THE GERMAN VIEWPOINT

by Eckhard Voss

Germany is the main receiving country of posted workers in the EU and the issue of posting has been a prominent issue of public debates about wage equality and minimum wage setting. This article describes the evolution of minimum wage setting in Germany by collective agreements at sectoral level declared generally binding under the Posted Workers Act. Since the 1990s the scope in terms of sectors covered has been extended consecutively and finally resulted in the introduction of the statutory minimum wage in 2015. However, evidence from various sectors shows that formal coverage does not also mean that posted workers actually receive the minimum wages as agreed in sectoral collective agreements or as set in the context of the statutory minimum wage.

La Germania è il Paese UE con il maggior numero di lavoratori distaccati, e la questione del distacco dei lavoratori è stata spesso al centro dei dibatti pubblici sull'uguaglianza salariale e la fissazione del salario minimo. Il presente articolo descrive l'evoluzione della fissazione del salario minimo in Germania ad opera dei contratti collettivi di settore cui viene riconosciuta efficacia vincolante *erga omnes* a termini della legge sui lavoratori distaccati. A partire dagli anni Novanta, si è assistito a una costante crescita nel numero di settori coperti da contratti collettivi, che ha portato nel 2015 all'introduzione del salario minimo legale. Tuttavia, come emerge in diversi settori, tale copertura formale non sempre implica che i lavoratori distaccati ricevano effettivamente i salari minimi negoziati negli accordi collettivi di settore o fissati nell'ambito del salario minimo legale.

1. Introduction

Germany is renowned for the stability of its wage setting system which is based on collective bargaining taking place at sector/industry level, leaving an increasing room for flexibility at regional and local/company level. The principles of wage bargaining are based on the provisions of the Collective Bargaining Act of 1949. There have been comparatively few changes since then apart from introducing elements of decentralised flexibility within the existing system. However, also against the increase of posting (mainly in the construction sector) during the 1990s, an increasing number of economic sectors have seen collective agreements on minimum wages that have been declared generally binding by government decree. The key legal tool for this has been the Posted Workers Act (PWA) that exists since

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1996. Quite consequently and also against the background of increased problems of low wage developments and an erosion of collective bargaining coverage in many service as well as manufacturing/craft sectors, there has been a debate on a statutory minimum wage that finally came into force at the beginning of January 2015.

There is a strong interaction between minimum wage setting and posting of workers. This is not only because the German Posted Workers Act has been the umbrella regulation of generally binding minimum age agreements but also because illicit and fraudulent practices by making use of "creative" and often criminal practices of remunerating posted workers as well as poor working conditions has gained public attention and media coverage, e.g. in sectors such as meat processing, the construction sector or in freight road transport.

A further important element in regard to the relevance of the topic of wage setting for posted workers is the fact that Germany is by far the main receiving (as well as sending) country of posted workers in the EU and the strong increase in the number of posted workers from central and eastern Europe during the last decade[1].

2. Wage setting mechanisms in Germany

In the 1950s Germany developed a comprehensive system of multi-employer bargaining at sectoral level. Collective agreements between trade unions and employers' associations covered almost all sectors of the German economy. For more than four decades, German collective bargaining covered between 80 and 90% of all German workers. Against that background, the state played only a minor role in the regulation of wages in Germany. Moreover, Germany before 2015 never had a statutory minimum wage, since the notion was seen as being in contradiction to the principle of "collective bargaining autonomy". As a result, minimum wages in Germany were exclusively determined by collective agreements and affected only those workers covered by such agreements.

From the mid-1990s onwards, however, German collective bargaining entered a stage of profound change which led to the increasing fragmentation and partial erosion of collective bargaining (Haipeter, 2013). The most obvious expression of these changes has been the continuous decline in bargaining coverage: for the whole of Germany, overall bargaining coverage in 2013 was estimated to be around 58%[2].

