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Wage-setting in a System of Self-Regulation through Collective Private Autonomy

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Abstract

The German system of wage-setting is based on the idea that workers bargain in a field of balanced powers through exercising collectively their freedom of contract. Works councils play an important role for enforcement and with concern to distribution of salaries in the plant. However, they cannot bargain wages. Parliament also refrains from wage setting on its own or influencing the wage setting process of the bargaining parties since both sides of industry set the labour standards autonomously. Nevertheless, according to the case law of the Federal Labour Court, the employer has to treat his employees equally. Moreover, for the purpose to overcome the structural imparity in the Labour relations, the State provides a collective bargaining system. On top of that, a Minimum wage legislation has been introduced in order to support the wage setting system, which is in the first place a system of self-regulation of collective labour organisations. Minimum wages, however, shall be only additional parts. They surely have to protect workers who are not protected by collective agreements.

Keywords: Wage; Freedom of Contract; Collective Bargaining; Equality Principle; Minimum Wage Legislation.

1. Introduction.

The German system of wage setting is based on the idea that workers bargain in a field of balanced powers through exercising collectively their freedom of contract. Works councils play an important role for enforcement and with concern to distribution of salaries in the plant. But they cannot bargain wages. Parliament also refrains from wage setting on its own or influencing the wage setting process of the bargaining parties since both sides of industry set the labour standards autonomously.

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2. Wage-setting in the Civil Law System.

The amount of payment for the worker is, starting from a legal point of view, in the first place a question of freedom of contract. The labour contract is a special kind of contract of service of dependent workers. In 2017 the Parliament adopted an amendment to the Civil Code (*Bürgerliches Gesetzbuch – BGB*)[1] implementing a definition of employee and employer and of their specific obligations - more than hundred years after coming into force of the *BGB*!

According to section 611a BGB the employee is obliged to work under the direction of the employer and the employer must pay the "concluded" salaries. This amendment was no real reform since the same legal situation followed from section 611 BGB which defines the contract of service because the labour contract is only a specific kind of contract of service.

Since the labour contract is a normal civil law contract the parties are free to conclude on the payment, and especially on its amount, as return for the performed work. The parties enjoy freedom of contract. For labour contracts this freedom follows from the fundamental right of freedom to exercise a profession under section 12 of the Constitution (*Grundgesetz – GG*)[2]. This freedom of contract is, however, not freedom without limits. There are numerous limits in this regard. In the first place, the "normal" civil law limits for contracts appear. E.g., the parties may not conclude a remuneration which is incompatible with the law. According to the section 134 BGB, unlawful conclusions are null and void. However, no statute exists in relation to the employees' remuneration. The legislator only adopted rules on minimum wages which entitle the employee to a certain minimum amount of remuneration (*infra* 6). Furthermore, according to the section 138 BGB, immoral legal transactions are also null and void. This is significant also for the labour contracts. The Federal Labour Court has decided that concluding a remuneration which is more than one third lower than the usual payment must be considered immoral[3]. Such starvation wage is not easy to identify since it is not so easy to discover which payment is "usual". But the Federal Labour Court also decided that the wages set out in a collective agreement should be deemed "usual" if the agreement is applicable to more than 50% of the employers or of the workforce within its geographical scope[4].

Another limit to freedom of contract in the sphere of wage setting follows from the *section* 107 para (2) of the Industrial Code (*Gewerbeordnung – GewO*). According to this statute, the employee is entitled to money payment. Non-cash benefits are only allowed if this is compatible with the interest of the employee or the peculiarities of the labour contract and this may not go beyond the unseizable part of the remuneration.

[1] *Gesetz zur Änderung des Arbeitnehmerüberlassungsgesetzes und anderer Gesetze* of 21 February 2017, in *Bundesgesetzblatt,* I, 2017, 258.
[2] See Benecke M., *Personalauswahl*, in Kiel H., Lunk S., Oetker H., (eds.), *Münchener Handbuch zum Arbeitsrecht*, 4th ed., 2018, § 31 no. 1-3.
[3] Federal Labour Court of 17 December 2014, Case 5 AZR 663/13, in *Neue Zeitschrift für Arbeitsrecht*, 2015, 608.
[4] Federal Labour Court of 22 April 2009, Case 5 AZR 437/08, in *Der Betrieb*, 2009, 1599.

