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.
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<td>1.1.2009</td>
<td>Reducing effects of the economic crisis (preventing unemployment)</td>
<td>Strongly involved; corporatistic</td>
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<td>Measures reforming collective bargaining</td>
<td><strong>Collective bargaining Empowerment Act (Change of the Collective Labour Act)</strong> <em>(Tarifautonomiestärkungsgesetz)</em></td>
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<td>1.1.2015</td>
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<td>Opposite relation. Employers were very critical, employees were quite positive.</td>
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<td>Measures fighting dualisation/segmentation on the labour market</td>
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<td>15.08.2014</td>
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<td>1.1.2015</td>
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<td>Opposite relation. Employers were very critical, employees were quite positive; discussion</td>
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THE LEGAL CHANGES
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**.

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

- **Penalty** between 2,500 and 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
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 competiveness 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 exiting collative 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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