7. Minimum wage(s) in Germany: origins, enforcement, effects

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7.1 INTRODUCTION

On 1 January 2015, a statutory minimum wage (SMW) of €8.50 per hour took effect in Germany, breaking with an almost 100-year-old tradition of non-interference in the social partners' regulation of wages (the so-called *Tarifautonomie*). The introduction of the SMW was not, however, a sudden development. Rather, it was preceded by several government-sponsored sectoral minimum wages, already covering millions of workers, as well as regional governments' efforts to introduce minimum wages in the context of public procurement. Germany is an interesting case for a number of reasons. It is Europe's largest economy, but for a long time resisted introducing an SMW. From an institutional point of view, in contrast to many other countries, the governance of minimum wage(s) does not fall under the direct jurisdiction of the labour administration and labour inspectors do not monitor compliance. In order to understand this German *Sonderweg*, this chapter asks the following questions: How did the introduction of an SMW in Germany become possible politically? How (effectively) and by whom is the payment of the various minimum wages enforced? And finally, how have minimum wages affected employment growth and household incomes? Addressing these questions enables us to better understand the governance of minimum wage regimes and the wider institutional context within which governance takes place. This implies that the introduction of the SMW and other minimum wages must be properly contextualized. Accordingly, following a succinct presentation of relevant institutions and actors, as well as the structural labour market context in the following section, Section 7.3 traces the political dynamics that led to the introduction of sectoral, regional and eventually the statutory minimum wages. Section 7.4 then focuses on governance issues such as the legal setting of different minimum wage laws – sectoral, regional and statutory – and assesses the strengths and weaknesses of the institutionalized enforcement mechanisms designed to monitor and sanction firms' compliance. The fifth

section discusses the effects of minimum wages on German labour market developments, while the final section concludes by discussing key lessons and practical implications. The evidence of this chapter is mainly based on desk research, which has been supplemented by insights gathered via a small number of expert interviews and personal conversations on the topic that took place between 2015 and 2018.¹

7.2 CONTEXTUALIZING THE INTRODUCTION OF THE SMW IN GERMANY

7.2.1 Political Institutions and Key Actors Involved in Labour Market Governance

Germany is a federal parliamentary democracy with 16 federal states (*Länder*). Given Germany's multi-party system, coalition governments are the norm and have always comprised one – if not both – of the main people's parties, including the Christian Democrats (CDU/CSU)² and the Social Democrats (SPD). From 1998 to 2005, the Social Democrats and the Greens formed a coalition government. From 2005 through 2009, and again since 2013, a grand coalition of both people's parties was in government, led by Chancellor Angela Merkel (CDU). From 2009 to 2013, a coalition was formed between the Christian Democrats and the pro-market Liberals (FDP).

At federal level, the Federal Ministry for Labour and Social Affairs (BMAS) is responsible for the formulation, supervision and, to some extent, implementation of labour laws matters related to occupational health and safety (OHS) and labour market policy. The German Public Employment Service (PES), in turn, is a self-governed body transposing active labour market policy and administering unemployment benefits.

In addition to the public authorities, the social partners – employer associations and trade unions – are important actors in the labour market. On the employer side, the most important actor for wage-related issues is the Confederation of German Employers' Associations (*Bundesvereinigung Deutscher Arbeitgeberverbände*, BDA). The members of the BDA comprise employer associations, which are themselves organized regionally as well as sectorally. On the side of workers' representation, the most important body and official social partner is the German Federation of Trade Unions (*Deutscher Gewerkschaftsbund*, DGB), the trade unions' umbrella organization. The DGB's members, who negotiate wages with employers or the respective employer association, include eight multi-industry trade unions. The largest DGB member organizations are the metal and electrical union *IG Metall* and the united service sector union *ver.di*, with about three million members each.