The decreasing coverage of collective agreements at sector level as well as labour law reforms gave way to a growing wage and income inequality and a strong increase in the incidence of low wages. Between 1995 and 2012 the percentage of low-wage workers, defined as those earning at or less than two-thirds of the median hourly wage, increased from 18.8% to 24.3%. In absolute terms, the number of low-wage workers in Germany between 1995 and 2012 grew from 5.9 to 8.4 million, or by 48%. Today, Germany has one of the largest shares of low-wage workers across Europe (Kalina, Weinkopf, 2014; Schulten, 2014).

This trend has resulted in minimum wage setting by collective agreements that were declared generally binding for whole sectors via government decree according to the PWA, which was transposed into German law in 1996. Minimum wage setting via the PWA was

[1] See European Commission (2012). It should be noted that national sources indicate much higher figures than the EU study, see Wagner, Hassel (2015).

[2] See Ellgut, Kohaut (2014). Other sources had shown the somewhat lower coverage of only 55% as early as 2010, see Statistisches Bundesamt (2013).

originally limited to the construction sector only with the clear objective of limiting social and wage dumping and of establishing an environment for fair competition in this sector.

Therefore, the law required foreign construction companies to pay their posted workers according to the minimum wage level that has been agreed in the collective agreement in the construction sector and that has been declared generally binding according to the German Collective Agreements Act (hereafter TVG). Originally, only this type of collective agreements that were signed by both signatory parties was the possible source of declaring an agreement generally binding.

An important change took place in 1998 when the principle was established that a collective agreement was no longer declared generally binding on the basis of the TVG but by a specific public order according to the PWA. In the context of this change also the restriction was lifted that the minimum wage declared generally binding only could include the lowest wage group defined in a collective agreement. However, still the interpretation of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 ("PWA") concerning the posting of workers in the framework of the provision of services was a narrow one – until today, only the terms and conditions of employment defined in Art. 5 of the German PWA are applicable.

Since 1998 there is also the possibility of declaring an agreement generally binding by an alternative way and outside of the TVG, i.e. by statutory regulation through the Ministry of Labour and Social Affairs. Furthermore, the amendment of 1998 stipulated that it is no longer necessary that at least 50% of the employees are covered by the scope of the agreement in order to be declared generally binding.

While the PWA until 2007 was limited to the construction sector only, it was extended for the first time in 2007 when the commercial cleaning sector was included, reflecting also in this sector a growing social/wage dumping by foreign companies.

A further extension of the sectors covered by the PWA happened in the reform of the PWA in 2009 when its scope was extended to six further sectors, in which minimum pay conditions could be set by statutory regulation regarding the general binding nature of a collective agreement.

In 2009, also for the care sector the possibility of regulating minimum working and pay conditions within the scope of the PWA was established. However, against the peculiarity of labour relations (a strong role of religious institutions in the sector, which have not concluded any collective agreements) and the significant internal diversity concerning pay conditions within the sector (also in regard to regional and local differences), a specific and tailor-made solution was established (Art. 12 PWA 2009) and a Care Commission was established that is composed of religious as well as other employers' organisations, trade unions and employee representatives from the church-related care institutions on an equal basis. Based on suggestions and applications from either party, the Commission can take a decision on minimum working and pay conditions, which can then be declared generally binding by statutory regulation by the Ministry of Labour and Social Affairs.

After the sectoral scope of the PWA has been subsequently extended since the initial legislation, the amendment of the collective bargaining act in 2014 finally extended the scope to all sectors. However, as stated in the interview with the Ministry of Labour and Social Affairs, only nation-wide collective agreements on minimum wages that are declared generally binding fall under the scope of the PWA.

The scope of the PWA was then significantly opened for further sectors by legal amendments until 2014 when the final step was taken to establish the general possibility

for all sectors to negotiate and conclude collective agreements at sector level that then would be declared generally binding for all employees within its scope. In the end there were more than a dozen of sectors where specific collective agreements on minimum pay rates and conditions were in place in 2014. Quite consequently, the next step was the introduction of a general statutory minimum wage for all employees in 2015.

