



# THE GERMAN CASE STUDY

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# Background

- Typical for the industrial relations in Germany is the sectoral collective labour agreement, agreed upon by both the union and on the other hand the employers' organisation.
- This collective labour agreement applies to a branch or a part of the branch, for the whole country or for a specific region.
- This type of collective labour agreement applies on the one hand to the members of the employers' organisation and on the other hand to the union members.

# Sectoral or Company CLA

- There are approximately 150 different "*Tarifbranchen*" (**branches**). Some of the branches are very broad and contain more than one industry.
- *For example: the Metalindustrie contains several branches, like: engineering and automobile industry, metal production, electronical industry, wharfs, aviation and space travel, foundries among other branches.*
- Apart from the Sectoral Collective Labour Law, in Germany there are **Company Collective Labour Agreements**. These collective labour agreements are agreed upon by the union and one single company.

Cluster of reforms	Law	In effect from:	Likely effect	Role of social partners
Measures affecting employment protection legislation	<b>Short Time Work (Extension)</b> <i>(reform of the Kündigungsschutzgesetz)</i>	1.1.2009	Reducing effects of the economic crisis (preventing unemployment)	Strongly involved; corporatistic
Measures reforming collective bargaining	<b>Collective bargaining Empowerment Act (Change of the Collective Labour Act)</b> <i>(Tarifautonomiestärkungsgesetz)</i>	15.8.2014	Empowerment of the process of collective bargaining in order to protect employees from 'race to the bottom' on terms of labour.	More opposite relations; discussion
Measures fighting dualisation/segmentation on the labour market	<b>Minimum Wage Act (Introduction)</b> <i>(Mindeslohngesetz)</i>  Introduced by Collective bargaining Empowerment Act	1.1.2015	Reducing precarious work, reducing competition on terms of labour, advancing fair pay. Disburdening of the social security system	<i>Opposite relation. Employers were very critical, employees were quite positive.</i>
Measures fighting dualisation/segmentation on the labour market	<b>Posted Workers Act (extended to all branches)</b> <i>(Arbeitnehmerentsendegesetz)</i>  Introduced by Collective bargaining Empowerment Act	15.08.2014	Preventing competition on terms of labour by foreign workers. Preventing 'race to the bottom' on	<i>Opposite relation. Employers were very critical, employees were quite positive.</i>
Measures fighting dualisation/segmentation on the labour market	<b>Temporary Work Act (introduction of Minimum Wage)</b> <i>(Arbeitnehmerüberlassungsgesetz)</i>  Introduced by Collective bargaining Empowerment Act	1.1.2015	Preventing competition on terms of labour for temporary workers.	Opposite relation. Employers were very critical, employees were quite positive; discussion



# THE LEGAL CHANGES

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# 1. Short time Work (economic crisis)

- Before the economic crisis Germany already reformed the **social security system** (Harz I, II, III and IV).
- Germany was hit hard by the economic crisis but **recovered** relatively quickly.
- Main instrument to overcome the economical crisis was the extension of the possibility to introduce '**Short Time Work**'.

# Introduction of short time work

- Short-time work is a temporary reduction in working hours which is implemented for a whole site or an identified part of an employer's site.
- It is intended to maintain employment relationships while at the same time reducing salary expenses.
- Cost savings result from the fact that the employees' remuneration claims are automatically reduced in proportion to their reduced working hours.
- For example, a 50% reduction in working time would lead to a 50% reduction of the fixed salary.

# Conditions for short time work

- The short-time working allowance due to temporary shortfall (KUG) is granted:
- where the **normal working week** in companies or company departments **has to be shortened** temporarily for economic reasons or due to an unavoidable event.
- The requirements of sections 95 to 109 German Code of Social Law III (§§ 95 - 109 Sozialgesetzbuch 3 (SGB III)) must be fulfilled.



# Win-win situation

- What makes short-time work attractive to employees and employers alike is the availability of **public funding**.
- If certain requirements are met, Germany's Federal Employment Agency will **compensate** the employee's loss in remuneration to a certain degree.
- Short-time work therefore often creates a **win-win situation**:
  - The government **saves unemployment benefits**
  - The employer **retains a qualified workforce** and saves salary costs
  - The employees keep their jobs while their pay is reduced to a smaller extent than their working hours.

# Social Dialogue (1)

- **Tripartite national social dialogue** was one of the main responses to the financial crisis. This took place only at a consultative level.
- Nonetheless, the **union involvement** was considerable, particularly at the sectoral/subnational level.
- December 2008: **Tripartite summit** convened by the federal chancellor.
- Main aim: discussing the **impact of the crisis** on the national economy.

