LABOUR LAW IN GERMANY

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1. Labour Law Framework in Germany

1.1 Overview

Of the 82 million inhabitants in Germany, 37 million hold their jobs as employees.[1] To regulate the relationship between these employees and their employers there is not one consolidated German Labour Law Code. German Labour Law comes from the following sources:

- European Union (EU)directives and case law
- German federal and state legislation (published in separate Acts on various labour law issues)
- Collectivearrangements
- Works committee-management agreements
- Case law

1.2 European Union legislation

The EU guarantees free movement of people.[2] That includes free movement of workers. Therefore EU citizens can move freely between member states to live, work, study or retire in any country of the EU.

German labour law is strongly influenced by European Union legislation and case law. EU law (directives and case law) must be implemented through national law. EU jurisprudence has legal binding power in all EU member states.

An example of the influence of EU directives on German federal law is the conversion of the highly qualified directive of the European Union. This directive is the basis of the EU blue card.[3] The blue card serves the purpose of granting residence in the EU for highly qualified non-EU-state workers.[4] The rules ofadministration of individual EU states are outside the ambit of the EU.

1 Institute for Employment Research: Durchschnittliche Arbeitszeit und ihre Komponenten in Deutschland, June 2012.
2 Article 45 of the TFEU (Treaty on the Functioning of the European Union = Treaty of Rome, effective since 1958).
3 EU directive 2009/50/EG
4 The EU blue card is dealt with in detail in chapter 5.2.

1.3 German federal and state legislation

1.3.1 The German Constitution as the foundation

German labour law is built upon the foundation laid by the German constitution.[5] According to the German constitution, Germany is a democratic and social federal state, in which basic rights are guaranteed.[6] In regard to the labour law, the most important basic rights are:

- The principle of equal treatment[7]
- Freedom of association[8]
- Free choice of occupation and prohibition of forced labour[9]

The principle of equal treatment prohibits any discrimination on the grounds of sex, race, nationality, handicap, religion, political opinion or trade union activity. As a basic right, it is juristically a fundamental principle of labour law.[10]Unjustified unequal treatment of employees is thus unlawful.

There are other important basic rights in labour law, whichare alsoguaranteed by the German federal and state legislation:

- Freedom of faith, conscience and creed[11]
- Freedom of expression[12]
- Protection of marriage and family[13]
- Protection[14]of maternity
- Guarantee of ownership[15]

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5 German Constitution = Grundgesetz (GG); it was adopted on 23 May 1949.
6 Art. 20, paragraph 1 GG.
7 Art. 3, GG.
8 Art. 9, paragraph 3 GG.
9 Art. 12, GG.
10 The principle of equal treatment under labour law.
11 Art. 4, GG.
12 Art. 5, paragraph 1, sentence 1 and paragraph 2 GG.
13 Art. 6, paragraph 1 GG.
14 Art. 6, paragraph 4 GG.
15 Art. 14, GG.

1.3.2 Federal Acts on concrete labour law issues

German labour law is not represented by one single Act,but is made up of a large number of Acts. The most important federal Acts in the context of labour law are:

- German constitution[16]– especiallyin determining freedom of association,[17] free choice of occupation and prohibition of forced labour.[18]
- Civil Code[19]– especially §§611 to 630, which define the employment relationship, but not matters like dismissals, illness and holidays, which are treated in specific Acts.
- Act on the Commercial Transfer of Employees.[20]
- Dismissal Protection Act.[21]
- Business Constitution Act,[22]which requires establishment of Works Councils where there are five or more employees.
- Personnel Representation Act[23] for employees working in public service.
- Collective Wage Agreement Act.[24]
- Codetermination Acts,[25]which determine workers' participation in supervisory boards.
- Partial Retirement Act.[26]
- Trade, Commerce, and Industry Regulation Act.[27]
- Commercial Code.[28]

16 German Constitution = Grundgesetz für die Bundesrepublik Deutschland (GG).
17 Art. 9 paragraph 3 GG.
18 Art. 12, GG.
19 Civil Code = Bürgerliches Gesetzbuch (BGB).
20 Act on the Commercial Transfer of Employees = Arbeitnehmer-Entsendegesetz (AEntG).
21 Dismissal Protection Act = Kündigungsschutzgesetz (KSchG).
22 Business Constitution Act = Betriebsverfassungsgesetz (BetrVG).
23 Personnel Representation Act = Personalvertretungsgesetz (PersVG).
24 Collective Wage Agreement Act = Tarifvertragsgesetz (TVG).
25 Codetermination Acts = Mitbestimmungsgesetze (Montan-MitbestG, MitbestG, and DrittelbG).
26 Partial Retirement Act = Altersteilzeitgesetz (AltTZG).
27 Trade, Commerce and Industry Regulation Act = Gewerbeordnung (GewO) - especially Section 105 ff.
28 Commercial Code = Handelsgesetzbuch (HGB) - especially Section 59 ff. (clerk/Handlungsgehilfe and apprentice/ Handlungslehrling).

- Act on Part-Time and Fixed-Term Employment,[29] e.g.,two-year fixed-term limit.[30]
- Act Regulating the Payment of Wages and Salaries on Public Holidays and in Case of Sickness.[31]
- Paid Leave Act.[32]
- Working Time Act.[33]
- Employee Leasing Act.[34]
- Maternity Protection Act and Ordinance on Maternity Protection in the Workplace[35]
- Act on the Payment of Child RaisingBenefit and Child RaisingLeave.[36]
- Home Care Leave Act and Family Home Care Leave Act[37]
- Law on Notification of Conditions Governing an Employment Relationship.[38]
- Act Regarding Protection at the Workplace.[39]
- Young Workers Protection Act.[40]
- Occupational Training Act.[41]
- Employment Protection Act.[42]

29 Part-Time and Fixed-Term Work Act = Teilzeit- und Befristungsgesetz (TzBfG).
30 Section 14 paragraph 2TzBfG.
31 Act Regulating the Payment of Wages and Salaries on Public Holidays and in Case of Sickness = Entgeltfortzahlungsgesetz (EntgFG).
32 Paid Leave Act = Bundesurlaubsgesetz (BUrlG).
33 Working Time Act = Arbeitszeitgesetz (ArbZG).
34 Employee Leasing Act = Arbeitnehmerüberlassungsgesetz (AÜG)
35 Maternity Protection Act = Mutterschutzgesetz (MuSchG)
36 Act on the Payment of Child-Raising Benefit and Child-Raising Leave = Bundeselterngeldgesetz.
37 Home Care Leave Act = Pflegezeitgesetz; Family Home Care Leave Act = Familienpflegezeitgesetz.
38 Law on Notification of Conditions Governing an Employment Relationship = Nachweisgesetz (NachwG).
39 Act Regarding Protection at the Workplace = Arbeitsplatzschutzgesetz (ArbPlSchG).
40 Young Workers Protection Act = Jugendarbeitsschutzgesetz (JArbSchG).
41 Occupational Training Act = Berufsbildungsgesetz (BBiG).
42 Employment Protection Act = Arbeitsschutzgesetz (ArbSchG).

- Workplace Ordinance[43]as well asthe Ordinance for Work with Visual Display Units.[44]
- Law Concerning Company Doctors, Safety Engineers and Other Experts for Occupational Safety.[45]s
- Ordinance for Occupational Diseases.[46]
- Volume Five of the Social Insurance Code[47] – Section 8 andsection 8a Marginal Employment.
- Volume Nine of the Social Insurance Code – Law Concerning Severely Disabled Persons.[48]
- General Equal Treatment Act[49].
- Employee Invention Act[50] together with the Second Ordinance for Implementing the Employee Invention Act.[51]
- Law on Fighting Illicit Workand Illegal Employment.[52]
- Labour Court Act.[53]
- Works Council Constitution Act[54] regulating cooperation between employers and employees.
- Insolvency Ordinance.[55]

43 Workplace Ordinance = Arbeitsstättenverordnung (ArbStättV);

44 Ordinance for Work with Visual Display Units = Bildschirmarbeitsverordnung (BildscharbV).

45 Law Concerning Company Doctors, Safety Engineers, and Other Experts for Occupational Safety = Gesetz über Betriebsärzte, Sicherheitsingenieure und andere Fachkräfte für Arbeitssicherheit (ASiG).

46 Ordinance for Occupational Diseases = Berufskrankheiten-Verordnung (BKV).

47 Social Insurance Code = Sozialgesetzbuch (SBG).

48 Law Concerning Severely Disabled Persons = Schwerbehindertenrecht.

49 General Equal Treatment Act = Allgemeines Gleichbehandlungsgesetz (AGG).

50 Employee Invention Act = Gesetz über Arbeitnehmererfindungen (ArbnErfG).

51 Second Ordinance for Implementing the Employee Invention Act = Zweite Verordnung zur Durchführung des Gesetzesüber Arbeitnehmererfindungen (ArbnErfGDV 2).

52 Law on Fighting Illicit Work and Illegal Employment = Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung (SchwarzArbG)

53 Labour Court Act = Arbeitsgerichtsgesetz (ArbGG).

54 Works Council Constitution Act = Betriebsverfassungsgesetz (BetrVG).

55 Insolvency Statute = Insolvenzordnung (InsO).

- Employment Promotion Act.[56]
- Code of Civil Procedure[57] regulating individual dispute settlement.