3. Equal Treatment.

The employer has if he follows a general scheme, according to the case law of the Federal Labour Court, to treat his employees equally[5]. This means also that he has to pay equal wages for equal work. Furthermore, the scope of antidiscrimination legislation expressly includes wages as set out in the *section* 2 no. 2 of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz – AGG*). That prohibits direct and indirect discrimination with respect to remuneration on the grounds of *inter-alia* sex, ethnic origin or age. Discriminatory clauses are null and void according to the *section 7 AGG* and the employee is entitled to compensation and indemnity in cases of discrimination. This must lead to the result that the victim of discrimination of lower wages payment may not only claim for equal wages but also for compensation and indemnity. Although not expressly mentioned in the statute it is out of dispute that the victim is entitled to equal treatment with a comparable employee[6], i.e. higher wages. Finally, article 157 TFEU regulates equal treatment of men and women with concern to wages and is directly applicable to employment relation[7].

Even if it is unlawful to discriminate on the ground of sex and the victims of discrimination are entitled to equal treatment, the reality is different. In 2016 the Government announced that the average remuneration of women was 21% lower than the men average wages. Adjusted with concern to equal or equivalent work the difference still came to 7%.[8] The Parliament therefore adopted a statute that aims at promoting transparency of wage schemes which should in the long-term lead to equal treatment of women and men.

The Act on Transparency of Wages (*Entgelttransparenzgesetz – EntgTranspG*) explicitly stresses the prohibition of unequal payment on the ground of sex. It obliges the employers to set non-discriminatory wages systems. But if the employer applies a collective agreement it is presumed that this system is not discriminatory (sic!). In the enterprises with more than 500 workers the employer has a duty to assess the equal payment of men and women. Some bigger firms must publish the results of the assessment. However, there are some doubts if these instruments will really lead to a change in practice. Therefore, one could think that individual claims for equal payment would be a more appropriate instrument to bring about gender equality in the field of payments. One of the most important problem in this field seems to be the proof of unequal treatment. Sections 10-16 *EntgTranspG* therefore entitle the employee to information about the average wages of comparable employees in plants with more than 200 employees. The employer shall inform about the statistical median of the wages of the other sex. The problem remains that the statistical median does not satisfy for proving discrimination. But together with further facts it may lead to a presumption of discrimination. In that case the employer has to bear the burden of proof according to the section 22 AGG. Furthermore, the refuse of the employer to give the information about the average wages of the other sex leads to a reversal of the burden of proof according to the section 15 para (5) *EntgTranspG* if the employer does not apply a payment scheme concluded in a collective agreement.

[5] Federal Labour Court of 14 November 2017, Case 3 AZR 515/16, 2018 *ECJ* 367.
[6] Deinert O., *Pflichtverletzung*, in Däubler W., Bertzbach M., (eds.), *Allgemeines Gleichbehandlungsgesetz*, 4th ed., 2018, § 15 no. 20.
[7] CJEU, Case C-43/75 *Defrenne II,* ECLI:EU:C:1976:56.
[8] 18 *Bundestags-Drucksache* 11133, 1.

4. Collective Bargaining.

Freedom of contract means formally that the parties are free to agree on whatever content they like. In cases of the structural imparity like in the labour relation, this freedom seems, nevertheless, not to exist. If the employee has the only choice to accept the offer of the employer or to be unemployed, he has no real choice. Moreover, the unemployment insurance will not pay benefits if the employee decides not to accept an offer unless he provides reasonable grounds. In this situation of structural imparity in the labour relation only the employer enjoys effectively freedom of contract while the employee can be considered free only formally. This leads to a threat for the employee's contractual freedom. In those cases, according to the case law of the Federal Constitutional Court, the State is obliged to protect the fundamental freedom of the weaker party[9]. Although the fundamental freedoms are directed towards the State this leads to an indirect effect of those rights in the private relation of contract parties.

This is the reason why there exist more limits to freedom of contract of the parties then those normally set out in the Civil Code. In fact, the State arranged a set of rules aiming at the employee professional freedom protection. In the first place the State provides a collective bargaining system for the purpose to overcome the structural imparity in the Labour relations. According to the Federal Constitutional Court collective autonomy is a machinery that fits with the positive obligation of the State to protect the freedom of profession of the employee[10]. This is only one side of the coin. One could think that the State could be free to decide in which way he wants to fulfil his positive obligations and providing a collective bargaining system would be one possible but not the only way of protecting the employee effectively. But this interpretation would not be compatible with the Constitution since its article 9 *GG* guarantees the freedom of organisation. This freedom includes the freedom of the unions and the employers' associations to bargain collectively. These organisations have the right to primarily regulate the conditions for their members and the State may not set labour standards if the collective parties do so. They enjoy a prerogative of regulating labour standards through collective agreements[11]. For this reason, it is also incompatible with the Constitution if the State sets indicators for wage levels. Censorship of collective agreements through control of the contents would be a violation of the Constitution[12]. Therefore, the guidelines for permissible wages would be inacceptable. For this reason, the EU economic governance has no impact on wages bargaining.

