

Offen im Denken

Compliance with and enforcement of minimum wages in Germany

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Gerhard Bosch & Claudia Weinkopf

- Effects of the German minimum wage
- Focus and approach of our research
- Compliance and enforcement
- The Financial Investigation Unit for Undeclared Work
- Types of enforcement strategies
- Examples of good practice
- Summary and conclusions

- **Long and very controversial debate on whether Germany needs a statutory MW** (Bosch and Weinkopf 2014; Bosch 2018)
 - Many economists were strictly against the MW-introduction -> fear of severe job losses (up to 4 million jobs)
- **In 2015, hourly wages increased on average by 4.8%**
 - Lowest decile: +15%
 - Employees in small companies (5-9 workers): +13.4%
 - Foreign nationals: +9.3%
 - Mini-jobbers: +9.2%
 - Low-skilled workers: +7.2%
 - Women: +6.8%
- **No negative employment effects**
 - slight reduction of mini-jobs (~153,000) – but 50% replaced by regular jobs

- Over average job growth in sectors with high incidence of low wages (e.g. hospitality, meat processing)
 - Adjustment channels of employers (Bellmann et al. 2016)
 - Higher prices
 - Reduction of weekly working hours
 - Increased skill requirements
 - Reluctance in hiring new applicants
 - The MW corrected the monopsony power of employers by reducing the gap between wages and productivity (Bruttel et al. 2017)
- Non-Compliance of between 7 and 10% (2016) as a further explanation for a lack of negative impacts on employment? (Burauel et al. 2017; Pusch 2018)

Qualitative study (funded by HBS) on compliance and enforcement of the German minimum wage with a particular focus on the control and implementation strategies in three industries

- main construction industry, meat processing, hospitality

Methodology

1. Broad review of theoretical and empirical studies on compliance and enforcement of minimum wages and labour standards around the world
2. Conduction of a total of 75 interviews with 102 experts from trade unions, employer associations, works councils, companies, control authorities (FKS), advice centres for foreign workers (e.g. „Fair Mobility“) etc.
3. Additionally, we carried out a comprehensive analysis of relevant media and internet reports on MW violations and working conditions in the three industries

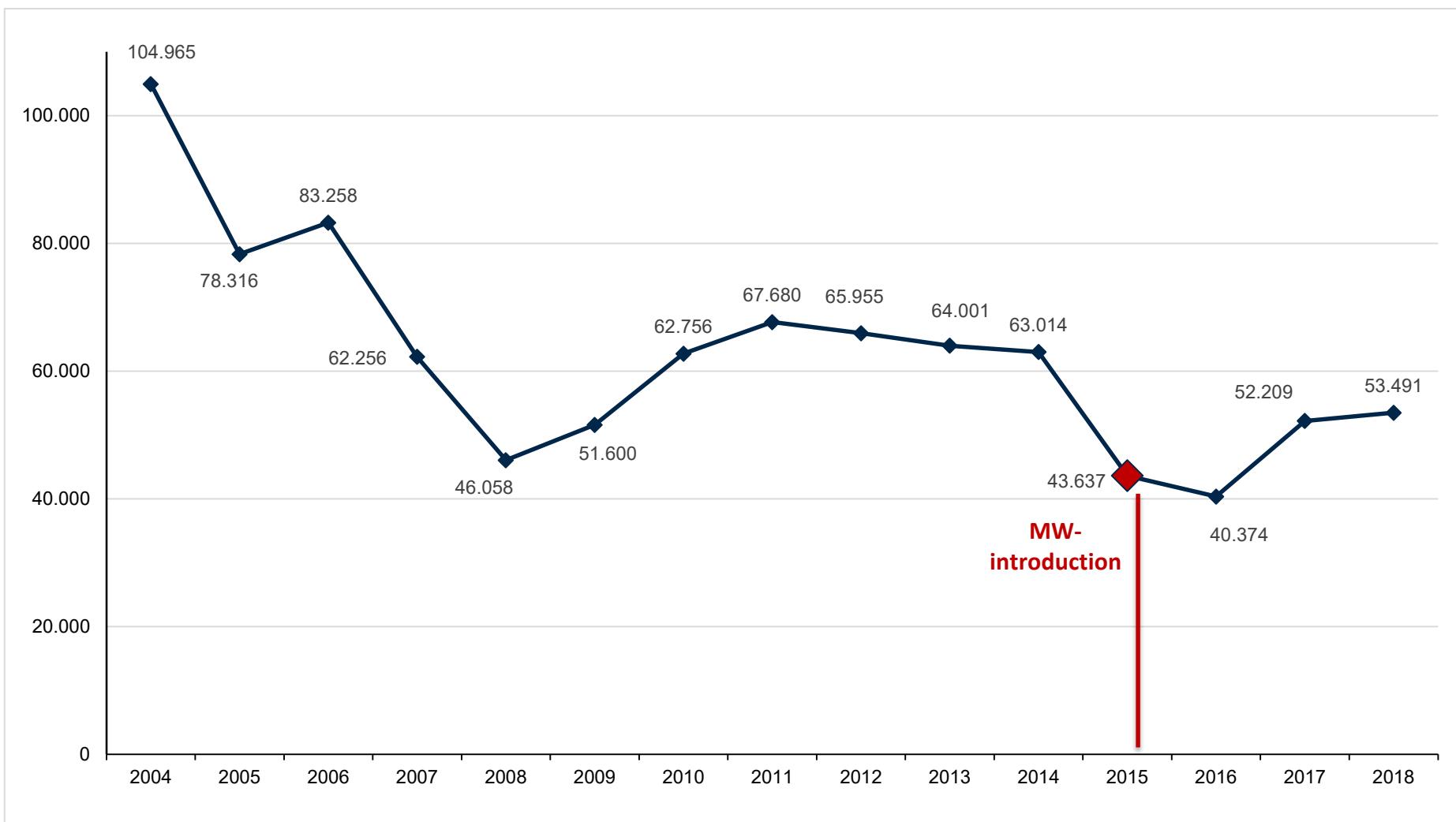
A comprehensive book will be published by Springer VS soon