1.4 CollectiveAgreements

Collectiveagreementscan be negotiated for both entire branchesand for single companies.

- Collectiveagreements for a single branch are applicableindustry-wide, i.e., they have to be respected by all companies of the specific branch.[58]
- Collectiveagreements for a single company are valid for that company only.

Both kinds of collectiveagreement are bindingas long as they are in line with the statutory minimum standards.They can lead to a more favourable situation for the employees, but are not allowed to go below the statutory provisions.

Collectiveagreements have three characteristic functions:[59]

- Aprotective function (setting minimum labour standards).
- Arationalizing function (regulating working life and alignment for a large number of people instead of individual agreements for each company, plant or establishment).
- Apeacekeeping function (as long as the collectiveagreement remains in force, new demands and labour disputes about included topics are absolutely banned (industrial peace).

A collectiveagreement functions as a labour contract between an employer and one or more unions. The agreement typically considers the terms and conditions of employment of workers, such as:

- wage scales

56 Employment Promotion Act = Arbeitsförderungsgesetz (AFG)

57 Code of Civil Procedure = Zivilprozessordnung (ZPO)

58 Collectivewage agreements = Tarifverträge.

59 Jung, L. 2001: National Labour Law Profile: Federal Republic of Germany, published by International Labour Organization, http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158899/lang--en/index.htm. Retrieved 14 Dec 2012

- hours of work
- training
- working conditions
- health and safety
- grievanceprocedures
- rights to participate in workplace or company affairs
- rights and responsibilities of trade unions

The parties often refer to the result of the negotiation as a collective bargaining agreement (CBA) or as a collective employment agreement (CEA).

The partners negotiating collective agreements are the appropriate trade union on one side and the appropriate employers' association on the other side.

The most important trade unions in Germany are:

- German Unified Services Union "ver.di"[60]
- Metalworkers Union (IG Metall)
- Mining, Chemicals and Energy Union (IG BCE)[61]
- Construction, Agriculture and Environment Union (IG BAU)[62]
- Food, Beverages and Catering Industry Trade Union (NGG)[63]
- Railway and Transport Trade Union (EVG)[64]
- Education and Science Trade Union (GEW)[65]
- Police Trade Union (GdP)[66]

60 Founded on 19 March 2001 as the world's largest industry-based federation as a merger of five trade unions comprising some three million members.

61 IG Berbau, Chemie, Energie.

62 IG Bau, Agrar, Umwelt.

63 Gewerkschaft Nahrung, Genuss, Gaststätten.

64 Eisenbahn- und Verkehrsgewerkschaft.

65 Gewerkschaft Erziehung und Wissenschaft.

66 Gewerkschaft der Polizei.

The most important employers' associations are:

- Gesamtmetall,the federation of German employers' associations in the metal and electrical engineering industries
- BundesarbeitgeberverbandChemie,the employers' association for the chemical and pharmacy industry

Collective agreements are quite important. In 2009, 52 % of employees in Western Germany and 34 % of those in Eastern Germany were covered by a branch-level collective agreement.[67] However importance of collective agreements is diminishing. The percentage of employees covered by a branch-level collective agreement decreased more than 10 % in both parts of Germany over he past ten years.[68]

1.5 Works committee–management agreements

Works committee–management agreements[69]can be established for single companies or plants. They are negotiated between the employer and the works council[70]and they are binding for the respective company. Their aim is to concretize questions that are not regulated in detail by law or by collectiveagreements. If a collectiveagreement contains an escape clause for specific fields, these fields can be regulated in a company agreement.

Company agreements should be made for all issues that involve workers' participation, i.e.:[71]

- Issues concerning order and employee conduct in the company.
- The beginning and end of the normal workday, including breaks, and the division of working hours among the individual days of the week.
- Temporary shortening or lengthening of the company's standard number of working hours.

67 IAB-Betriebspanel 2009, Hans-Böckler-Stiftung 2010.

68 In 1999, 65% of employees in Western Germany and 46% of those in Eastern Germany were covered by a branch-level collective agreement. See Liliane Jung (2001) with reference to IAB-Betriebspanel.

69 Agreement between works committee and management =Betriebsvereinbarungen.

70 Works council = Betriebsrat: a body on the company level representing the employees of the company.

71 Section 87 section 1 BetrVG.

- Issues relating to remuneration payments.
- Setting up general holiday policies.
- Introducing and using technical equipment for monitoring employee conduct or performance.
- Regulations concerning prevention of work accidents and occupational diseases as well as health protection within the framework of legal stipulations or accident-prevention stipulations.
- Form, organisation, and administration of social services whose scope is limited to the plant, the company or the enterprise.
- Defining general conditions of use of living quarters rented by employees in deference to maintaining a working relationship.
- Issues concerning company wage structures, especially with regard to setting up remuneration policies and introducing and using new remuneration policies, as well as altering them.
- Establishing piecework and premium rates and comparable payments based on performance, including monetary factors.
- Policies regarding the company suggestion (process improvement) system.
- Policies about carrying out group/team work.

1.6 Individual agreements

The contract of employment is agreed to by the employer and the individual employee. Some special featuresthat are of increasing interest in Germany are explained below:

1.6.1 Permanent versus fixed-term contracts of employment

There are permanent and fixed-term contracts of employment.[72]As a rule, the employment contract isdrawn up for an unlimited period.[73]It is, however, possible for the employer and the employee to draw up a contract for a limited period.

72 For this section refer to Jung, L. 2001.

73 Section 620 paragraph 2 BGB.

The duration of fixed-term contracts must be set using objective conditions, such as a specific end date, the completion of a specific task or the occurrence of a specific event.

It must also in principle be based on the justification that is laid down in the Civil Code[74] which includes motives like the temporary requirement of a certain type of work, a limitation in order to make the worker's access to professional life easier, or the replacement of a sick employee. However, a fixed-term contract may be also lawful without any such justification, if it falls under one of two exceptional cases:[75]

- The contract is drawn up for a limited period of up to two years, but does not follow any other contract with the same employer,
- The contract is drawn up with an employee who is at least 58 years old.

If the employee wants to claim the ineffectiveness of a limitation, he/she must take legal action within three weeks after the agreed end of the employment contract. An employee who is employed for a fixedterm must be given treatment equal to that given to full-time employees employed to do similar work.[76]

Fixed-term contracts are getting more and more prevalent. In 2009, 57 % of newly hired employees had a fixed-term employment contract. In 2001 that was the case for 32 % of newly hired employees.[77]

1.6.2 Probation

When concluding a labour contract, the parties often agree on a probationary time of up to six months. During this period, the employee can be dismissed with notice of only two weeks.[78]

74 Section 14 paragraph 1 TzBfG.

75 Section 14 paragraph 2 TzBfG.

76 Section 4 paragraph 2, section 3 paragraph 2 TzBfG.

77 According to the Institute for Employment Research 2013, http://infosys.iab.de/infoplattform/ dokSelect.asp?pkyDokSelect=88&show=Lit. Retrieved 10 Jan 2013.

78 Section 622 paragraph 3 BGB.

1.6.3 Part-time

Part-time is defined as any work week of fewer hours than the weekly hours worked by full-time workers.[79]

Every full-time employee who has been employed for at least six months in the same company can request to work part-time.[80] The employer shall accept this request unless he/she regards the request as not feasible in view of operational reasons, such as when the reduction of working time may have negative impact on the organization, workflow, or safety, or would lead to excessive costs. Other acceptable reasons for refusal may be specified by collective agreements.

Part-time workers who want to work full-time must be given preference in case there is a vacant full-time post. Employers are also obliged to inform employees who want to change their working time, as well as the Works Council, about vacant full-time or part-time jobs within the company and about opportunities to participate in training programmes.

Part-time employees must be given treatment equal to that given to full-time workers, provided that there are no legally justified reasons for unequal treatment.[81]

In 2012, 34.4 % of all German employees worked part-time.[82]

1.6.4 Temporary employment

Temporary employment means that a temporary work agency employs an individual on a permanent basis and transfers him/her temporarily to another company (the user). During this period,the employee works under the supervision and in line with the instructions of the user.

Long-term transfer[83] of employees is permitted only under the strict preconditions of the Act on the Commercial Transfer of Employees. Transferred employees are entitled to the same rights as any other employee too, especially maternity

79 For this section refer to Jung, L. 2001.

80 Section 8 paragraph 1 TzBfG.

81 Section 5 and section 4 paragraph 1 TzBfG.

82 Institute for Employment Research: Durchschnittliche Arbeitszeit und ihre Komponenten in Deutschland, June 2012.

83 I.e., for more than 12 months.

protection, parental leave, continued payment of remuneration in case of sickness, minimum holiday of 24 days per year,[84] social security and statutory redundancy provisions.

1.6.5 Vocational training

In Germany there is a system implemented called the DualeBerufsausbildung (dual vocational education). After school, young people can apply to a company for vocational training. The apprenticeship takes two to three years, depending on the type of prior education of the student.[85]

During vocational training, the trainees spend about 50 % at school and 50 % at on-the-job-training. The aim of these programmes isto enable participants to start on an assistant level after the vocational training.