The increasing role of minimum wage agreements via the PWA has to be seen against changes within the German labour market as well as the collective bargaining system that resulted in increased pressure on wages[3] and a growing low wage sector. The PWA provided for a relatively easy way of regulating working conditions in those sectors that are characterized by a strong experience of social dumping and wage competition by foreign companies as well as employees. In contrast, the Minimum Wage Act 2015 (MiLoG) not only provided for a further extension of the scope of minimum wage – now the whole labour market – but is also a reflection of the situation in those sectors that have faced increased internal competition on wages. At the same time, due to low organization rates both in unions as well as with employers, or a highly decentralised industrial relations environment, concluding sector-wide agreements that qualify for a national extension was very difficult or even not possible.

Thus, as today there are two basic systems of setting minimum wages in Germany: firstly, wage setting according to the MiLoG, which is statutory binding for all employees; and secondly, minimum wages in specific sectors, which are based on collective agreements and are then declared generally binding according to the PWA. There is a third case of minimum wage setting that is related to public procurement in most of the 16 federal states of Germany, which is described briefly hereafter.

Considering the interaction of the different minimum wage setting mechanisms that are in place in Germany, the legal regulation is based on certain rules within the overall norm of the favourability principle. According to the favourability principle, deviation from the norms set by collective bargaining is only possible if either it favours the employee or the collective agreement includes an opening/deviation clause (Articles 4/3) TVG.

Also in Article 1(3) MiLoG it is regulated that collective agreements according to the TVG, PWA or the Act on Temporary Employment Business (AÜG) are regarded as the superior source for norm setting, if they benefit the individual employee more than the MiLoG provisions. In contrast, the minimum wage takes priority over collective agreement provisions that conflict with the minimum wage and are less favourable for workers.

Statutory minimum wage: since January 2015, according to the MiLoG, there is a gross hourly wage of € 8.50 (Article 1 (2) MiLoG) which equals a gross wage of around € 1,400. This amount has been the result of a political negotiation process that took into account different considerations, e.g. average incomes and salaries/wages. Also minimum wage levels in other EU countries were taken into account.

The statutory or general minimum wage regulation is still in the process of implementation and has been also the case of a number of law cases, for example in regard to the exact calculation and components[4]. It should be noted here also that wages of less than € 8.50 per

[3] Due to growing competition in the global context as well as against the background of increasing unemployment, sectoral agreements from the mid-1990s increasingly included opening or "hardship clauses" whereby companies got the temporary possibility to undermine sectoral standards in exchange for the safeguarding of jobs. By the mid-2000s, almost all major industry-wide agreements included opening clauses which gave far-reaching opportunities for deviations at company level. See, for example, Hassel (2014).

[4] See for example the still pending judgement of the labour court of Düsseldorf of 20 April 2015 (Akz: 5 Ca

hour will be allowed until 31 December 2016 in situations when this has been provided for in a corresponding collective agreement between representative parties and has been made binding by means of an ordinance that is based on the PWA or the AÜG for all employers based in Germany or abroad who fall within the scope of the collective agreement, and for their employees. However, starting from 1 January 2017, the minimum wage will apply to all sectors. Effective from 1 January 2018, the general statutory minimum wage will be adjusted following recommendations from the Minimum Wage Commission and a public order of the German government, applying without restrictions.

Sector-level minimum wage agreements: as of July 2015 there are 14 sectors[5] where collective bargaining agreements on minimum wage levels are in place, that fall within the scope of the PWA. It should be noted that there are sectors (hairdressing, agriculture, forestry and horticulture and temporary agency work) where sectoral minimum wages are below the statutory minimum wage level of € 8.50 for a transition period that may last until 2017. However, in all other sectors the minimum wages are above the statutory level. The highest minimum wages are paid in the construction sector with € 13.35 in further training services in Western Germany and € 12.50 in Eastern Germany (figures as of 1 July 2015). This division between Western and Eastern Germany still characterizes a number of collective agreements. Furthermore, in some sectors minimum wages differ between skilled and unskilled workers. This is the case in the construction sector, which has three different minimum wage levels: skilled workers in Western Germany have the right to receive a minimum wage of € 14.20 whereas the rate for unskilled workers is € 11.20. In Eastern Germany there is a uniform minimum wage rate of € 10.75 regardless of the skill level.