No such prohibited censorship of collective agreements lies in the fact that the social partners have to respect superior law, especially EU law. Therefore, the collective actors may not violate antidiscrimination law. As the CJEU decided in the preliminary ruling *Hennigs and Mai*[13], wages schemes in collective agreements discriminating against certain employees are

[9] Federal Constitutional Court, of 7 February 1990, Case 1 BvR 26/84, 81 *BVerfGE* 242 - 255; Federal Constitutional Court of 19 October 1993, Case 1 BvR 567/89, 89 *BVerfGE* 214 - 232; See Schmidt I., *Einleitungz um GG*, in Müller-Glöge R., Preis U., Schmidt I., (eds.), *Erfurter Kommentar zum Arbeitsrecht*, 19th ed., Munich no. 38 with further references.
[10] Federal Constitutional Court of 4 July 1995, Case 1 BvF 2/86, 92 *BVerfGE* 365.
[11] Federal Constitutional Court of 4 July 1995, Case 1 BvF 2/86, 92 *BVerfGE* 365.
[12] Federal Labour Court of 28 March 2006, Case 1 ABR 58/04, in *Arbeitsrechtliche Praxis TVG*, § 2 *Tariffähigkeit* no. 4, 2006.
[13] CJEU Cases C-297/10 and C-298/10 *Hennigs and Mai*, ECLI:EU:C:2011:560.

therefore illegal. In the following the Federal Labour Court has decided that wage differentiations on the grounds of age are unjustified. Discriminated employees may therefore claim for the payment of the highest age grade[14]. But if the collective actors establish a new, non-discriminatory scheme they may, during a transitional period, safeguard the effective payments of employees which would is no violation of the antidiscrimination legislation[15].

Wage setting is the predominant subject of collective bargaining. Usually the social partners conclude on collective agreements in the different branches at the regional level. But also, agreements with a nationwide scope appear like in the public sector for employees of the Federal Republic and of the municipalities. Wage agreements are often concluded y for two years while framework agreements on other working conditions (*Manteltarifverträge*) have a longer duration of about five years. Collective agreements have the effect of a statute: they have a direct and indispensable effect in the labour relation, but only for the parties that are bound by the collective agreement. This is, according to the *section* 3 of the Collective Agreements Act (*Tarifvertragsgesetz – TVG*), only the case if the employer is a member of the employer's organisation or has concluded the collective agreement on his own *and* if the employee is a trade union member. Collective agreements may be declared generally binding by the Labour Ministry, but it happens rarely in cases of payment agreements. According to the Posted Workers Act (*infra*, 6), only in relation to minimum wages, the possibility of declaring collectively concluded wages as generally binding has a certain significance.

This results in that only 46% of the workforce in Germany works in an entity of an employer who is bound by the agreement[16]. But wage setting through collective agreements has much more importance because individual contract parties are able to implement a collective agreement in the labour contract. Accordingly, some further 23% of the workforce enjoy rights set out in the agreement by way of orientation to the agreement in individual contracts[17].

Employers who are bound by the agreement normally offer such possibilities to all their employees in order to avoid incentives for outsiders to join trade unions.

5. The Role of Works Councils.

The system of collective labour relations in Germany has a dual structure. The representation of workers takes place in the first route by freely established trade unions. Every employee has the right to establish and to join freely trade unions under the freedom to organise according to *article 9 section 3 GG*. According to the case law it follows from this stipulation also that no one can be forced to become a member of a union - negative freedom to organise[18]. Therefore, the legitimacy of representation through unions follows from a legal

[14] Federal Labour Court of 10 November 2011, Case 6 AZR 481/09, in *Neue Zeitschrift für Arbeitsrecht*, 2012, 161.
[15] CJEU Cases C-297/10 and C-298/10 *Hennigs and Mai*, ECLI:EU:C:2011:560.
[16] Ellguth P., Kohaut S., *Tarifbindung und betriebliche Interessenvertretung: Ergebnisse aus dem IAB-Betriebspanel 2018*, 2019, 290 - 292.
[17] *Ibid.*
[18] Federal Constitutional Court 14 November 1995, Case 1 BvR 601/92, 93 *BVerfGE* 352 - 357; Federal Labour Court 19 September 2006, Case 1 ABR 2/06, in *Betriebs-Berater*, 2007, 163 - 164.