- **Legislator:** Design of the minimum wage, facilitation of controls through clear regulations (self-enforcement)
- **State level with its own control authorities:** Equipment, powers, scope for prevention
- **Social partners:** Information, advice, mediation in case of complaints, joint controls
- **Company representative bodies:** Implementation and enforcement of laws and collective agreements, co-determination
- **Employees:** Enforcement of claims individually or with support (e.g. by trade unions)
 - in several European countries (but not in Germany!) also supported by the control authorities

- **Hardly any pay slips that are clearly below the minimum wage**
 - minimum wage * contractual monthly working time = gross monthly wage
- **But various other entry gates for shortfalls**
 - inaccurate documentation of working time, unpaid hours (overtime, no pay for breaks and preparatory work)
 - deductions from wages for "bad work", tools, clothing, lodging etc. (Weinkopf and Hüttenhoff 2017)
 - incorrect classifications (e.g. payment as an assistant instead of as a specialist – particularly in sectors with a higher MW for skilled workers such as construction industry)
 - illicit work, illegal employment and bogus self-employment
- **For mini-jobbers still frequently no payments for holidays and sick days** (Bosch and Weinkopf 2017)

- **FKS is the responsible unit for controls of minimum labour standards and MW since 2004**
 - Its strategic orientation is based on a mix of proactive, suspect-independent and reactive controls
 - In 2015, the FKS changed its strategy to a closer focus on organised crime
 - Significant reduction of the number of employer audits in recent years
- **Staff levels of FKS below targets**
 - Currently, 1,304 of 7,913 positions (16.5%) are vacant (due to a high fluctuation)
 - Difficulties to close the gap due to the duration of training (up to 4 years)
 - Unions demand for a number of at least 10,000 FKS-officers
- **In our interviews, union representatives from FKS criticized**
 - the last organizational reform of customs with an abolition of the formerly obligatory “patrol service”
 - a lack of coordination and exchange of experience
 - ineffective double structures due to the maintenance of two parallel services, which hinder internal communication and the bundling of resources

Annual number of FKS-controls of employers, 2004-2018



Source: Own presentation based on FKS-statistics

- **Clarity of minimum wage entitlements**
 - Transparent requirements for allowances and other wage components to be credited against the MW for employees and companies (Croucher and White 2007)
 - Clear rules on what counts as working time and correct recording of hours worked (Skidmore 1999)
 - Employees must know and be able to assert their claims for withheld MW
- **Companies accept the minimum wage if they can rely on the compliance of their competitors** (Bosch and Weinkopf 2015)
- **Effective controls require**
 - sufficient staff capacities for controls and deterrent penalties for non-compliance (Benassi 2011: 14; Tallberg 2002: 612)
 - close cooperation between different actors and authorities, data exchange and plausibility checks
 - sequential complementarity of information, advice and conviction, followed by controls and sanctions for non-compliance ("enforcement management ladder") (Tallberg 2003: 143)