For a collective agreement to be declared generally binding, there is a specific procedure to follow, which is laid down in Article 5 of the TVG: after the signatory parties of an agreement have submitted an application, the bipartite Collective Bargaining Committee (*Tarifausschuss*)[6] of the peak level social partners' organisations (DGB and BDA) at federal and central state level have to mutually agree on it before the agreement can be declared generally binding by the Ministry of Labour and Social Affairs. This also means that either social partner group would be able to veto such a decision.

Furthermore, there are certain qualitative criteria for a collective agreement to be declared generally binding: until 2014, the main criterion was that the collective agreement as such/without declaration of being generally binding would cover employers whose enterprises employ at least 50% of the workforce of the agreement's scope. This has changed significantly due to a legal reform in 2014, the "Act for Promoting Collective Bargaining Autonomy" (*Tarifautonomiestärkungsgesetz*). The reform abolished the previous threshold of 50% of workers covered and introduced the criteria that an agreement has to be in the "public interest" as the major criteria for an extension. According to § 5 TVG, the public interest is defined in case one of the following situations occurs:

– the collective agreement has a predominant relevance for the formation of the working conditions of those companies and employees that fall within its scope; or

1675/15) which is about the question whether the performance bonus (*Leistungsbonus*) could be included in the calculation or not.

[5] These are: further education services, painting and decorative trade, the construction sector, scaffolding erection, roofing trade, industrial cleaning, electrician trade, care provision, laundry services in the commercial customer business, hairdressing, agriculture, forestry, horticulture, textile and clothing as well as temporary agency employment.

[6] It should be noted here that the role of the Collective Bargaining Committee is not to negotiate or conclude collective agreements. The function is to deliver a suggestion of the two cross-sectoral social partners on declaring an already existing collective agreement generally binding by public order.

– there is a need to guarantee certain collectively agreed standards by an extension in order to avoid undesirable economic development.

The legal reform of 2014 also brought another significant change: collective agreements that are declared generally binding on the basis of the TVG since the legal reform of 2014 are only applicable for companies that post workers to Germany if their scope is the main construction sector and related activities (*Bauhaupt- und Nebengewerbe*). In all other sectors, the setting of a minimum wage is only possible by public order according to the PWA.

It should be noted here that also under the new regulation of extending a collective agreement, there is the need to agree such an extension with the social partners' organisations in the Collective Bargaining Committee, either at national level, or – in case of regional agreements – at the level of federal states.

Minimum wage regulation at the level of federal states: in 14 out of the 16 German federal states, there are regulations of minimum wage levels and certain social criteria in place that are relevant in the context of public procurement. As to sectoral coverage, most federal states have adopted a regulation that covers all sectors that are covered by the PWA. Furthermore, in most states public procurement in the public transport sector is linked to the respect of the most representative collective agreement. And finally, 12 federal states have established a minimum wage in the context of public procurement that in most cases reflects the general minimum wage level of € 8.50 – but in some states is slightly higher[7].

As to the public procurement clauses, European Court of Justice (ECJ) judgments have played an important role. Apart from the Rüffert court rule (ECJ C-346/06)[8], also a more recent example illustrates that the ECJ tends to regard guaranteeing the free competition within a common market of service providers as very important. In the C-549/13 case, the ECJ in September 2014 took a decision against the public procurement legislation in the City of Dortmund in North Rhine-Westphalia. This legislation stipulated a binding collective bargaining regulation in public procurement that included a minimum wage of at least € 8.62 per hour that must be paid by any tenderer and subcontractor. In this case, the City of Dortmund had awarded a contract to the Federal Printing Establishment (*Bundesdruckerei*) that subcontracted the tasks to a Polish business operator in Poland. Under the federal states' regulation in North Rhine-Westphalia, the Federal Printing Establishment was obliged to pay the minimum wage. The ECJ ruled that this legal requirement prevents subcontractors established in other member states from deriving a competitive advantage from differences in the respective rates of pay. It ruled that NRW goes beyond what is necessary to ensure that the objective of employee protection is met.

3. Wage setting mechanism interaction with posted workers

Already the evolution of minimum wage setting since 1996 illustrates the strong link to the phenomenon of posting of workers and in particular the legal instrument to set generally binding minimum wage levels for all workers in a given sector.