transaction on a voluntary basis. Besides, the State provides a second system of collective representation on a democratic basis through elected works councils. According to the *section* 1 of the Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*), the workers in all entities with at least five employees enjoy the right to elect works councils. Works councils represent the workforce of the plant and have different rights to involvement. The intensity of these rights differs by the subject. In some fields works councils are entitled only to information rights while in others they have also co-determination rights. Works councils can conclude with the employer on works agreements which have direct and indispensable effects on the individual labour relations of all the represented employees according to section 77 para (4) *BetrVG*.

Bargaining collectively on wages is predominantly the task of trade unions and employers' organisations. Their regulatory prerogatives are founded on their constitutional right to bargain collectively. The social partners in the works constitution have no comparable strong right since works constitutional rights are not guaranteed by the Constitution. Nevertheless, works councils are not completely excluded from the wage setting machinery. First of all, according to the *section 80 para (1) no. 1* BetrVG works council has the right and the task to monitor compliance with the acts, collective agreements etc. to the benefits of the workers. This includes monitoring the payment entitlements according to the collective agreement. But this monitoring task does not cover co-determination rights. Additionally, the works council has a certain co-determination right with respect to classification and re-classification of employees in payment structure systems according to the section 99 *BetrVG*. This does not mean that the works council has a right to bargain on the amount of salaries of the individual employee. The employee's entitlement follows from the wage system. But the works council is entitled to co-assess together with the employer in such classification questions. If the works council dissents the employer has to claim in the labour courts for a decision overruling the works council's refuse to consent.

A co-determination right on the collective wages structure in the plant is set out in the section 87 para (1) no. 10 *BetrVG*. But this co-determination right exists only under the expressly stated precondition that a collective agreement of organisations does not exist. If this precondition is fulfilled the works council has, nevertheless, no right to co-decide on the amount of wages. It is only entitled to co-determination on the distribution of a given amount of wages within the entity. This concerns the salaries of employees in a comparable relation to other employees.

This legal situation results in that collective agreements and works agreements on wages cannot concur in a plant. In the opposite! According to the *section 77 para (3) BetrVG*, wages and other working conditions usually regulated through collective agreements cannot be subject to a works agreement. This means that the social partners at plant level may not even conclude on higher wages to the employees' benefit. This rule aims to avoid that works councils act as "alternative unions" since otherwise compulsory elected works councils would compete with trade unions with a contribution duty for the employee[19].

[19] Deinert O., *Betriebsvereinbarung*, in Deinert O, Heuschmid J., Zwanziger B. (eds.), *Arbeitsrecht,* 10th ed., 2019, 90-91.

6. Minimum Wages.

Germany has a long-standing tradition of abstention from legal intervention in the field of wage setting. The Parliament for a long time fully trusted in a system of self-regulation by management and labour through voluntarily established organisations. Only for the eventual case that the system would fail completely in a certain sector the Parliament adopted an Act which allowed to set minimum working conditions[20]. But this Act has found no application at all till now.

In the 1990s, during a phase of recession, a first evidence of structural failure of the system was to be seen in the construction industry. Wage setting for construction sites failed to cover a significant part of the workforce, the foreign posted workers. The Parliament, by implementing the Posted Workers Directive[21], adopted the Posted Workers Act (*Arbeitnehmerentsendegesetz – AEntG*)[22] which *inter-alia* made generally binding collective agreements in the construction industry and in the harbour tug branch *internationally mandatory*. Therefore, also the parties under the foreign contract statutes could not deviate from these agreements.

In subsequent years the structural problems of the collective agreement system became more and more evident. Therefore, a political discussion in relation to the setting of statutory minimum wages started. The unions realised that minimum wages could produce a stabilising effect on the collective agreements system by setting a minimum standard which no one could bargain. Nevertheless, conservative politicians were contrary to the statutory minimum wages. This led to a political compromise through an amendment of the *AEntG*[23]. No national statutory minimum wage should be established.

