"> - Labour intensive industry - Dominance of SMEs - Strong pressure from client companies 	<ul style="list-style-type: none"> - Labour intensive industry - Division into public non-profit and private for-profit providers - Commercialisation and privatisation 	<ul style="list-style-type: none"> - Labour intensive industry - Strong focus on manufacturing - Liberalisation of regulations on the use of temporary agency work
Industrial relations regime	<ul style="list-style-type: none"> - National collective agreements - Universally applicable sector-wide minimum wage 	<ul style="list-style-type: none"> - National collective agreements - Universally applicable sector-wide minimum wage 	<ul style="list-style-type: none"> - Fragmented collective bargaining system 	<ul style="list-style-type: none"> - National collective agreements - Universally applicable sector-wide minimum wage
Main sources of precarious employment	<ul style="list-style-type: none"> - Non-compliance with collectively agreed standards - High importance of migrant workers - Contracting out of services and differentiated production chains - Bogus self-employment 	<ul style="list-style-type: none"> - High proportion of marginal part-time workers (Mini-Jobs) - Non-compliance with collectively agreed standards - Low pay - High work pressure 	<ul style="list-style-type: none"> - High work pressure - Understaffing - Contracting out of services 	<ul style="list-style-type: none"> - Instability and insecurity of temporary agency work - Pay gap between agency and regular workers - Low pay
Strategies to combat precarious employment	<ul style="list-style-type: none"> - Better surveillance and control of working conditions - Improving working conditions for migrants (especially raising sector-wide minimum wage) - Practical support for migrant workers - General contractor liability and pay clauses in public procurement - Better regulation and control of solo-self-employment 	<ul style="list-style-type: none"> - Political demand to abolish Mini-Jobs - Improving working conditions for migrants (especially increasing sector-wide minimum wage) - Setting standards for work and service quality - Better surveillance and control of working conditions 	<ul style="list-style-type: none"> - Limiting the contracting out of services - Collective agreements for out-sourced employees - Legal requirements for minimum staff 	<ul style="list-style-type: none"> - Legal restrictions and limitations on the use of agency work - Collective agreements for agencies - Collective agreements at the user companies

Source: Compiled by the authors

Against this backdrop, all the sectors covered here experienced a rise in the significance of precarious employment, although with different forms and characteristics (*Table 7.1*). While the majority of workers in temporary agencies and commercial cleaning have a non-standard employment contract, construction and hospitals are characterised by a growing dualisation between a standard core and a non-standard peripheral workforce. In the last two sectors, the contracting out of services has played an especially important role in the growth of non-standard employment. In construction, the rise in precarious work was also driven by the use of migrant workers, mainly posted from Eastern European countries. Although the core workforce continues to have standard employment contracts, it is shrinking and faced with growing workloads and pressures. The construction industry is also particularly exposed to a growing problem of weakening compliance with legal or collectively-agreed standards.

Commercial cleaning is one of the sectors with the highest incidence of non-standard employment, with more than half of all cleaners being employed only on marginal part-time contracts, most of which are also fixed-term. Temporary agency workers, who by definition also represent a non-standard form of employment, are also characterised by a high degree of instability and insecurity and have often much worse conditions than regular employees.

In view of the differing economic development and characteristics of the various sectors, trade unions, and in some cases employer associations, have proposed particular packages of measures to combat precarious employment. Overall, six strategic approaches can be identified. First of all, there are strong calls for legal changes in labour market regulation in order to limit the spread of non-standard forms of employment. This is especially the case in commercial cleaning, where trade unions have demanded the abolition of the special tax status for 'marginal part time employment' (Mini-Jobs), which has created a very strong incentive for companies to replace regular employees. There are also calls for legal changes in the field of temporary agency work, with greater limitations on its use and a strengthening of the principle of equal pay and equal treatment between agency and regular workers. In construction, there is a specific demand for better legal protection of the solo self-employed in order to avoid bogus self-employment.

A second strategic approach is that of improving working conditions for precarious employees by means of collective agreements. In construction, commercial cleaning and temporary agency work trade unions and employers' associations have agreed on sectoral minimum wages that have subsequently been declared binding on the entire sector. This step was made using the German Posted Workers Law, which also ensures that companies headquartered outside Germany and posted workers must comply with these minimum standards. As collective bargaining is rather fragmented in the hospital sector, sector-wide agreements are rather unlikely and trade unions' approach here has been to call for improvements in conditions mainly through the introduction of legal requirements for minimum staffing levels.

A third strategic approach addresses contractor and client companies. This approach has been pursued mainly in construction but also in commercial cleaning, where both employers and trade unions have supported public procurement legislation that would include pay and social clauses, so that companies would only be awarded a public contract if they met certain minimum labour standards. In the area of temporary agency work, unions have been able to sign various collective agreements with employers' associations in sectors with major client companies (such as metalworking), so that agency workers receive a branch-level supplement in addition to the agreed minimum for agency work.

Fourthly, various initiatives have been taken to improve the control and enforcement of collectively agreed standards. In construction and commercial cleaning, employers, trade unions and labour inspectors have created so-called 'alliances against illegal employment' to develop joint strategies for assuring better compliance with employment standards. A growing debate is taking place in the commercial cleaning sector over setting new quality standards to include minimum work requirements, such as the amount of working time for each type of activity to be performed.

Fifthly, unions have given practical support to precarious workers and have tried to organise them. This holds true, in particular, in construction, where the focus has been very much on migrant workers. New approaches have also been developed for agency workers, where unions have developed new organising projects at client companies.

Finally, on a more general level, trade unions in all sectors have initiated public debates to counter the dominant discourse on precarious employment by stressing workers' own vision of 'good', 'fair' or 'decent' work. The principle aim of this is to show that precarious work is not just a given fact of modern working life, but something that needs to be changed to meet the needs of millions of workers. It falls to trade unions to draw together these various initiatives against precarious work into a comprehensive strategy for a 'new order' for the German labour market.

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Wirtschafts- und Sozialwissenschaftliches
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Hans-Böckler-Straße 39

40476 Düsseldorf

Telefon: +49 211 7778 0

Telefax: +49 211 7778 120



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