## Social dialogue (2)

- Also the Federal Government's stimulus package was outlined. The results of this exchange of views between the tripartite partners were taken into consideration when the **package of measures** was implemented in January 2009.
- There were further **high-level conferences** organised in January and April 2009 along with numerous consultations at the state and local levels. **Stimulus Package II** was accepted in January 2009

## 2. Collective Bargaining Empowerment Act

- Major reform and resulted in changes in several other laws. Main changes are:
- Change of art. 5 of the Collective Labor Law Act (*Tarifvertragsgesetz*)
- Introduction of the Minimum Wage Act (*Mindestlohngesetz*)
- Change of art. 6 the Posting of Workers Act (*Arbeitnehmer-Entsendegesetz*)
- Änderung of art. 7 Temporary Work Act (*Arbeitnehmerüberlassungsgesetzes*)

# Change of art. 5 of the Collective Labour Law Act

- Art. 5 of the Collective Labour Law Act
- Contains the extension of collective labour agreements.
- This extension of collective agreements through generally binding declarations has been 'revitalised'.
- The instrument was widely used in the past, but the use of it declined in the past decades due to a 50% quorum which has to be met.
- The density of the employers in Germany has declined, so it was very hard to get CLA's declared universally binding.

# Main changes:

- Restriction of the collective agreement commission to an advisory function
- removal of the 50% quorum – especially for collective agreements covering common organisations,
- declaration of the extension of collective agreements for all representative collective agreements,
- no undercutting of a declared extension of collective agreements by other collective agreements;
- if necessary the extension of collective agreements to comparable branches
- and finally responsibility to be given to the industrial tribunal rather than the administrative court in the event of disputes connected to the legal extension of collective agreements (AVE).

# New conditions for declaring binding of CLA's

- The declaring binding of the CLA appears as a rule to be necessary on behalf of the public interest, when:
  1. the CLA has obtained a predominating importance for the making of working conditions for its scope, or
  2. the protection of the working of the collective labour agreements demands a decision to declare the CLA binding, in order to prevent the effects of economically ,non-desirable developments‘

### 3. Minimum Wage Act

- As from 1 of January 2015 in Germany a Minimum Wage Act (*Mindestlohngesetz*) was introduced.
- This Act...
- ...contains a general legal minimum wage of 8,50€ per hour
- ...has has the same effect in East- & West-Germany.



# Exemptions

- There are several exemptions from the minimum wage for example for: young people, trainees, long-term unemployed people, paperboys.
- Further, for 2 years after the introduction of the Minimum Wage Act, exceptions are possible for specific branches.
- In these branches must apply a CLA which is declared generally binding by the Minister of Social Affairs. This CLA must be agreed upon by representative social partners.

# Motivation for introduction Minimum Wage

- Increase of 'atypical employment forms' related to hope to improve employment situation of low-qualified people
  - ⇒ didn't pay-off, no springboard-effect to 'better employment'
  - ⇒ decline of wages in lower income range (wage dumping),

**Therefore,** introduction of GMW was **unavoidable!**

- Large numbers of employees entitled to a wage increase (2012 more than 2.5 Mio. employees less than 6€)
  - ⇒ first prognosis of Federal Government was that 3.7 Mio employees are entitled to a wage rise

# Branches (1)

- For **18 branches do** branch-specific minimum wages apply.
- Approximately **4,6 Million workers** are working in these branches.
- These minimum wages are set between **7,20 & 14,20€**, depending on specific branch or the regional CLA-scope.

## Branches (2)

- In six branches the minimum wage is still **under 8,50€**
- In these branches
  - the **exception of the Minimum Wage Act** is used.
  - it is planned to raise the CLA-wages to the minimum of 8,50€, **step by step.**

Branche	Jan. 2015	Next step	From
Meat Industry	8,00	8,60	10/2015
		8,75	12/2016
Hairdresser(Ost incl. Berlin/West)	7,50/8,00	8,50	08/2015
Land- und Forstwirtschaft, Gartenbau Ost/West (Farming/Gardening)	7,20/7,40	7,90/8,00	01/2016
		8,60	01/2017
		9,10	11/2017
Leiharbeit Ost inkl. Berlin (Temporary Work)	7,86	8,20	04/2015
		8,50	06/2016
Textil- und Bekleidungsindustrie Ost (Textile)	7,50	8,25	01/2016
		8,75	11/2016
Wäschereidienstleistungen Ost inkl. Berlin (Cleaning industry; laundry)	8,00	8,75	07/2016