Instead the model of the Posted Workers Act should get a wider scope allowing the conclusion of minimum wages at branch level that could be declared generally binding by the governmental regulation. Although the Act declares such regulations internationally mandatory, the function of the Act changed to a certain degree. It is no longer only a private international law instrument. Instead, the Act became an important part of the wage setting system. For the areas not covered by collective agreements, the minimum conditions should be possible by the governmental decree, according to the Minimum Working Conditions Act[24] which however – like the previous Act with the same name[25] - has found no application at all[26]. Five years later the political environment had changed. The Parliament adopted the National Minimum Wage Act (*Mindestlohngesetz – MiLoG*)[27]. By means of this Act a minimum wage of € 8.50 was established. Minimum wage legislation is from its structure a support piece of the wage setting system which is in the first place a system of self-regulation of

[20] *Mindestarbeitsbedingungengesetz – MiArbG* of 11 January 1952, in *Bundesgesetzblatt*, I, 1952, 17.
[21] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services, 1997.
[22] *Arbeitnehmerentsendegesetz* of 26 February 1996, in *Bundesgesetzblatt*, I, 1996, 227.
[23] *Arbeitnehmerentsendegesetz* of 20 April 2009, in *Bundesgesetzblatt*, I, 2009, 799.
[24] Erstes Gesetz zur Änderung des Gesetzes über die Festsetzung von Mindestarbeitsbedingungen of 22 April 2009, in *Bundesgesetzblatt*, I, 2009 818.
[25] CJEU Cases C-297/10 and C-298/10 *Hennigs and Mai*, ECLI:EU:C:2011:560.
[26] The adoption of MiLoG was combined with the cancellation of the minimum working conditions act under article 14 of the *Tarifautonomiestärkungsgesetz*.
[27] Article 1 of the *Tarifautonomiestärkungsgesetz*.

collective labour organisations. Minimum wages shall be only additional parts. They are aimed to protect the workers who are not protected by collective agreements. They furthermore shall support the collective bargaining system by excluding competition to undercut in terms of wages. This explains why the title of the statute that introduced the *MiLoG* and amended the *AEntG* is "*Tarifautonomiestärkungsgesetz*"[28] (act strengthening the collective economy).

The National minimum wage is mandatory. Any employer seated in Germany or abroad, has to pay the minimum wage according to the section 20 *MiLoG*, irrespectively of the law governing the labour contract. According to the section 13 *MiLoG* a purchaser is liable in the supply chain as a guarantor. The payment of the minimum wage is under the supervision by the customs administration according to the *sections 14-18 MiloG*. Therefore, the employers have to fulfil documentation obligations and for foreign employers a notification requirement is applicable. The authorities may impose a fine in the case of failure to pay the minimum wage (section 21 para (1) no. 9). Furthermore, in these cases tenderers may be excluded from public tendering according to the section 19 *MiLoG*.

The minimum wage was in the beginning € 8.50 per hour. The implementation of a modification process for the amount of the minimum wage was highly discussed during the legislation process. Politicians and economics and especially employers were afraid of a never-ending interaction between increase of legislative minimum wage and increase of collectively bargained wages. The final result is a procedure with involvement of an independent commission (sections 4-12 *MiLoG*). The commission is composed of equally represented three members of the confederations of employers and unions. Additionally, the Government will appoint two scientific advisers without any vote and an independent chair upon the proposal of both sides of industry. The commission will decide every two years on adjustments (increase or decrease). The decision of the commission shall be the result of balancing the protection interest of employees, fair and suitable competition a prevention of unemployment. The commission shall take the evolution of wage bargaining in the past as guidance. The decision of the minimum wage commission if the basis for a possible regulation of the Government. This means that the commission cannot on its own change the minimum wage. On the other hand, the Government has no right to change the minimum wage autonomously. The Government has the only possibility to accept or decline the proposal and cannot deviate from the commission's proposal. The minimum wage increased in the meantime up to € 9.19 and is expected to increase further from the beginning of 2020 up to € 9.35[29].

The Parliament was also afraid that a minimum wage could have a counterproductive effect and harm employment. After the intense debates several exceptions were set out in the Minimum Wage Act. The apprentices were not entitled to the minimum wage. The same is true for people working pro bono. Short-term trainees and trainees within an education program are excluded from the scope of the statute as well. People younger than 18 who have no professional education may neither claim for the minimum wage. Furthermore, long-term unemployed people are not entitled to the minimum wage for the first six months of

[28] *Tarifautonomiestärkungsgesetz* of 11 August 2014, in *Bundesgesetzblatt*, I, 2014, 1348.
[29] Zweite Mindestlohnanpassungsverordnung – MiLoV2 of 13 November 2018, in *Bundesgesetzblatt*, I, 2018, 1876.

their occupation. Finally, a limitation concerning the amount of the minimum wage existed during a transition period until the end of 2017 in the newspaper delivery.