Vocational training contracts are not considered to be contracts of employment, but they need to comply with the general labour law framework, unless the Occupational Training Act provides special rules.[86]

1.7 Case law

Labour legislation is concretized and interpreted by labour courts. Some matters, especially regulation of strike, are not dealt with in federal or state Acts, but are partly or even totally left to case law.

Labour Courtsare structured at three levels:

- Local Labour Courts as the first level
- Regional Labour Courts as the second level
- The Federal Labour Court as the last level

Local Labour Courtsare composed of one professional judge, who is chairman, and two honorary nonpaid judges with equivalent legal powers. One of the latter is appointed from the employee side and one from the employer side.

84 Based on 6 day-week, including Saturdays, i.e. minimum of 4 weeks per year.

85 The two-year period applies for graduates of a high school (Gymnasium), the three-year period applies for graduates of a junior high school (Realschule) or of a secondary modern school (Hauptschule).

86 Section 3 paragraph 2 BBiG.

The Federal Labour Court consists of chambers. The chambers are composed of three professional judges and two honorary nonpaid judges. One of the latter is appointed from the employee side and one from the employer side.

2. Important Rules for All Companies

2.1 Hours of work

Protection of working time is governed by the Working Time Act, the Maternity Protection Act, and the Young Workers Protection Act.

In general, working time is defined as the time from the beginning until the end of work without breaks. The legal working time is 8 hours per day, except for Sunday and statutory holidays, which are normally foreseen as a resting period.

In the following cases, the daily working time of 8 hours must not be exceeded:

- expectant and nursing mothers[87]
- employees or trainees under 18 years[88]
- Young workers must not work on Saturday.[89]

In all other cases, the regular daily working time may be extended to 10 hours, if the average of the daily working time in the following six months is 8 hours per day.[90] Night work is legally permitted only under some strict preconditions.[91]

In 2012, the average agreed working time was 37.96 hours per week.[92]

87 Section 8 MuSchG.
88 Section 8 JArbSchG.
89 Section 16 JArbSchG.
90 Section 3 ArbZG.
91 Sections 6 and 7 ArbZG.
92 Institute for Employment Research: Durchschnittliche Arbeitszeit und ihre Komponenten in Deutschland, Juni 2012.

2.2 Paid leave

In Germany, the minimum leave entitlement is 24 days per calendar year, not counting Sundays and public holidays.[93] Saturdays are included in the calculation. Further days of paid leave are added by the particular collectiveagreement. Usually a period of 4 to 6 weeks per calendar year is granted by collective agreements.

2.3 Maternity protection and maternity leave

As a general rule, the management of the work and the workplace must be organized in favour of the pregnant and nursing employees.[94] This protection applies as soon as the employer has been informed about the existent pregnancy. A ban is then put on heavy physical work or piecework as well as on work with dangerous materials.[95] In case of an employer's misconduct, he is punished for a regulatory offence or even for a criminal act.[96] Protection is safeguarded by the supervisory authority, which must be informed about the existent pregnancy.

During pregnancy and for four months after childbirth, the employee is additionally protected against any dismissal, either with or without notice.[97] The same absolute protection applies to the period of child-caring leave.[98] During a period of six weeks prior to the birth of the child until eight weeks after the birth, the pregnant and nursing mother must not work. In case of premature or multiple births (e.g. twins), this ban lasts until twelve weeks after birth. During this period of maternity leave, the employee is paid maternity allowance out of a statutory health insurance fund and a supplement by the employer. A ban on employment may apply even earlier than six weeks prior to the birth. If a medical doctor certifies that the pregnant employee must partly or even entirely stop working to avoid a risk to herself or the unborn child's life or health, the employer must partly or even entirely release her from work. She is then paid a maternity wage, which amounts to the previous average earnings.[99]

93 Section 3 paragraphs 1 and 2 BUrlG.
94 Section 2 paragraph 1 MuSchG.
95 Section 4 paragraphs 1, 2 and 3 MuSchG.
96 Section 21 paragraphs 1 to 4 MuSchG.
97 Section 9 MuSchG.
98 Act on the Payment of Child Raising Benefit and Child Caring Leave.
99 For this section refer to Jung, L. 2001.

2.4 Other leave entitlements

There are some other leave situations which are governed by specific Acts:

- Sick leave

  If an employee has been employed for at least four weeks and was not to blame for his incapacity for work, continued payment of wages can be claimed for a period of up to six weeks.[100] In this situation, the employee can claim 100 % of his average income.[101]

- Child-caringleave

  During childcaring leave, the mutual duties under the individual employment contract are suspended.[102] This leave is granted without pay, and ends when the child reaches four years of age.[103]

- Parents' allowance

  Parents receive an annual amount rangingfrom € 7,200 to € 25,200 (two-thirds of their former salary) for up to one year per child born after 31 December 2006. This government grant is extended for another two months for the partner, i.e., if the parents decided that the mother (father) stayed at home for the first twelve months, the father (mother) is allowed to stay at home for another two months.

2.5 Minimum age and protection of young workers

It is prohibited by law to employ children.[104] This applies to:

- Children under 15 years.
- Children who are older than 15 years and still obligated to attend full-time schooling.[105]

Workers under the age of 18 may perform their apprenticeship or vocational training if the following conditions are met:

100 Section 3 paragraph 1 EntgFG.
101 Section 4 paragraph 1 EntgFG.
102 Established Federal Labour Court ruling.
103 Section 15 Act on the Payment of Child Raising Benefit and Child Caring Leave.
104 JArbSchG.
105 Section 5 paragraph 1, and section 2 paragraphs 1 and 3 JArbSchG.

- The employer must observe special protections laid down in the Young Workers Protection Act.[106]
- The daily working hours must be not more than 8.
- Any work between 8 p.m. and 6 a.m. is forbidden.
- During work, breaks of suitable duration must be ensured.
- No service must be performed on Saturdays and Sundays.[107]
- No dangerous work, piecework, time-based work or underground mining work is to be demanded.

2.6 Pay issues

Actual pay is determined in the individual contract of employment, but cannot be lower than the minimum wage established in the relevant collective wage agreement.[108] Unlike many other countries, Germany has no statutory minimum wage. However, collective agreements negotiated between trade unions and employers' associations lead to minimum wages for the respective industries.

If a bankruptcy proceeding has been opened over the employer's assets, the employee's claim to wages is generally treated with priority. Wages that are due rank highest during the insolvency proceedings. Outstanding wages for the last six months prior to the opening of the insolvency proceedings rank after legal costs and administration expenses. Compensation for outstanding wages of the last three months prior to the opening of the insolvency procedure is guaranteed by the federal employment office. The same guarantee covers claims made by workers in case the opening of the insolvency proceeding has been refused because the employer has not left enough assets to make such a proceeding worthwhile.

2.7 Suspension of the contract of employment

2.7.1 Strikes/ lockouts

The mutual duties of the contract of employment are suspended during a legal strike or a justified lockout. Consequently,employees do not have to work and the

106 JArbSchG.

107 There are very rare exceptional cases, especially for the tourism and the farming industry.

108 For this section refer to Jung, L. 2001.

employer is not obliged to pay wages. Trade unions usually pay strike assistance to their members. The strike assistance is usually two-thirdsof the gross income. Other employees who are directly affected by the strike receive social security payments from the state.

2.7.2 Lay offs

The mutual contractual duties are not entirely suspended during a temporary layoff.[109] In such cases, collective agreements or work agreements may provide for short-time work with corresponding wage reductions. However, such a measure cannot be unilaterally ordered by the employer.

2.7.3 Short-timework

With a short-timework[110]programme, employees accept a reduction in work time and pay. Short-timework is an alternative to laying-off any of the employees instead of reducing the working hours of all or most of the employees. The agreement can be a collective agreement, a company agreement, or an individual agreement. The typical situation for short-timework is a recession-related programme. Such programmesoperated quite successful in Germany during the last recession.

The government makes up some of the employees' lost income by granting short-timework compensation. In 2009, the German government had budgeted € 5.1 billionfor the programme, which replaced some of the lost income of over 1.4 million workers. According to an Organisation for Economic Co-operation and Development (OECD) report, the programmehad saved nearly 500,000 jobs during the recession.[111]The most frequently cited advantages of such a programme are:

- Avoiding mass layoffs
- Keeping skilled work groups together
- Avoiding the atrophy of workers' skills during extended layoffs

109 This might happen, e.g., because of lack of orders or bad weather.

110 Kurzarbeit.

111 See 'Germany's "Kurzarbeit" programme: a possible role model for other countries,' German Information Centre 2009, http://www.german-info.com/press_shownews.php?pid=1638. Retrieved 24 Sep 2010.

2.7.4 Military or alternative service

The mutual duties of the employment contract are also suspended during military and alternative service.[112]

2.8 Termination of employment

2.8.1 Prerequisites

Employees benefit from special protection rules against dismissal if the following prerequisites are met:

- The company they are working for regularly employs more than five full-time employees (not counting vocational trainees and marginal part-time workers).
- The employee has completed a qualifying period of six months of work without interruption.[113]

2.8.2 Ordinary termination

An ordinary termination is a termination with prior notice. The notice must be in writing. The employment relationship is ended when the period of notice expires.[114]

Termination at the initiative of the employer is limited by law.