# Offence against the Minimum Wage Act

- **Penalty** between 2.500 en 50.000€
- **Enforcement** ⇨ by **civil service** called '**Zoll**' (resorting under the Finanzamt; sort of inspection)
- **Individual employee** ⇨ can also go to court and ask the judge to sentence the employer to pay the minimum wage correctly
- **Until now:** not much case law available (matter of time)

## 4. Posting of Workers (AEntG)

- Germany also knows **several minimum wages in specific branches** (this is common use).
- This is an effect of the German act on the '**Posting of Workers**' (*ArbeitnehmerEntsendegesetz* -AEntG)
- This act concerns the **minimum working conditions** for employees who are employed in one EU Member State but sent by their employer on a temporary basis to carry out their work in another Member State.
- Following the 'Posting of Workers Act' for special sectors the federal minister for labor is entitled to declare the **minimum wage** for binding.

## 5. Temporary Employment Act (AÜG)

- The Law on Temporary Employment (*Arbeitnehmerüberlassungsgesetz - AÜG*) provides the Minimum Wage for **Temporary Workers**.
- This change in law was necessary because of the introduction of the Minimum Wage Act.
- The **minimum wage** also applies to temporary workers.



# THE ROLE OF THE SOCIAL PARTNERS

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# The role of the social partners – Short time work

- The successfully functioning social partnership in Germany was highlighted by employers in the industries hit by the crisis.
- The Confederation of German Employers' Associations (BDA) emphasised the joint achievements of employers and unions during the crisis.
- In addition, the Employers' Associations for the Metal and Electrical Industry (Gesamtmetall) stressed that the crisis of 2009/2010 was overcome by the teamwork between employers, unions, works councils and policy-makers.
- According to the chair of the BDA, it was the jointly pursued collective bargaining policy that helped maintain employment levels.

## Social partners successfully managed to mitigate the effects of the crisis

- The stabilization of the employment level, particularly in the most crisis-hit industries is mainly an effect of the cooperative, solution-seeking behaviour of social partners at the establishment and sectoral levels.
- This achievement was also due to the relative flexibility of the German system of industrial relations. (Vogel, 2013).

## More specific:

- The possibility to deviate from collectively agreed standards by means of opening clauses, and the wage restraint and concessions negotiated during collective bargaining rounds.
- Moreover, the reform steps taken by the federal government (such as prolonging short-time working entitlement periods and introducing two rescue packages) set the right framework for social partner action.

# The role of the social partners – Minimum Wage

## DGB (employees)

- Welcomed coalition agreements for the introduction of general minimum wage (GMW) ⇒ **in line with a long-term demand!**
- **Improvement of living & working conditions of people** (in particular for full-time employed still depending on additional support)
- **Improves companies competitiveness** due to fair treatment of their employees
- **Critique:** fixing GMW until 2018 (plea for an earlier increase)

## BDA (employers)

- Introduction of GMW will leave **‘skid marks’** on the labor market ⇒ in particular for marginal groups (low-qualified) difficult to be integrated into the labour market.
- Plea for more **‘differentiation’** of a possible law to allow for deviations from the GMW (in particular existing collective agreements shouldn't be violated)
- **Concerns:** role of the minimum wage commission

# Opinion of the social partners

## DGB

- Positive development;
- So far no tremendous job cuts are observable;
- **Debate about increase of GMW**

## BDA

- Harms **collective bargaining & inhibits entry into work**;
- Creates **new bureaucratic burdens** for employers (documentation of working time)
- **Linkage of GMW Act and Working Hours Act** is not covered (specifications in Working Hours Act are unrelated to requirements of Minimum Wage Act)
- Essential to modify **employer liability**

# Evaluation & critiques on the GMW

## Introduction of GMW raises questions concerning

- **How many people** (employees but also employers) does it affect?
  - Different sources report different statistics: GMW concerns 8,7% (West) & 18,1% (East) of employees
- What are **social & economic long-term consequences**?
  - ⇒ **Wage increase** of around 20% for full-time employees (1,3% (West) and 4,8% (East))
  - ⇒ **How do employers/companies react?**
    - Increase in prices
    - **Massive job cuts** (in low-paid segments) ⇒ increase of social risks
    - Employment of excluded groups (underaged, unemployed, outsourcing)
    - Increase of **illegal work**

# THANK YOU

- Questions?
- Comments?
- Suggestions?

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