

## **Enforcement of minimum wages in Germany**

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**Claudia Weinkopf & Frederic Hüttenhoff**

- **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*

Gerhard Bosch  
Frederic Hüttenhoff  
Claudia Weinkopf

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