The statutory period of notice depends on the number of years the employee has been working for the same employer. The minimum periods are as follows:[115]

- 4 weeks
- 2 months if the employee has completed his fifth year
- 3 months if the employee has completed his eighth year
- 4 months if the employee has completed his tenth year
- 5 months if the employee has completed his twelfth year
- 6 months if the employee has completed his fifteenth year
- 7 months if the employee has completed histwentieth year

112 Section 1 ArbSchG.

113 Sections 1 paragraph 1 and 23 KSchG.

114 Section 622 BGB.

115 Years of service before the employee is 25 years old are not taken into consideration to calculate his entitlement to notice.

Collectiveagreements may specify longer or shorter periods of notice, whereas individual contracts of employment may only specify longer periods of notice.

2.8.3 Extraordinary termination

An extraordinary termination is a termination that is effective immediately without a period of notice.[116]

Termination at the initiative of the employer is limited by law. It is only possible if

- There is an important reason which makes it, in good faith, unacceptable to continue the employment relationship until the end of the notice period, or
- In the case of a fixed-term employment contract, onthe contractual date for its expiration.

A typical situation for an extraordinary termination is serious misconduct. In such cases, the extraordinary termination is only possible within two weeks of the moment when the notifying party learns about the facts that are decisive in terminating the employment relationship. In case of litigation, the same party will be required to prove the facts on which the extraordinary termination is based.

2.8.4 Works council participation

If the company has a works council, the employer is obliged to consult it before every case of dismissal. This duty is with the employer,even though the council's response is not binding on the employer. The works council has a period of three days in case of summary dismissal and one week in case of ordinary termination to agree or declare reservations in writing; otherwise agreement is presumed by law. Termination without proper hearing of the works council is void by law.[117]

2.8.5 Challenging the termination

A worker who intends to challenge the validity of histermination must file a submission before a labour court within a time limit of three weeks of the date hehad received hisnotice. If the court is not convinced that either the ordinary termination is socially justified, or the extraordinary dismissal is for important reasons, it may order the worker's reinstatement, with back pay, unless it feels

116 Section 626 BGB.

117 Jung, L. 2001.

that such a measure is impractical, in which case it may order the employer to pay compensation, normally equal to one month's pay per each year of service, with a maximum of 12 months, or 18 months when the worker is more than 55 years old and has 20 or more years of service.[118]

2.8.6 Social plan

If an entire group of workers is being laid off because there is no longer work for them,the employer – together with the works council – has to draw up a social plan. The social plan contains regulations about how to determine the termination payments for the employees.

2.8.7 Particular protection against termination of employment

The following groups of employees benefit from particular protection against dismissal:

- disabled workers
- pregnant women
- works council members

2.9 Strike and lockout

2.9.1 Strike

Industrial action can be carried out by employees as well as by employers.[119] It is not regulated by any Act but is ruled by case law, especially through decisions of the Federal Labour Court. Strikes of employees are generally recognized industrial actions.

There might be an all-out strike, which hits the whole branch of industry, or only selective strikes. Recent strikes have been organized as partial or selective strikes. They are quite effective if they are carried out in companies that have a negative impact on branches of industry if they do not work properly; e.g., strikes within the transportation sector can lead to massive breakdowns in the automotive

118 Jung, L. 2001.

119 For this section Jung, L. 2001.

industry when transportation of parts from key suppliers to vehicle manufacturers is interrupted.

A strike can be called exclusively by a trade union.

It can be used only as a last resort, when other means for reaching agreement have been exhausted.[120] Before calling a strike, an arbitration procedure must take place.[121] For such a procedure, a neutral senior person is appointed who is charged with conciliating the controversial demands.

If a trade union prepares for a strike, the following steps must be taken:

- strike ballot
- strike resolution is passed
- strike pickets have to be installed[122]
- it must be ensured that maintenance and emergency work is carried on during the strike

Strikes are prohibited if they:

- are directed against those collective agreements that are still in force
- are directed at objectives that cannot be part of a collective agreement[123]
- ignore the rules of a fair fight

Any illegal industrial action results in a liability to pay damages to the persons or enterprises affected. In case of an illegal strike, the employee may also face the risk of extraordinary dismissal.[124]

120 Principle of commensurability.

121 For the most part, trade unions and employers associations have voluntary agreed on the duty of taking part in an arbitration procedure before any industrial action, even though compulsory state arbitration does not exist.

122 The strike pickets must not prevent the work of those who are willing to work.

123 Prohibition on political strikes.

124 Extraordinary dismissal here means termination of employment without notice.

2.9.2 Lockout

Lockout means that an employerrefuses workers who are willing to work access to the factory. Lockouts are only permitted if they are used as a defence against partial and selective strikes.[125]

2.9.3 Consensus model

The numerous rights of employees for participation are often criticized. However trade unions point out that, due to the numerous employee participation rights, Germany sees fewer days of strike than other countries. That is cited as an advantage of the German model, which has its focus on consensual agreements between trade unions and employers' associations.

3. Codetermination in the Works Council

3.1 The German understanding of codetermination

Codetermination is the concept of employeesconsulting with management and participating in the decisions of private-sector companies. Codetermination bodies are:

- the works council
- the supervisory board

Codetermination in the works council takes place on three levels:

- establishment / plant level
- company / legal entity level
- corporate group level

Depending on the number of employees at the establishment or company, a works council can be constituted. Unless the company has more than 5 employees, it can't have a codetermination on any level.

125 According to Federal Labour Court rulings.

3.2 Functions of the works council

The functions of the works council can besummarized as shown in figure 1:[126]

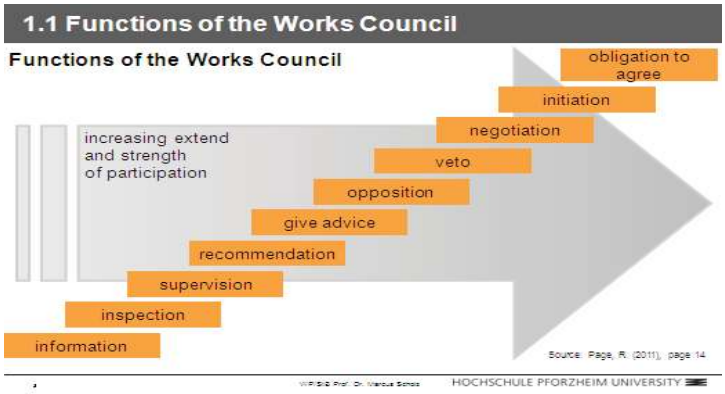

Figure 1: Functions of the Works Council

The functions of the works council can be described as follows:

Right to information

- The employer and the works council should meet together at least once a month to discuss current issues.[127]
- The employer must supply the works council with comprehensive information in good time to enable it to carry out its duties;[128] for example, information on:
    - Construction of works, working procedures and operations[129]
    - Manpower planning[130]
    - Recruitmentand transfers[131]

126 Source for the complete paragraph 3.2: Page, Rebecca, Co-determination in Germany,published in: Hans BöcklerStiftungWorking Paper 33, 2011, pages 14–17.

127 Section 74 paragraph 1 BetrVG.

128 Section 80 paragraph 2 BetrVG.

129 Section 90 paragraph 1 BetrVG.

130 Section 92 paragraph 1 BetrVG.

131 Section 99 paragraph 1 BetrVG.

Right to inspect documents

- The works council, if it so requests, must be given access at any time to the documentation that it may require to carry out its duties.
- The works council is also entitled to inspect the payroll of the establishment including the gross wages and salaries of the employees.

Right of supervision

The works council must ensure that the employer observes and complies with the following:

- Legal and equitable treatment of all employees[132]
- Acts and ordinances[133]
- Safety regulations
- Collective agreements
- Works agreements

Right to make recommendations

It is the duty of the works council to make recommendations to the employer for action benefiting the establishment and its staff.[134]For example:

- Smoking ban
- Canteen
- Information and communication
- Health promotion, etc.

Right to be consulted

- The works council must be consulted before every dismissal, and the employer should inform the works council of the reasons for the dismissal.[135]
- Any dismissal carried out without consulting the works council is

132 Section 75 paragraph 1 BetrVG.
133 Section 80 paragraph 1 BetrVG.
134 Section 80 paragraph 2 BetrVG.
135 Section 102 paragraph 1 BetrVG.

null and void.

- The employer must consult the works council before every new employment.[136]

Right to advise (for example, in manpower planning[137])

The employer shall inform the works council in full and in good time on:

- Present and future manpower needs
- Vocational training measures
- Resulting staff movements

The works council may make to the employer recommendations related to the introduction and implementation of manpower planning.

Right of opposition (for example, on dismissal)

- The works council must be consulted before every dismissal and informed about who is to be dismissed, why it should take place, and when. The employer must also inform the works council on the social matters related to the dismissal that have been taken into consideration.
- The works council may object to routine and exceptional dismissals if it believes that:
    - Insufficient regard for social aspects has beenshown
    - Selection guidelines have not been observed
    - Job transfer within the company is possible
    - Retraining or further training is possible
    - A contractual change, with the agreement of the employee, could be made[138]
- When objecting to a routine dismissal, the works council must lodge its written objection with the employer within one week. If the

136 Section 99 paragraph 1 BetrVG.
137 Section 92 BetrVG.
138 Section 102 paragraph 3 BetrVG.

dismissal is an exceptional one, then the works council has three days to inform the employer.