[7] See: http://www.boeckler.de/pdf/wsi_ta_tariftreue_uebersicht_stand_2015_03.pdf.

[8] Rechtssache C-346/06 Dirk Rüffert als Insolvenzverwalter über das Vermögen der Objekt und Bauregie GmbH & Co. KG gegen Land Niedersachsen. http://curia.europa.eu/juris/document/document.jsf?text=&docid=68391&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1. See also: Hänlein 2008.

In the following section, three aspects of wage setting of posted workers are discussed briefly:
– the components of the minimum rates of pay that posted workers receive, highlighting in particular those elements that are regarded as critical;
– the question of wage gaps between local and posted workers;
– finally, suggestions and reform proposals to improve the regulation of wage setting of posted workers.

The issue of posting has been quite intensively addressed by academic literature in Germany, both from a labour law perspective as well as from the perspective of industrial relations and labour sociology[9].

3.1. Components of the minimum rates pay of posted workers

As to the constituent elements of the minimum rates of pay, the situation in Germany is quite clear[10].

Basic principle: the minimum wage is a minimum rate of remuneration within the meaning of Article 2, clause 1, of the PWA. Accordingly, calculation of the statutory minimum wage shall follow the principles for calculation of collectively agreed minimum wages pursuant to the PWA.

The minimum wage is an hourly gross wage that, because of the mandatory nature of Articles 1 and 20 MiLoG, must be calculated and disbursed as a monetary consideration. Remuneration in the form of payments in kind, that is, as benefits provided by the employer by way of consideration for the performance of work in a form other than money, is fundamentally not permitted. The sole exception to this principle concerns the remuneration of seasonal workers to the extent that their board and lodging may count towards the minimum wage. The option that non-monetary benefits provided by the employer may be included in the calculation is indeed given for seasonal workers, but only as concerns the MiLoG, not though in the context of the PWA or the provisions of AÜG.

The calculation of the minimum wage does not include employer contributions to social insurance funds.

The following principles must be followed when determining the minimum wage.

Allowances or supplements paid by the employer are considered to be elements of the minimum wage if their payment does not depend on an employee's performance exceeding the usual performance expected in the wage agreement. This is regularly the case where the allowances or supplements, together with other benefits from the employer, have the purpose of compensating an employee's performance for which at least a minimum wage must be paid (functional equivalence of the performances is to be compared). In order to establish such functional equivalence, it is in particular the minimum wage collective

[9] Concerning legal studies on the implementation of the PWD in German law led to a rather large amount of advisory opinions, commentaries, explanatory notes and case studies by law professors and other legal experts. Judicial decisions of the Court of Justice of the European Union (CJEU), above all in the Viking, Laval and Rüffert cases, led furthermore to a number of juridical articles and papers, who saw an excessive intervention of the court decisions in the autonomy of social partnership. See Blanke (2008); Bücker, Warneck (2011); Schlichtherle (2010); Seikel (2014). In the context of political science, studies deal with the impact of posted workers on the German labour market and raised issues because of (poor) working conditions and missing employee representation. See Apel (2012); Czommer, Worthmann (2005); Eichhorst (2000); Sell (2015); Wagner (2014, 2015).

[10] The following information is taken from information provided by the federal government's authority responsible for the control of the application of minimum wage regulations, the German Customs. This information is regularly updated and provided in several languages. See: http://www.zoll.de/EN/Businesses/Work/Foreign-domiciled-employers-posting/Minimum-conditions-of-employment/minimum-conditions-of-employment_node.html.

agreement that must be referred to. Where such an agreement sees the performance as compensated by the minimum wage in itself, the allowances or supplements must be taken into account as components of the minimum pay. Such scrutiny is required whenever the obligation to pay the corresponding allowances or supplements has not been provided for in the minimum wage collective agreement as such.

Typical examples of allowances or supplements that are always included as components of the minimum wage are the supplement for employees in the construction industry (*Bauzuschlag*) or the allowances identified in the employment contract as the difference between the local wage and the applicable minimum wage.