7. Hierarchy of Legal Sources.

Although social partners enjoy collective autonomy which implies that working standards should be fixed in the first place by employer's organisations and trade unions the minimum wages at branch level according to the *AEntG* and the national minimum wage according to the *MiLoG* are indispensable also for collective actors. It follows from the philosophy of minimum wage legislation as a certain degree of minimum protection for workers and as pillars of the collective bargaining system that undercutting minimum wages must be impossible also for collective agreements. These are standards of lowest level for all respectively for the specific branch that allow on the other hand better protection through individual and collective agreements

The individual labour contract parties may deviate from collective agreements to the advantage of the employee according to the favourability principle in the section 4 para (3) *TVG*. This indicates the collective bargaining shall overcome the structural imparity in the labour relation. The employee is free to conclude on wages, but not below the level set out in the collective agreement.

The Works Constitution Act does not contain such a favourability principle. The Federal Labour Court has, nevertheless, decided that works agreements are governed in the same way by the favourability principle[30]. According to the *section 77 para (4) BetrVG* the works agreement has compulsory effects. But that shall not prevent the parties from the conclusion of better conditions for the employee. In the field of wage setting this is, as we have seen, of low importance since the works councils may not be engaged in bargaining earnings. As it was described earlier, the favourability principle has insofar neither importance for the relation between collective agreements and work agreements.

The labour contract parties often conclude on payments beyond the collective agreement. This leads to the question if the employer may reduce the additional payment in the case of increase of the remuneration guaranteed by the collective agreement: in case of such increase he may want to reduce the additional payment to the same extent with the result that effective payment will remain the same and the increase of collectively guaranteed payment will cost nothing. The courts interpret the conclusion on additional wages in a way that it contains the implicit right of the employer to count it against later collective wage increases[31]. They, furthermore, hold that a collective agreement may not prohibit the employer from doing so since this is a question of the individual labour contract which cannot be governed under collective autonomy[32]. Following this, the employer can freely decide if the employee will enjoy the collective wage increase or not. If he does so, he must apply his decision uniformly

[30] Federal Labour Court of 16 September 1986, Case GS 1/82, in *Arbeitsrechtliche Praxis BetrVG*, § 77 no. 17, 1972.
[31] Federal Labour Court of 27 August 2008, Case 5 AZR 830/07, in *Neue Zeitschrift für Arbeitsrecht*, 2009, 49 - 52.
[32] Federal Labour Court of 16 June 2004, Case 4 AZR 408/03, in *Arbeitsrechtliche Praxis TVG*, § 4 Effektivklausel no. 24.

to all the employees in the plant. Otherwise the wage structure in the plant will change because the distribution system changes. In this case works council has a co-determination right according to the section 87 para (1) BetrVG concerning wages structure (*supra*, 5)[33]. Again, we can see that works councils may not bargain on wages. They can only influence indirectly on wages through co-determination on distribution of a certain amount. In German language this is described as "*Topftheorie*" (pot theory) according to which the works council has no influence on the contents of the pot.

8. Conclusion.

The German system has a long-standing tradition to trust in the collective bargaining of wages. The decrease of power of collective economy led to Parliament's intervention through a system of a mandatory national minimum wage and the possibility to establish nationwide sectoral minimum wages. This minimum wage policy aims at protecting individual workers as well as setting pillars in order to stabilise the collective bargaining system. Minimum wages based on collective agreements may override regulatory minimum wages, but only to the advantage of the employee.

The priority for social partners entitles only employer, employer's organisations and trade unions. Works councils may not establish their own wages policy. Their role conisists in monitoring and to co-determining wage distribution (not the overall amount).

Although antidiscrimination legislation prohibits unequal payments on the ground of sex, gender pay gap still remains a challenge for the German system

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[33] Federal Labour Court of 3 December 1991, Case GS 1/90, in *Arbeitsrechtliche Praxis BetrVG*, § 87 Lohngestaltung no. 52, 1972; Federal Labour Court of 3 December 1991, Case GS 2/90, in *Arbeitsrechtliche Praxis BetrVG*, § 87 Lohngestaltung no. 51, 1972.