7.2.2 Labour Law and Wage-setting Autonomy

With regard to wage setting, Germany's constitution (indirectly) includes the so-called 'wage-setting autonomy' clause (*Tarifautonomie*) that attributes the right to settle wages to the social partners. Accordingly, the government *cannot* interfere in ongoing wage negotiations between the social partners, while the government's ability to issue legislation on wages is circumscribed and often controversial. Nevertheless, the government can influence wage levels/coverage by four means: (1) the Collective Bargaining Act (*Tarifvertragsgesetz*, TVG) first introduced in 1949, which allows the labour minister to make wage agreements generally binding to a specific sector if certain criteria are met (see below for more detail); (2) the Posted Worker Act (*Arbeitnehmer-Entsendegesetz*, AEntG, first applied in 1996) with which the minister can declare a collectively agreed minimum wage floor for specific sectors;³ (3) the Temporary Agency Work Act (*Arbeitnehmerüberlassungsgesetz*), which allows the minister to set a minimum wage floor for temporary agency work upon consent with the social partners (in effect since 2012); and (4) the Statutory Minimum Wage Act (*Mindestlohngesetz*, MiLoG), which took effect in 2015. At the *Länder* level, several governments have also introduced minimum wages in the context of *public procurement* since 2007 (see also Section 7.3.1.3).

7.2.3 Socio-economic Developments: Risks and Opportunities

Since the overhaul of the German welfare state under the label 'Agenda 2010' in the early 2000s, Germany has had a substantial increase in its overall employment rate. Older workers in particular, but also women, have contributed to Germany's substantial increase in employment. The Agenda 2010 and the associated Hartz reforms included inter alia labour market deregulation, a tightening of welfare receipt for the long-term unemployed, a phasing-out of early retirement options as well as an expansion of childcare provision and school hours (for more details, see Weishaupt, 2010, 2011).

Although the growth displayed in Figure 7.1 is impressive, one may ask at what price employment has reached all-time record highs. It is clear that Germany has *not* achieved employment growth through an overall reduction of average wages. While wages increased only moderately in the first decade of the twenty-first century (thereby increasing German competitiveness in comparative perspective), wage increases have been more substantial since 2011. Overall, the average wage increased significantly from €28,306 in 2000 to €39,446 in 2017 in current prices (cf. OECD Stat). On the other hand, however, there has been a substantial growth in atypical employment and in the low-wage sector, which has grown more or less continuously – especially in absolute terms – since the late 1990s (Figure 7.1 and Table 7.1). The statis-

Source: Eurostat; own graph.

Figure 7.1 Employment rate in Germany (%), 2001–17

Source: OECD Stat; own graph.

Figure 7.2 Incidence of participation by men and women in low-wage jobs (below two-thirds of gross median pay) (%), 2000–16

tics also show a strong gender bias; it is mainly women who work atypically and in low-wage jobs. However, the proportion of women in low-paid work has fallen since its 2004 peak. The percentage of men in low-paid work, by contrast, has continuously increased since the turn of the millennium.

Table 7.1 *Proportion of employees in typical/atypical work by type, 1997, 2007 and 2017 (%)*

Year	Typical employment	Atypical employment	Of which: fixed-term	Part-time	Marginal ('mini jobs') ^a	Agency
<i>Total</i>						
1997	82.2	17.8	6.7	11.6	4.5	–
2007	74.3	25.7	9.1	16.3	9.1	2.0
2017	76.9	23.1	7.6	14.3	6.5	2.8
<i>Men</i>						
1997	91.6	8.4	6.5	2.0	1.4	–
2007	85.6	14.4	8.9	4.1	3.7	2.5
2017	86.1	13.9	7.4	4.1	3.0	3.6
<i>Women</i>						
1997	70.3	29.7	6.9	23.6	8.4	–
2007	61.6	38.4	9.3	30.2	15.3	1.5
2017	67.0	33.0	7.9	25.4	10.2	1.9

Note: ^a Marginal employment contracts are remunerated with a maximum of €450 per month and exempt of the full social security contributions.

Source: Federal Statistical Office (2017).