Right of veto (for example, in personnel measures)

- The employer must notify the works council of the intended measure, submit the appropriate documents, andseek the consent of the works council.
- The works council discusses the proposal and passes a resolution.
- The works council notifies the employer in writing within one week of its refusal or consent.If the works council fails to informthe employer, then the works council is seen to have consented to the proposal. The works council may only refuse consentin certain circumstances:
    - A breach in any Act, ordinance, safety regulation, or collective agreement would result
    - A non-observance of selection guidelines would result
    - The proposal would lead to the dismissal of or would be prejudicial to the employee concerned or employeesin the establishment,which is not warranted for operational or personal reasons
    - The vacancy has not been publicized within the establishment[139]
- The employer may apply to the Labour Court for a decision in lieu of the works council'sconsent.

Right to negotiate (for example, in social matters)

The works council has the right of codetermination in the following matters (insofar as they are not regulatedby legislation or collective agreement:

- Order and operation of the establishment and employee conduct
- Working time, breaks and distribution of working hours
- Temporary reductions or extensions to the regular working hours
- Time, place, and form of payment ofremuneration
- Principles of grant of leave arrangements and schedules

139 Section 99 paragraph 2 sentences 1 – 6 BetrVG.

- The introduction and use of technical devices to monitor the behaviour or performance of employees
- Protection of health and accident prevention
- The form, structure, and administration of company's social services
- The assignment and notice to vacate the company accommodation.
- The fixing of job and bonus rates and comparable performance related remuneration
- Principles relating to suggestion schemes[140]as an instrument to gather ideas for operational improvements from the workers

The employer is only entitled to impose binding rules on the above matters after an agreement withthe works council has been made. The employer and works council may, after negotiation, sign a works agreement, whichhas a direct and binding effect on all employees.

If no agreement can be reached, then the conciliation committee decides the matter. The decision ofthe conciliation committee has the same binding effect as a works agreement.

Right to initiate measures

- In establishments with more than 1,000 employees, the works council may request the drawing up of guidelineson the technical, personal, and social criteria to be applied by the employer in the planning of employeerecruitment, transfer, re-grading and dismissal measures.
- If no agreement can be reached on the guidelines or their content, then the conciliation committeeshall decide.

Obligation to agree (for example, regarding company changes)

- The employer must inform the works council of the following company changes:
    - The reduction of operations or the closure of the whole or of important departments of the establishment

140 Section 87 BetrVG.

- The transfer of the whole or of important departments
- The amalgamation with other establishments or divisions
- Important changes in the organization, purpose or plant
- The introduction of entirely new work methods and production processes[141]

- Works council and employer negotiate to reconcile their interests in connection with the proposed change, andthey draw up a Social Compensation Plan (financial and/or social benefits for employees disadvantaged bythe proposed change). A written agreement is made and signed by both parties.[142]
- If there is a failure to agree, the parties may agree to mediation by the Land Labour Office. If this failsor no application for mediation is made, the employer or works council may submit the case to the conciliationcommittee for a decision.
- If there is a failure to agree, the parties may agree to mediation by the Labour Office. If this failsor no application for mediation is made, the employer or works council may submit the case to the conciliationcommittee for a decision.

3.3 Works council on the establishment, company, and group level

3.3.1 Works council on the establishment level

- Establishments with fewer than five employees
- Establishments with fewer than five employees do not need to implement a works council. An establishment is the organizational unit in which the entrepreneur, either alone or together with his staff, pursues particular working objectives.
- Establishments with five or more employees
- Establishments with five or more employees need to implement a works

141 Section 111 paragraph 1 – 5 BetrVG.
142 Section 112 BetrVG.

councilon the initiative of the employees.[143] The members of the works council are elected for a period of four years.[144]

3.3.2 The company works council

If the company as a legal entity comprises more than one establishment, a central works council must be formed. The company works council is made up of the members of the establishment works councils. It deals with matters that not only affect one establishment, but several establishments, or affect the company as a whole.

3.3.3 Group works council

In a group of legal entities, the establishment works councils can decide to set up a works council at group level. The group works council deals with matters that are relevant for more than one subsidiary.

3.4 Size of the works council

The number of members of a works council is determined by the number of employees normally employed in the establishment, as shown in table 1 "Size of Works Council".

Size of the Works Council

Voting workers	Number of council members	Voting workers	Number of council members
< 5	0	1,001-1,500	15
5-20	1	1,501-2,000	17
21-50	3	2,001-5,000	17 + 2*
51-100	5	5,001-6,000	31
101-200	7	6,001-7,000	33
201-400	9	7,001-9,000	35
401-700	11	> 9,000	35 + 2**
701-1,000	13		

* +2 additional members for each 500 additional workers
** +2 additional members for each 3,000 additional workers

Source: Section 1 and section 9 BetrVG

Table 1: Size of Works Council

143 In practice, works councils are set up especially in medium-size and big enterprises, and much more rarely in small enterprises.

144 Section 21 BetrVG.

3.5 Occurrence of works councils

Not every establishmentin which employees have the chance to install a works council has aworks council. The installation of a works council happens with the initiative of the employees. As figure 2 "Percentage of establishments with a works council" shows, the percentage of establishments with an installed works council increases as the number of employees working inthe establishmentincreases.

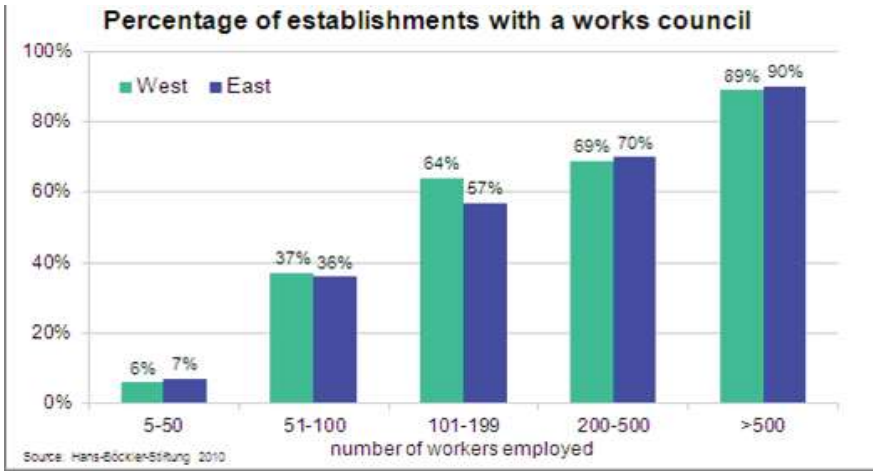

Figure 2: Percentage of establishments with a works council

4. Codetermination on the Managerial Level

4.1 Overview

In public companies, the management board is under the supervision of the supervisory board. The members of the supervisory board are elected by the shareholders at the general meeting. Depending on the size of the company, some members of the supervisory board are elected by the employees of the company. In these cases the employees are entitled to electfrom one-third to 50 % of the supervisory boardmembers

The duties of the supervisory board are as follows:

- Approving the appointment of the executive management board
- Monitoring the management board's management of current business operations
- Codetermining business operations requiring supervisory board approval

- Scrutinizing of annual accounts

Codetermination of employees on the supervisory board is laid down in three different laws:

- Third Part Codetermination Act
- Coal, iron, and steel codetermination law
- Law on codetermination

Depending on the industry and the number of employees of a company, the employees hold different percentages of the seats on the supervisory board, as shown in Table 2 "Percentage of Supervisory Board elected by the Workers".

Percentage of Supervisory Board elected by the Workers					
number of employees	< 500	500–1000	1000–2000		> 2000
industry	all industries		others	coal/iron/steel	others
percentage of seats that are elected by the employees	0%	33%	33%	50%	50%

Table 2: Percentage of Supervisory Board elected by the Workers

4.2 Small companies

In companies with a workforce below 500 employees, the employees are not entitled to elect any supervisory board member.

4.3 Medium-sized companies

In medium-sized companies with a workforce of 500 to 2,000 employees, the employees are entitled to elect one-third of the supervisory board members.[145] It is not obligatory for the employees to elect members of the trade union.

The supervisory board should have a minimum of three members.

