

Enforcement of minimum wages in Germany

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- **Focus and methodology of our research**
- **Compliance and enforcement**
- **Enforcement approaches**
- **The Financial Controls of Illicit Work (FKS)**
- **Conclusions**

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
- Analysis of work of the financial control of illicit work (FKS)

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.

- **Hardly any pay slips with hourly pay below the minimum wage**
 - Timesheets are often corrected by tax consultants
- **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)
 - illicit work, illegal employment and bogus self-employment
 - For mini-jobbers still frequently no payments for holidays and sick days (Bosch and Weinkopf 2017)
- **Non-compliance of between 7 and 10% of employees** (2017) (Fedorets et al. 2019; Pusch 2019)

- **Strategic and cooperative enforcement is more effective than isolated or uncoordinated enforcement** (Bignami et al. 2013; ILO 2013)
- **Strategic enforcement**
 - Prioritisation, Effective deterrent, sustainability
- **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**
 - 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

- **in German: Finanzkontrolle Schwarzarbeit (FKS)**
- **Responsible since 2004**
 - Customs department
- **Strategic approach**
 - Prioritisation
 - 70% of controls in risk industries (e.g. in the construction industry, meat industry, hospitality)
 - focus audits
 - Controls: suspicion-independent and according to hints
- **Cooperation with other authorities**
 - Cooperation agreements with prosecutors, tax offices, German pension insurance etc.

- **43 main customs offices with 113 locations**
- **Low central specifications**
 - No uniform Germany-wide strategy
 - Main customs offices with high autonomy
 - Productive cooperation only with state authorities
- **Change in strategy since 2015**
 - Stronger focus on organised crime
 - Significant reduction of the number of employer audits in recent years
 - Abolition of the formerly obligatory “patrol service”
 - Controls according to hints predominate
- **Staff level**
 - Currently (2019), 1,304 of 7,913 positions are vacant
 - Difficulties to close the gap due to the duration of training (up to 4 years)
 - high fluctuation

- **Consequences of controls are often not visible and sanctions have no deterrent effect**
 - public prosecutors often reduce the penalties imposed
- **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

- **Strategy of the FKS could be more efficient**
 - Priorisation by focusing in specific industries
 - But: no deterrent and sustainable effects
- **Control density needs to be further increased and aligned more strategically**
 - including closer cooperation with industry stakeholders and social partners
 - resources must be used more efficiently (in particular, the selection of companies must be more strategic)
- **Employees need more support in asserting their entitlements to correct payment**
 - Especially in the case of judicial demands for withheld minimum wage claims
 - Trade unions demand for a right of collective redress (*Verbandsklagerecht*)
 - In several other countries, the control authorities provide direct support to workers affected by MW-violations (DGB and Justitia et Pax 2017)

Thank You

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Offen im Denken

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Kontrolle von Mindestlöhnen

 Springer VS

- Amengual, Matthew / Fine, Janice** (2017): Co-enforcing labor standards: the unique contributions of state and worker organizations in Argentina and the United States. In: *Regulation and Governance* 11 (2): 129-142.
- Bignami, Renato / Casale, Guisepppe / Fasani, Mario** (2013): Labour inspection and employment relationship. LAB/ADMIN Working Document No. 28. Geneva.
- Bosch, Gerhard / Hüttenhoff, Frederic / Weinkopf, Claudia** (2019, forthcoming): *Kontrolle von Mindestlöhnen*. Springer.
- Burauel, Patrick / Caliendo, Marco / Fedorets, Alexandra / Grabka, Markus M. / Schröder, Carsten / Schupp, Jürgen / Wittbrodt, Linda** (2017): Mindestlohn noch längst nicht für alle – Zur Entlohnung anspruchsberechtigter Erwerbstätiger vor und nach der Mindestlohnreform aus der Perspektive Beschäftigter. In: *DIW-Wochenbericht* 49: 1109-1123.
- Croucher, Richard / White, Geoff** (2007): Enforcing a National Minimum Wage. *Policy Studies* 28 (2): 145-161.
- Fine, Janice / Gordon, Jennifer** (2010): Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations. In: *Politics and Society* 38 (4): 552-585.
- Gallina, Paul Leonard** (2005): *New Compliance Strategies: 'Hard Law' Approach*. Human Resources Development Canada.
- Hardy, Tess** (2011): Enrolling Non-State Actors to Improve Compliance with Minimum Employment Standards. In: *The Economic and Labour Relations Review* 22 (3): 117-140.
- Hardy, Tess / Howe, John** (2015): Chain Reaction: A Strategic Approach to Addressing Employment Non-Compliance in Complex Supply Chains. In: *Journal of Industrial Relations* 57 (4): 563-584.

- ILO** (2013): Labour inspection and undeclared work in the EU. LAB/ADMIN Working Document No. 29. Geneva.
- ILO** (2014): Minimum Wage Systems. Geneva.
- Pusch, Toralf** (2018): Bilanz des Mindestlohns: Deutliche Lohnerhöhungen, verringerte Armut, aber auch viele Umgehungen. WSI Policy Brief Nr. 19. Düsseldorf.
- Vosko, Leah F. / Noack, Andrea M. / Tucker, Eric** (2016): Employment Standards Enforcement: A Scan of Employment Standards Complaints and Workplace Inspections and Their Resolution under the Employment Standards Act. Ontario.
- Weil, David** (2010): Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division.
- Weil, David** (2014): *The fissured workplace. Why work became so bad for so many and what can be done to improve it.* Cambridge MA/London: Harvard University Press.
- Weil, David** (2015): *Strategic Enforcement in the Fissured Workplace.* John T. Dunlop Memorial Forum. Harvard Trade Union Program. Harvard Law School.
- Weil, David** (2018): Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change. *Journal of Industrial Relations* 60 (3): 437-460.
- Weinkopf, Claudia / Hüttenhoff, Frederic** (2017): Der Mindestlohn in der Fleischwirtschaft. In: WSI-Mitteilungen 70 (7): 533-539.
- Williams, Colin C. / Lansky, Mark A.** (2013): Informal employment in developed and developing economies: Perspectives and policy responses. In: *International Labour Review* 152 (3-4): 355-380.