- **Traditional perspective**
 - Controls almost exclusively carried out by state authorities
 - and mainly in areas with a high probability of non-compliance (e.g. small businesses in the hospitality industry)
- **International criticism**
 - Effective controls cannot be carried out by the state alone (Fine and Gordon 2010; Vosko et al. 2016)
 - State authorities often lack relevant knowledge of sectoral particularities (e.g. correct classification of jobs)
 - Detection of violations, but little change of firms' behaviour (lack of sustainable impact)
- **Strategic and cooperative enforcement is more effective than isolated or uncoordinated enforcement** (Bignami et al. 2013; ILO 2013)
- **Challenge: Identification of relevant actors who are able and willing to intervene at industry level** (Hardy 2011)

- **Strategic and targeted enforcement strategies take into account where the largest and most sustainable behavioural changes of companies can be achieved with limited resources** (Weil 2010, 2014, 2015, 2018)
 - Encouraging leading companies to set internal standards which must also be observed by subcontractors and service providers along the value chain and to monitor their compliance (Hardy and Howe 2015)
 - In the best case, improvements in working conditions can be achieved without direct controls (Weil 2010)
- **Cooperative enforcement**
 - Close cooperation between supervisory authorities (ILO 2013)
 - Networking with public, private and civil society actors (Amengual and Fine 2017; Gallina 2005)
 - Formalised integration of insiders at industry and company level: employees, works councils, union and employer association representatives

- **Insufficient specification of the (legal) minimum wage entitlements hampers effective implementation and enforcement**
 - Claims are not directly recognizable from the *Minimum Wage Act*
 - Employees frequently do not know either which deductions are legally permitted
- **Employees in Germany must claim their withheld MW-entitlements individually**
 - Proof for violations is difficult to provide
 - Risk of litigation costs discourages
 - No support by control authorities
 - FKS only claims underpayment of social security contributions in the case of violations
- **In several other countries, the control authorities provide direct support to workers affected by MW-violations** (DGB and Justitia et Pax 2017)

Examples of good practices in the construction sector

- In **Germany**, construction companies are obliged to provide information on the number of employees and monthly earnings to the social funds (SOKA-BAU). If the share of skilled workers (entitled to earn at least the higher MW 2) is below 50%, firms are automatically contacted and required to explain and/or correct the provided information
- In **Austria**, construction companies are obliged to provide detailed information about their subcontractors (company name and tasks) already in applications for public tenders
- In **Switzerland**, union and employer representatives are responsible for controls of construction sites and entitled to ban companies for up to one year if they did not comply with collectively agreed wages

- **MW-introduction has led to significant increases of hourly wages in meat processing and hospitality industry**
 - But in all three sectors there are still violations which are difficult to detect
 - Correct recording of working time as a particularly critical issue (Skidmore 1999)
- **Control density needs to be further increased and aligned more strategically**
 - including closer cooperation with industry stakeholders and social partners, plausibility checks and improved exchange of data and information between different public authorities
- **Employees need more support in asserting their entitlements to correct payment**
 - e.g. through advice and support by initiatives such as "Fair Mobility" (especially for posted workers from abroad), but also in the case of judicial demands for withheld minimum wage claims
 - Trade unions demand for a right of collective redress (*Verbandsklagerecht*) (Kocher 2002)

- **Currently, more and more people argue that the MW in Germany is too low and demand for an over average increase (into the direction of a „living wage“ of around € 12 per hour) (e.g. Schulten and Pusch)**
 - However, this would require a political majority which is currently not existent
- **Another important cornerstone in order to raise wage levels not only for low-wage earners would be an increased collective bargaining coverage by more general extensions of collective wage agreements**
 - This target had already been part of the „Act on the Strengthening of Free Collective Bargaining“ in the course of the MW-introduction in 2015, but without any real effects so far
- **A slight change of regulation could resolve this problem**
 - Applications for general extensions of collective agreements from individual sectors should only be rejected by a majority in the collective bargaining committee which would prevent the present blockade by the employers' associations

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