145 Third Part Codetermination Act = Drittelbeteiligungsgesetz.

Composition of the supervisory board according to the Third Part Codetermination Act is as shown in Figure 3: "Supervisory Board of medium-sized companies":

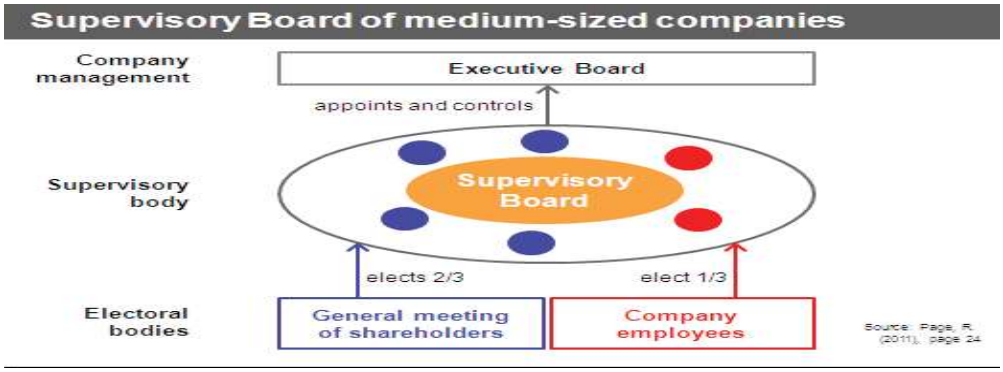

Figure 3: Supervisory Board of medium-sized companies

4.4 Companies in the coal, iron, and steel industry

In companies working in the coal, iron, and steel industries, employees are entitled to elect 50 % of the supervisory board members if the company employs more than 1,000 individuals.[146] The trade unions that are relevant for the company have the right to nominate candidates for 2 to 4 seats on the employees' side. The nominated trade union candidates have to be elected by the same rules as the other candidates from the employees' side.

Additionally there has to be appointed one "neutral" member of the supervisory board, who is neither a representative of the shareholders nor a representative of the employees.

In total, the supervisory board has a minimum of 11 and a maximum of 21 members. Composition of the supervisory board according to the coal, iron, and steel codetermination law is as shown in Figure 4: "Supervisory Board in the coal, iron and steel industry":

146 Coal, iron, and steel codetermination law = Montanmitbestimmungsgesetz.

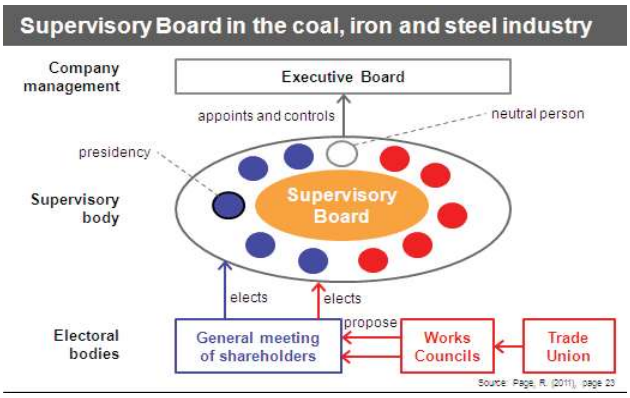

Figure 4: Supervisory Board in the coal, iron and steel industry

4.5 Big companies

In limited liability companies that are not part of the coal, iron, and steel industry and have more than 2,000 employees, employees are entitled to elect 50 % of the supervisory board members.[147] The trade unions that are relevant for the company have the right to nominate candidates for 2 to 3 seats on the employees' side. The nominated trade union candidates have to be elected by the same rules as the other candidates from the employees' side.

If the votes within the supervisory board are 50:50, the chairman of the supervisory board can decide to make his/her vote count twice to break the tie.

In total the supervisory board has a minimum of 12 and a maximum of 20 members.

Composition of the supervisory board according to the 1976 law on codetermination is as shown in figure 5 "Supervisory Board in big companies":

147 1976 Law on Codetermination = Mitbestimmungsgesetz 1976.

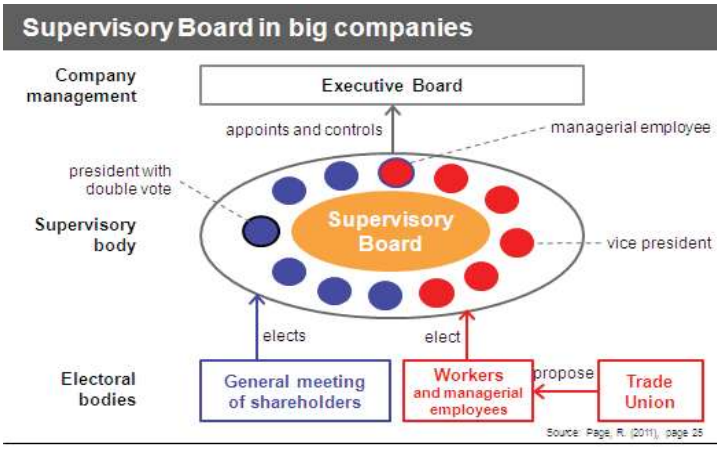

Figure 5: Supervisory Board in big companies

Recent developments

5.1 Immigration as a chance

2012 has been the second year for an increase in German population after eight years of declining population.[148] The main reason for the increase was immigration. Actually one of eight people living in Germany has been born in another country.[149]

Internal labour mobility within the EU increased in the context ofthe economic crisis. The links between economic developments, regulatory frameworks and migration patterns in different European countries have been the subject of several scientific studies. Recent publications resulting from such studies show that skills, socio-demographic characteristics, attitudes and labour market integration are very diverse and vary substantially between different sending and receiving countries.[150]

For Germany with its overaged population immigration of young talents is essential for sustaining economic wealth. And as it happens, the economic weakness of southern European states supports Germany's efforts to increase immigration.

148 Statistisches Bundesamt, press release 14.01.2013

149 Statistisches Bundesamt, press release 18.12.2012

150 Galgóczi, Béla / Leschke, Janine / Watt, Andrew: Skills Mismatch, Return and Policy Responses. Burlington, Farnham 2012

5.2 The Blue Card

The EU blue card is the European equivalent to the U.S. green card.[151]

This new entitlement to residence title was introduced in Germany in 2012 and is addressed to well-educated and skilled people in order to make Germany more attractive to them as a place to live and work.[152]

5.2.1 Eligible group of people

A citizen of a non-EU-country can apply for the EU blue card if both the following requirements are met:[153]

- He or she has a German or an accredited foreign or a university degree that corresponds to a German one.
- He or she has a working contract with a gross annual compensation of at least
    - o € 44.800 (€ 3.733 per month) or
    - o € 34.944 (€ 2.912 per month) if it is a contract in the so called shortage occupation (scientists, mathematics, engineers, doctors and IT-skilled workers)

5.2.2 Point of time to apply

The journey to Germany has to comply with the general entry rules. Therefore a citizen of a non-EU-country needs to apply for the EU blue card before his entry into Germany.[154]

5.2.3 Validity period

The EU blue card is limited to a firsttime validity of a maximum of four years. If the duration of the employment contract amounts to less than four years, the EU blue card is issued for the duration of the employment contract plus three months or is extended.[155]

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151 For detailed information refer to http://www.bluecard-eu.de/eu-blue-card-germany/

152 At the same time as the EU blue card got introduced Germany got the advantage of a new residence law which improves the legal conditions for an occupation admission of foreign students after the end of their study at a German university.

153 Section 19a paragraph 1 AufenthG (= Residence Act = Aufenthaltsgesetz)

154 The German representation embassy abroad is responsible in each case.

155 Section 19a paragraph 3 AufenthG

5.2.4 Permanent right of residence

Foreigners, who own the EU blue card, can apply for permanent residence after 33 months. If they have knowledge of German language on level B1, they can apply after 21 months (§ 19a, passage 6, law of residence).

After 33 months the owner of the EU blue card should get permission to settle in the country if the following requirements are met:

- he/she can prove knowledge of German language on level B1 and
- he/she had paid for the duration of these 33 months:
    - o either compulsory or volunteer contributions to the governmental social pension fund or
    - o premia to an insurance policy that carries the right to get similar benefits

5.2.5 Work permit for relatives

Relatives of the holders of EU blue card can work without a time of waiting and without limits in Germany.

The spouse is not required to show proof of knowledge of the German language. Even simple knowledge of German is not deemed necessary for the spouse.

5.3 The 2011 bargaining round

In contrast to many other European states, the economic situation in Germany in 2011 was very strong. Therefore trade unions were much more demanding in that year's negotiating round. Consequently the average agreed rise in pay was at 2.0 %, which is considerably above pay settlements in 2010. On the other hand, consumer price inflation was at 2.3 %.[156]Below the line the average agreed rise in pay was not sufficient to offset fully the price inflation.

