



Decent working conditions and the Revision of the Written Statement Directive Brussels, April 11, 2018

Dr. Frank Lorenz

silberberger.lorenz.towara
kanzlei für arbeitsrecht

**Group of the Progressive Alliance of Socialists
& Democrats in the European Parliament**



Overview

1. Current situation in precarious work
2. Most vulnerable groups
3. Different approaches
4. The right balance
5. Adressing the challenges



Current situation in precarious work (Germany)

2016: 33,296 employees

23% = 7,655 atypical 31%m / 69%f

8% = 2,655 temp.empl. 50%m / 50%f

4,807 part-time 15%m / 85%f

2,169 small-scale 24%m / 76%f

(Statistisches Bundesamt Germany, 2016)

2000: 29,862 employees

20.1%=6,012 atypical 35%m / 65%f

Temporarily employment

7.6 % of the female and 6.6 % of the male workforce

20+% of workers 15-24 years old

13.1 % of workers 25-34 years old

13 % of workers with foreign passport

(German government, Bundestags-Drucksache 18/11981 of April 18, 2017)



Current situation in precarious work (Germany)

Dramatic increase in temporary work

2016 towards 2015 + 4.4 %

2016 towards 2013 +16.4 %

54% lasting less than 3 months (equal pay is guaranteed after 9 months!)

Average wage 58% of normal wage

(German government, Bundestags-Drucksache 18/13245 of August 3, 2017)

In general, a written employment contract is not required by law, except for temporary employment contracts and in diverse collective agreements.

Decline of collective agreements (without collective agreements:

West: 66% enterprises, 49 % employees, East: 79 % enterprises, 51 % employees,
(Institute for employment research 2013)



Most vulnerable groups – current situation

- **Female employees**
- **Young employees**

- **Employees in enterprises without collective agreements**
- **Temporary work**
- **Temporarily employed persons (esp. 0-hours contracts)**
- **Small-scale employment**

- **Foreign employees**
(no statutory right to employment conditions in mother language)



Most vulnerable groups – future situation

- **Employees without or only a minimum education**
- **Bogus self employment (digitalism)**
- **Elderly employees**



Different approaches

- It should be obvious to know the essential rights and obligations in a written form, at least at the same time you start your employment. This also includes the listing of the valid collective agreements.
- The present German approach relies very much on contractual freedom. Therefore, only contractual damage is foreseen in case of breach of statutory obligations. From a practical and an EU law perspective, that is inadequate.



Different approaches

- Facing a decline in binding collective agreements, mandatory standards have to be guaranteed by law without the possibility to undermine them on a contractual level, even if it is collective.
- Enforcement of existing legal obligations is crucial. Therefore, institutions have to be equipped with the necessary power and personnel.
Labour inspectorates might be a possible choice.



The right balance

- Regarding the decline of typical labour arrangements and the increase of cross-border labour relationships (maybe even on a virtual level = crowdworking), the definition of an employment contract on an EU level makes sense.
- It is useful to broaden the concept of employment towards the traditional understanding of dependent work and to assign fundamental contractual rights as transparency to those working in a grey-area arrangement.
- Also, the EU legislation has to reflect the different systems of collective labour law, mostly anchored in the social history of the member states.



Adressing the challenges

- Extension of the right of transparency to all forms of employment incl. bogus self employment
- In order to prevent abuse, exemptions should be narrow (SME, small-scale employment)
- It needs to be discussed if minimum requirements concerning contracts of employment will be regulated on a rather limited level within a revised Written Statement Directive or if a seperate instrument with a more intense regulation is more appropriate. On the other hand, the charm to combine these approaches is obvious



Many thanks for your attention!

If you have any further queries:

rechtsanwalt dr. frank lorenz

silberberger.lorenz.towara

kanzlei für arbeitsrecht

grabenstraße 17, 40213 düsseldorf

tel. 0049211/55020-20

mail: lorenz@slt-arbeitsrecht.de

www.slt-arbeitsrecht.de