Allowances or supplements that are considered in certain circumstances are overtime supplements, where the employer is obliged to pay overtime supplements on the basis of a wage agreement within the meaning of Article 3 PWA, or, in the care sector, on the basis of a legal ordinance according to Article 11 PWA. In this case it is sufficient that the actual wage paid, including the overtime supplements, is at least equal to the sum of the minimum wage and the overtime supplement as they are laid down in the collective wage agreement.

Payments such as the Christmas bonus or additional holiday pay are regarded as part of the minimum wage if the employee is, in fact, irrevocably paid the proportional amount due for the period of the posting at each date for the minimum wage due (e.g. 15th of each month).

Examples of allowances or supplements that are not taken into account as components of the minimum wage (and thus have to be paid on top):

– more work per time unit (piecework premiums);
– above-average quality work results (quality premiums, premiums for accident-free driving in the transport sector);
– work at particular times (e.g. overtime, Sunday, holiday, or night work);
– work under difficult or dangerous conditions (e.g. dirt allowances or danger allowances);
– allowances that employers pay their workers to reimburse them the costs they actually incurred while working abroad (such as travel, board and lodging) and that are regulated by the relevant legislation in many countries.

Remuneration plus (flat) daily allowance: where an employer domiciled abroad pays their workers a daily subsistence allowance in addition to the regular wage during their temporary posting to Germany, and where the amount of such allowance is not broken down and it is therefore not evident which part of the allowance serves to reimburse a worker's actual expenses and which part is meant to close out any additional disadvantages related to a deployment abroad or to balance the difference between a worker's wage in their country of provenance and the minimum pay under German legislation, it is necessary – for the purpose of calculating those portions of the allowance that count towards the minimum wage – to view the different uses of such payment separately. In order to break down the allowance accordingly, the following criteria should be applied:

– *legal stipulation specifying the proportion between individual components of a daily allowance*: where relevant legal provisions (such as the labour legislation in the country of provenance) clearly lay down how the daily allowance is structured and/or specify which portion of the allowance is allocated to the reimbursement of expenses and which portion is paid solely because of the deployment abroad, this allocation as stipulated by law shall be applied. For the purpose of determining whether the minimum wage requirement is complied with, the portion paid as reimbursement of actually incurred expenses shall be disregarded. Only the remaining portion will count towards the minimum wage entitlement;

– *actual expenses*: in the absence of any rules governing the composition of the daily allowance, the factual circumstances should be taken into account. It means that the expenses actually incurred by the employee as a result of their posting abroad (such as the cost of travel, board and lodging) should be deducted from the full allowance amount. Where such costs make up or even exceed a worker's full subsistence, the payment does not count towards the national minimum wage pay at all. On the other hand, where the actual expenses of an employee fall short of the allowance paid, such difference may count towards the minimum pay;
– *deduction for the provision of lodging and board pursuant to the Social Insurance Fees Ordinance*: if it is not possible (anymore) to determine the expenses actually incurred by the employee, an amount equivalent to the lowest applicable rate for food and accommodation paid under the Social Insurance Fees Ordinance shall be deducted[11]. Only the amount remaining after such deduction shall be taken into account when determining whether the minimum wage is indeed being paid.

Where the employer grants an employee, in addition to the wage, benefits in kind that have a monetary value, e.g. accommodation and/or meals, such monetary value shall not be taken into account as a wage component. Where the employer deducts the cost of benefits in kind (e.g. the cost of employer-provided accommodation) from the wage, then only the sum actually paid to the worker shall count towards the minimum wage.

In case the employer pays an overall wage that includes both the remuneration for work and some additional amounts for employees to cover expenses for accommodation and meals themselves and no further details (regarding the various components of such pay, the respective amounts where applicable, or the actual provision of board or lodging) are available, an amount equivalent to the lowest applicable rate for food and accommodation paid under the Social Insurance Fees Ordinance shall be deducted and only the remaining amount shall be taken into account for national minimum wage purposes.