There were a number of agreed innovations during the year affecting employer obligations to take on trainees on completion of vocational training and on working time arrangements. Binding sectoral minimum wages, as provided for under

156 Almost twice as high as in 2010.

the mechanisms of the Posted Workers' Act, were raised and the scope of such provisions extended to more sectors.[157]

5.4 Decrease of bargaining coverage

The number of employees covered by collective agreements decreased continuouslybetween 1996 and 2008 as shown in figure 6 "Bargaining coverage 1996 – 2010".[158]

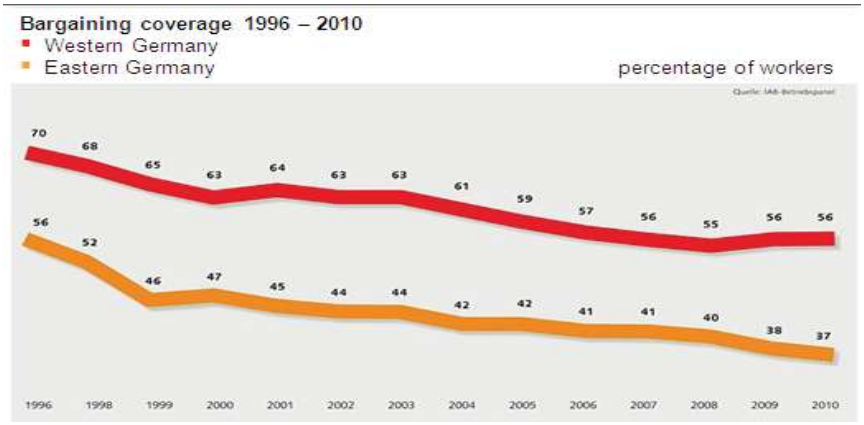

Figure 6: Bargaining coverage 1996 – 2010

However there is a slight stabilization in the western part of Germany since 2009. Recent studies confirm that bargaining coverage continues to decline.[159]

5.5 Erosion of collective bargaining

5.5.1 Indication

In the last two decades, the German system of collective bargaining has faced a process of creeping erosion in two ways:

- The bargaining coverage has declined steadily.[160]

157 Bispinck, Reinhard and the WSI-Tarifarchiv: Annual collective bargaining report 2011, issued by Wirtschafts- und SozialwissenschaftlichesInstitut in der Hans-Böckler-Stiftung (WSI) March 2012.

158 Source: Hans Böckler Foundation's Institute for Economic and Social Research (WSI) with reference to IAB-Betriebspanel; http://www.boeckler.de/32214_38631.htm; retrieved 27 Jan 2013

159 Addison, John T. / Teixeira, Paulino / Evers, Katalin /Bellmann, Lutz (2012): Is the erosion thesis overblown? * evidence from the orientation of uncovered employers. (IZA discussion paper, 6658), Bonn, page 15; http://doku.iab.de/ externe/2012/k120626301.pdf; retrieved 27 Jan 2013

160 For further details refer to section 5.4

- The bargaining system is decentralizing, i.e. it is changing from sector-level agreements to a system of multi-employer bargaining.

Research results indicate that unions in many other European countries do not have these two problems to the same extent as German unions.[161]Other European countries were able to continue with a rather stable collective bargaining system and a relatively high bargaining coverage.

5.5.2 Sources of trade unions power

To understand the erosion of collective bargaining in Germany, the sources of trade union power can be systemized as shown in Figure 7: "Sources of trade unions power":

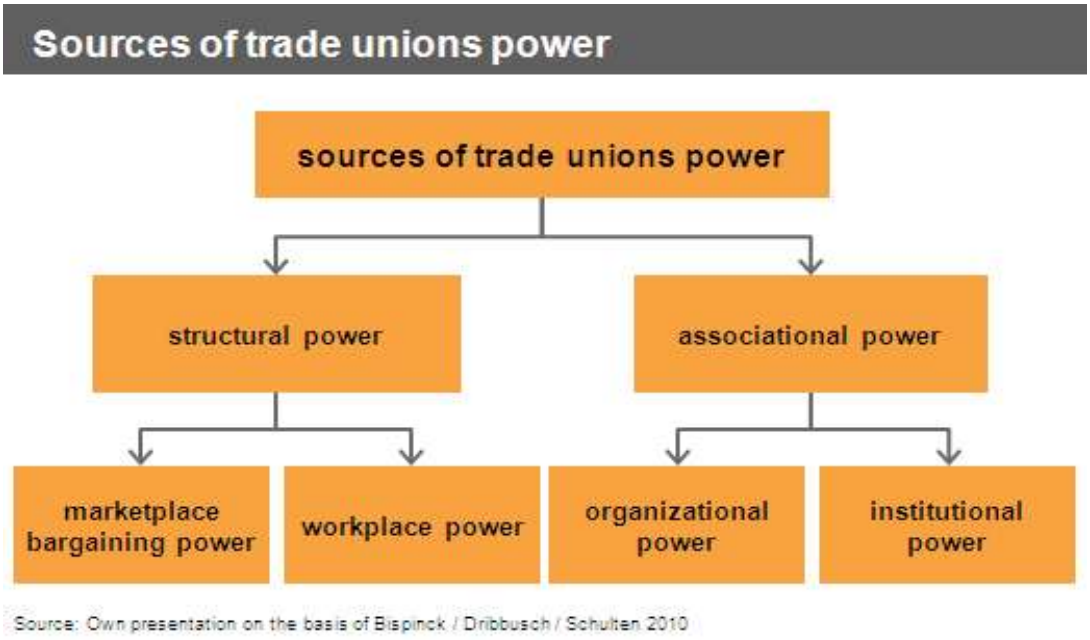

Figure 7: Sources of trade unions power

- Structural power depends on the workers' location in the economic system. It is made up of two components:
    - o Marketplace bargaining power is defined by the workers' position in the labour market, in other words,whether it is a buyer's or a seller's market.

161 Bispinck, Reinhard / Dribbusch, Heiner / Schulten, Thorsten: German Collective Bargaining in a European Perspective, Continuous Erosion or Re-Stabilisation of Multi-Employer Agreements?; paper presented at the 9th European Congress of the International Industrial Relations Association (IIRA) on 28 June – 1 July 2010 in Copenhagen, published in: WSI-Discussion Paper No. 171,2010.

- Workplace power is derived from the location of the workers in the production process.

- Associational power is affected by the ability of the union to negotiate on behalf of the workers. It comprises two elements:
  - Organizational power which is derived from a high percentage of workers being organized in a union.
  - Institutional power which results from the position of the union within institutional arrangements, i.e. whether collective agreements negotiated by a union cover a complete branch and consequently a large share of workers or only single companies.

5.5.3 Reasons for the erosion of trade unions power

The erosion of collective bargaining in Germany can be traced back to three elements, an erosion of bargaining power, an erosion of organizational power and an erosion of institutional power.[162]

The erosion of bargaining power results from a weakening structural power, which is affected by two developments:

- In 1995 unemployment rate reached a peak at 13.0 %. Nevertheless companies continued to develop plans for shifting activities to low-wage countries. According to a representative survey, during those years more than a third of German workers were afraid of losing their jobs and even more than 75 % were ready to accept a wage freeze for two years in order to keep their jobs.[163]
- Workforce is no longer a homogeneous group but is fragmented by:
  - Fixed term contracts[164]
  - Temporary employment via work agencies[165]

162 Bispinck, R. / Dribbusch, H. / Schulten, T., 2010, pages 2-13.

163 Ipsos 2004: Globalization of labour, Summary of a survey carried out in July 2004, downloadable at http://www.ipsos.de/downloads/news/FinancialTimes/Ipsos-Globalisierung-der-Arbeitswelt-Juli04.pdf

164 For further details please refer to section 1.6.1.

165 For further details please refer to section 1.6.4.

- Marginal part-time jobs, called "mini-jobs"[166]

German unions seem to have significant problems in adapting to this changed environment.

The erosion of organizational power results from a decline in union membership.

The erosion of institutional power results from:

- Decline of collective bargaining coverage.[167]
- Decline in the extension of collective agreements.[168]
- Decentralization and fragmentation of collective bargaining[169]

5.6 Advantages and disadvantages of German labour costs

Labour cost and unit labour cost are important factors of competitiveness for a country's economy.

Since the start of the monetary union, labour costs in the private sector have increased considerably, but moreslowly in Germany than in the rest of the European Monetary Union countries. The average annual growth rate of labour costs per workinghour during 2000 – 2010 was 1.7 % in Germany, while the European Union had an average annual growth rate of 3.3 %. This trend even intensifiedin 2010, when labour costs per working hour increased in Germany by as littleas 0.6 %, and in the European Union by 1.6 %.[170]

166 Mini-jobs are jobs paid a monthly maximum of € 450, which is the threshold above which jobs are liable to social security taxes.

167 The percentage of employees covered by a branch-level collective agreement decreased more than 10 % in both parts of Germany within the past ten years.In 1999, 65% of employees in Western Germany and 46% of those in Eastern Germany were covered by a branch-level collective agreement. See Liliane Jung (2001) with reference to IAB-Betriebspanel.

168 The Collective Agreement Act allows for an extension of collective agreements to all companies within a specific sector. Therefore the agreement must already cover 50 % of the employees in the respective sector, the extension must be of public interest and a majority of the Collective Bargaining Committee at the Ministry of Labour has to confirm the extension. Currently only some 1.5 % of the original agreements are extended. Bispinck, R. / Dribbusch, H. / Schulten, T., 2010, pages 4-5.

169 Due to opening clauses more and more companies find individual agreements negotiated with their works council. For further details please refer to section 1.5.

170 Niechoj, Torsten/ Stein, Ulrike / Stephan, Sabine /Zwiener, Rudolf: German labour costs: A source of instability in the euro area, Analysis of Eurostat data for 2010. Published in : IMK Report, No. 68e, Dezember 2011. . Retrieved 12 Jan 2013.

As labour costs are a major cost factor in the private sector, and labour costs have increased faster outside Germany, German companies improved their price competiveness compared to those from other European countries.

The trends in unit labour costs during 2000 – 2010 have been different for 3 different groups of countries. The trends are shown in Table3: "Increase of unit labour cost in selected EU countries compared to increase of unit labour cost in the EU average":

Increase of unit labour cost in selected EU countries compared to increase of unit labour cost in the EU average

	2000 – 2010 trend	countries
1	increase close or slightly above	Belgium, Finland, France, Netherlands
2	increase considerably above	Greece, Ireland, Italy, Portugal, Spain
3	Increase clearly below	Germany, United Kingdom

Source: Own presentation on the basis of Niechoj / Stein / Stephan / Zwiener 2011

Table 3: Increase of unit labour cost in selected EU countries compared to increase of unit labour cost in the EU average

The below average growth rate in Germany for both labour costs per working hour and unit labour cost leads to competitive advantages for German enterprises compared to enterprises in other European countries.

The below average growth rates in other European countries lead to higher individual income and consequently to higher demand for goods and services.

The combination of both effects leads to higher exports in Germany and higher imports in other European countries. While the German economy generated current account surpluses, other EU member state economies generated current account deficits. The consequence is massive bilateral current account imbalances. Because of the common currency it is not possible to compensate the imbalances by currency appreciations or depreciations. According to economists the imbalances can only

be compensated by drastic adjustments in the real economy.[171] In general, there are three possible ways to do so:

- Cutting labour cost in several European countries
- Increasing labour cost in Germany
- Transfer union

From a German perspective these 3 options can be assessed as follows:

- Cutting labour cost is connected with an extremely high political price for the political parties in charge. In most cases they will be voted out in the next elections. Countries that are not able to decrease labour costs might be pushed by the European Union, the European Central Bank and the International Monetary Fund todo so.
- Increasing labour cost in Germany is not really popular as many Germans like the idea of having an insurance against everything. Surrendering wage increases might be seen as an insurance premium for enduring the next economic downturn without losing one's job.
- Even if the idea of a transfer union is very unpopular in Germany, one has to take into account that Germans are already used to a transfer union within Germany called "Länderfinanzausgleich".[172] Against this background the option of the European Union becoming a transfer union can't be excluded.

5.7 Undocumented work in private households in Germany

The demand for domestic services is increasing. Domestic services especially comprise support to:

- housekeeping,
- childcare and
- care of the elderly.

171 Niechoj, T. / Stein, U. / Stephan, S. / Zwiener, R. (2011), page 15.

172 This is a system of horizontal fiscal equalization by cash payments from states with high tax income to other states with low tax income within Germany.

These services have been rendered traditionally by women (i.e. by the mother and wife) without remuneration. As the number of women taking paid employment increases, the demand for people carrying out domestic services also rises.

The demand for domestic services in Germanyis met mainly by undocumented work. This is supposed to be the result of legal and institutional regulations:

- Additional income of welfare recipients leads to significant deductions of welfare. Therefore the motivation of welfare recipients to accept regular work is low.
- The administrative efforts to meet the regulations are out of proportion compared to the paid salary. Regular work requires a lot of paperwork, which normally can't be managed without professional advice[173] e.g.
    - To comply with anti-discrimination rules when hiring the worker,
    - To register the worker,
    - To pay and declare his/her monthly social security taxes,
    - To pay and declare his/her income taxes,
    - To calculate the effects of holidays or other leave on social security taxes and income taxes and
    - To comply with labour law rules when dismissing the worker.
- Foreigners from a non-EU member state eventually have - due to restrictive immigration legislation - few possibilities to take up legal work in Germany.

Some commentators think that high charges on low wage incomes arethe main reason for welfare recipients and low-paid workers' refusingregular work.[174] However this assumption is not supported when one takes a closer look at effective tax rates. Low-paid workers pay no income tax up to an annual income of € 8,004. Additional income is charged with a progressive tax rate starting at 14 %.[175]It is

173 Of a Certified Tax Advisor and eventually a Lawyer.

174 Gottschall, Karin / Schwarzkopf, Manuela: Legal and institutional incentives for undocumented work in private households in Germany, Stocktaking and problem-solving approaches. Undocumented work in private households in Germany;in: Hans BöcklerStiftung: Working Paper No. 238; 2011.

175 The highest tax rate with an effective tax rate of 51.525 % (45 % income tax + 5.5 % solidarity surcharge + 9 % church tax) starts at an annual income of € 250,400. The candidate for chancellor of the social democratic party (SPD) for the 2013 election announced to rise the highest income tax rate to 49 % which would lead to an effective tax rate of 56.105 % (49 % income tax + 5,5 % solidarity surcharge + 9 % church tax).

not proven that this 14 % supports undocumented work and hinders regular work. Daily experience indicates that families would be happy to pay an additional 14 % for the domestic services instead of taking the risk of undocumented work but are afraid of doing the paperwork.

5.8 The German employment miracle

Employment rates in Germany are better than ever since the German reunification. While unemployment was one of the biggest issues in several election campaigns during the past years, the situation on the job market appears to be quite relaxed nowadays. In other European countries which have even been hit less hard by the 2009/2010 economic downturn, unemployment rates have increased significantly.

This development is referred to as the 'German employment miracle'. Despite the reputation of the German labour law being rather inflexible, the employment miracle is said to be a result of the high internal flexibility of the German labour market. Due to this flexibility it was possible to reduce average working time in the downturn significantly instead of dismissing employees. This is said to have saved some 3.1 million jobs.[176]

The main factors allowing a cyclical reduction of average working time are:

- Working time accounts enabling employees to work more than they are supposed to do during periods of economic strength, and to work less than they are supposed to do during a recession.
- Short-time work[177]
- Labour-hoarding by employers, i.e. not to dismiss redundant employees during an economic downturn to ensure that skilled and experienced employees are available at the economic upturn.

176 Herzog-Stein, Alexander / Lindner, Fabian / Sturn, Simon / van Treeck, Till: From a source of weakness to a tower of strength?, The changing German labour market. in: IMK Report, Nr. 56e, November 2010. Düsseldorf: 2010, ISSN: 1861-3683. 17 Seiten http://www.boeckler.de/5254.htm?produkt=HBS-005003&chunk=7&jahr=

177 For a description of the concept of short-time work please refer to section 2.7.3.

However it has to be mentioned that the assumed flexibility of the German labour market was funded by the federal government by granting compensation for short-time work. Without providing liquidity to that market, the short-time working schemes would not have been that successful.

Another very important factor for the employment miracle is wage moderation in Germany since introduction of the Euro even as other European countries continued to increase salaries more or less in the same way as they did during the regime of their old currency.[178] As a consequence, unit labour costs in Germany increased slower than in other European countries. Unit labour costs in more and more European countries even exceeded unit labour costs in Germany. The gap between lower unit labour costs in Germany and higher unit labour costs in other European countries widened more and more from year to year. This concurrent development obviously boosted the competiveness of German companies and made it easier for them to stay their course during the global crisis.[179]

5.9 Women in supervisory boards

Women are rare in both executive management and supervisory boards as Figure 8: "Percentage of women and men in the boards of the 160 biggest public listed companies in Germany" shows.

178 By trend, before implementation of the Euro, inflation used to be higher in the southern European countries compared to the northern European countries. In order to setting-off higher inflation rates, southern European countries showed a tendency to relatively high rises in pay. When the Euro was implemented the practice to agree relatively high rises in pay did not completely stop from over night.

179 Herzog-Stein / Lindner / Sturn / van Treeck negate the importance of wage moderation. This is no surprise as their publication was issued by the Boeckler-Stiftung, which is a subsidiary of the Confederation of German Trade Unions (DeutscherGewerkschaftsbund) and therefore not under suspicion to claim for wage moderation.

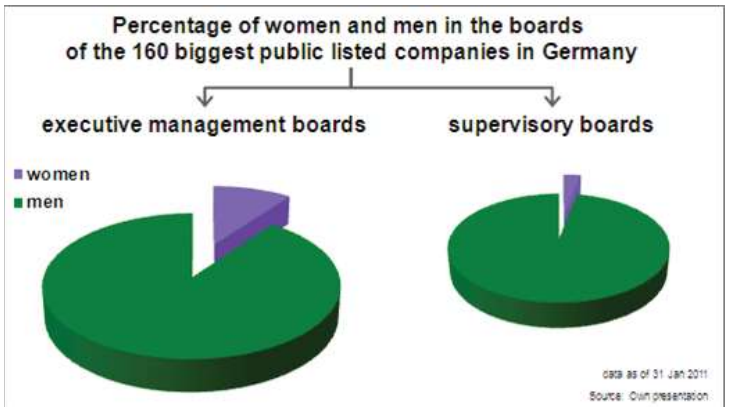

Figure 8: Percentage of women and men in the boards of the 160 biggest public listed companies in Germany

The percentage of women in the supervisory boards of the 160 biggest public listed companies in Germany (DAX, M-DAX, S-DAX, Tec-DAX) is in the region of 10 %. The situation is even more extreme in executive management boards where women hold only 3.1 % of the seats.[180]

Theaim of all political parties is to increase the percentage of women in executive management and in supervisory boards. However political parties also have different preferences as to the way to get to a broader participation of women. Some call for a legal binding federal Act. Others count on voluntary commitments on the part of the corporations.

* * *

180 WSI Überblick: Frauen in Aufsichtsräten und Vorständen; http://www.boeckler.de/wsi-gdp_fuehrungspositionen_01.pdf.Retrieved 27 Jan 2013