3.2. Reasons for wage gaps between local and posted workers

As highlighted by statements of the social partners that were interviewed in the context of a study of the EU Commission in 2015 and that represent the main sectors that received posted workers, there are a number of reasons for wage gaps between local and posted workers. In particular, the trade unions have highlighted the following:
– in sectors that were not covered by collective agreements on minimum pay (e.g. meat industry before August 2014, transport sector before the introduction of the statutory minimum wage), it was possible for posting enterprises to set wages that were below the wages paid to indigenous workers. This gap has decreased however since the statutory minimum wage and the application of the PWA to all sectors;
– in most cases, posted workers, irrespective of their professional qualification, are classified in the lowest minimum wage group (e.g. in the construction sector) while indigenous workers with a long-term employment relationship and with comparable professional experience receive much higher wages due to higher wage groups;

[11] Section 2 of the Social Insurance Fees Ordinance stipulates the following deductions with regard to expenses payments: to account for the portion covering the cost of board, a monthly amount of € 229 should be deducted from the overall allowance. The deduction with regard to the portion covering the cost of lodging should be € 223 (as of 2015).

– furthermore, posted workers face different treatment and rights when it comes to wage components that are paid to indigenous workers but not to posted workers, e.g. Christmas bonus, additional holiday bonus (if paid out on a monthly basis), continued pay in case of sickness, specific forms of performance premiums, etc.
– in this context it has also been highlighted that most posted workers come from countries where social security contributions are much lower than in Germany. This results in financial claims of posted workers being lower than in the case of German workers, and leads to a major (cost) motivation of German client enterprises to use posted workers;
– finally, according to the experience of the DGB and sector-related trade unions, there are also a lot of practices and creative "wage setting practices" that result in wage gaps between posted workers and indigenous workers. Particularly widespread for example are longer working hours without receiving overtime payment, as well as piecework wage, which, according to experts and supervisory authorities, are very difficult to control (see Wagner, Hassel, 2015).

However, as also stressed by the employers' organisations involved in this study, it is not possible to present quantitative data on wage differences and gaps. These depend very much on the specific sector and even enterprise-specific context. As stated for example by the employers' organisation in the construction industry ZDB, wage levels and differences are resulting from various factors and are also related to whether or not the employer is a member of the employers' organisation and therefore obliged to apply the respective wage agreement. In such a case, also the wage of the posted worker of that company would be above the minimum wage level.

4. Conclusions

Germany has been one of those EU Member States that are in favour of a substantive reform of the PWD according to the principle of "equal pay for equal work at the same place" in order to close existing gaps that still exist in regard to wage levels between indigenous and posted workers[12].

The German unions criticize the dominance of economic freedoms over fundamental social rights in general. This, from their point of view, is illustrated by judgements of the ECJ that interpreted the minimum social standards in the PWD as highest standards possible (DGB, 2012). Furthermore the unions, in particular, require that abuses in the implementation of the PWD must be countered much seriously and strictly that this is the case today. In particular, in sectors such as the meat-processing industry or in ship-building, health and safety accidents scandals and terrible working and living conditions of posted workers have raised massive public concern and media attention. This has resulted also in a growing awareness of single companies that, for example in the meat industry, have signed a (voluntary) "code of conduct", or has encouraged single shipbuilders to conclude a company-based collective agreement with the metalworkers' union on certain minimum standards for posted workers.

[12] The MInistry of Labour was a signatory of the Letter of "like-minded ministers" of 18 June 2015 to the EU Commission demanding such a reform of the regulation of posting of workers in Europe. Other countries/Ministries of Labour that have signed the letter were Austria, Belgium, France, Luxembourg, Netherlands and Sweden.

The BDA and many of its member associations see in the posting of workers a positive contribution to the German economy, as German employers take advantage of the possibility to use posted workers to fulfil contracts. However, also employers' organisations have stressed the need for an effective and targeted combat against misuse and social dumping. At the same time, however, employers' associations have raised concerns in regard to the successive extension of the number of sectors that are covered by the PWD, which no longer requires a consensual agreement of the bargaining committee. Concerns have been raised also in relation to the bureaucracy involved in the implementation of the law, and liability requirements when subcontracting (BDA, 2014).

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