The growth of low-wage jobs in recent decades has been one of the main factors in explaining rising inequality in Germany. According to the German Institute of Economic Research, the disposable income of the lower income segment decreased between 1991 and 2014, while the middle-income segment and the highest income segment grew by 8 and 26 per cent, respectively (Grabka and Goebel, 2017, 82). Similarly, the percentage of persons at risk of (in-work) poverty has increased, which can directly be attributed to the Hartz IV reforms (Gerlitz, 2018, 1126). Growth in atypical and low-wage work has been encouraged by a number of factors, including (a) legislative initiatives (for example, deregulation of atypical work), (b) employers' preferences and strategies (Eichhorst and Kendzia, 2014; Eichhorst and Tobsch, 2014) and (c) a decline of trade union density to well below 20 per cent and the associated erosion of collective bargaining coverage to under 60 per cent of workers (cf. also Bispinck, 2011). Figure 7.3 illustrates trade union decline in structural power.

Source: OECD Stat; IAB-Betriebspanel; own graph.

Figure 7.3 Trade union density and collective wage coverage (dependent workers) (%), 2001–16

7.3 THE LONG HISTORY OF MINIMUM WAGE REGULATIONS

7.3.1 Collective Bargaining and the (Declining Importance of the) Collective Bargaining Act

In the years following the end of the Second World War, the German Social Market Economy became fully institutionalized, including in relation to wage-setting autonomy, which delegates wage-setting responsibility almost entirely to the social partners. This arrangement enabled the social partners to reach an employee coverage rate of collective wage agreements between 80 and 90 per cent up until the 1980s (Schulten and Bispinck, 2013, 760). Despite the minimal role of the state, the Collective Bargaining Act (TVG) of 1949 included a paragraph (§5) that allowed the respective federal ministry to declare collective agreements as generally binding, but only when the following conditions were met: at least one of the social partners needed to ask the ministry to interfere; at least 50 per cent of workers in a given sector were covered by the collective agreement; the intervention had to be in the public interest; and a majority of the Collective Bargaining Committee at the Ministry of Labour, composed of peak trade union and employer association representatives, had to give their consent. In 1952, a ‘social emergency’ clause followed – the so-called *Mindestarbeitsbedingungs-gesetz* (MiArbG) – which

allowed for the application of the TVG in sectors that failed to reach the 50 per cent coverage quorum. The rules became even stricter and stipulated that severe social distortions had to be demonstrated.

Given the already high coverage rate and the strict rules concerning when to apply the laws, the TVG was rarely used, while the ‘social emergency option’ remained entirely dormant. More specifically, by the early 1990s – when collective agreements were still strongly present in the German economy – only some 5.4 per cent of all collective agreements were declared generally binding. This already low coverage rate would continue to decline gradually during the later 1990s and 2000s to less than 2 per cent in 2013 (Schulten and Bispinck, 2013, 760). This decline was the result of a significant overall decline in bargaining coverage – especially in the new *Länder* of East Germany – where newly founded firms never joined employer associations, while firms that had been members either left the associations entirely or joined new so-called ‘OT-associations’, which offered membership without the obligation to adhere to collective agreements (Silvia, 2010, 2013). Put differently, given the increasingly low coverage rate, it had become ever more difficult to meet the stipulations in the TVG, including the consent of the Collective Bargaining Committee and meeting the 50 per cent quorum.

7.3.2 The Posted Workers’ Act and its Strategic Use by the Social Democrats

In 1996, the then Christian Democrat-Liberal coalition government introduced a new instrument to declare wage agreements as generally binding when they first utilized the Posted Workers’ Act (*Arbeitnehmer-Entsendegesetz*, AEntG) in the construction sector. De facto, this decision was aimed at reducing foreign competition by obliging foreign firms to pay German wages. While the German law preceded the European Union (EU) Posted Workers’ Directive of 1996, it was nevertheless formulated in the context of European integration and legislation. More specifically, following the accession of Spain and Portugal in 1986, a dispute had arisen about wages paid to workers of a Portuguese construction company, who had sent – or posted – their workers to perform services in France (but paid them the much lower Portuguese wages). While the accession treaty had ruled out the free movement of people, it did not specifically forbid the provision of services. In 1990, the European Court of Justice then ruled in the so-called *Rush Portuguesa* case:

Community law does not preclude Member States from extending their legislation or collective labour agreements entered into by both sides of industry, to any person who is employed, even temporarily, within their territory, no matter in which

country the employer is established; nor does the Community law prohibit Member States from enforcing those rules by appropriate means.⁴

This ruling would also become the core point of reference for the Posted Workers' Directive adopted in 1996 (effective January 1997), shortly after the introduction of the AEntG. Besides the construction sector, other construction-related sectors such as roofers and electricians (installation) were also included in 1997.⁵

For some years, there were no more discussions about further extending the AEntG to include other sectors. However, in the early 2000s, the first voices began to appear discussing the possibility of introducing a generally binding statutory minimum wage (SMW), which would lead to a rediscovery of the AEntG. The first political players to discuss an SMW included the Party of Democratic Socialists (PDS),⁶ who jointly with the Foodstuff Industry and Catering Trade Union (NGG) argued for the need to introduce a statutory minimum wage in 2001. These discussions were then followed up with an official motion to parliament in 2002. At that time, most other trade unions still rejected an SMW, including the service sector union *ver.di*, the metal union *IG Metall*, and the chemical sector union *IG BCE*; only the construction sector union *IG BAU* suggested applying the AEntG also to other sectors (Peter and Wiedemuth, 2003).⁷

Following the so-called Hartz reforms – which entailed, inter alia, the deliberate promotion of a low-wage sector (Hartz I and II, which took effect in 2003) and a tightening of the benefits regime (Hartz IV, which took effect in 2005) – *ver.di* also began to endorse an SMW. In January 2006, *ver.di* and NGG launched a joint minimum wage initiative in which they demanded an SMW of €7.50 per hour. Only in December 2007, following an intense internal debate, did the DGB eventually adopt a position in favour of an SMW and subsequently launched a large public campaign. The campaign was picked up on by all major media outlets and is considered one of the most successful in the DGB's history (DGB, 2014).

Also, within the grand coalition elected in September 2005 and led by the Christian Democrats, vehement discussions on how to move forward emerged. On the one hand, Chancellor Merkel's Christian Democrats were sceptical and categorically rejected an SMW. On the other hand, even though the Social Democrats were in favour of some type of minimum wage regulation, they were not yet ready to commit to an SMW. The coalition nevertheless not only agreed to apply the AEntG also to the industrial cleaning sector – effective March 2008 – but also launched a special cross-party committee, in which a consensus was reached to ban 'unethical wages' (Weishaupt, 2018). Subsequently, eight additional sectors applied for their inclusion in the AEntG in 2008; six of which were granted inclusion by parliament in

Table 7.2 Two procedures to make wage settlements generally binding

Qualifying condition	TVG	AEntG
Application by at least one of the social partners	Yes	Yes
In the public interest	Yes	Yes
50% quorum (employers bound by collective agreements employ at least 50% of the workers in that sector)	Yes (but amended MiArbG since 2009)	No
Approval of the collective bargaining committee	Yes	No (since 1999)
Scope of agreement	National and regional	Only national
Limited to specific sectors	No (any agreement can be extended)	Yes (only specific sectors)
Limits in content of collective agreements	No (entire collective agreement is extended)	Yes (only lowest pay category is extended plus agreements regarding vacation, maximum working time, and OHS)

Source: Schulten and Bispinck (2013, 11), author's translation and additions.

January 2009, including the private security sector, the dry-cleaning and laundry sector, the waste management sector, forestry services, mining specialists and the further and vocational education training sector. The remaining two – long-term care and agency work – were subsequently discussed under separate rules. The minimum wage in the long-term care sector was part of an ordinance on the working conditions in the long-term care sector, which took effect on 1 August 2010, while agency work was regulated by its own law (*Arbeitnehmerüberlassungsgesetz*, AÜG) and an associated minimum wage, which took effect on 1 January 2012.

Besides granting six more sectors inclusion to the AEntG, parliament also voted to permit Labour Minister Müntefering to revive the dormant MiArbG's 'social clause' of 1952. Müntefering hoped that the social clause would allow him to apply the TVG in additional sectors as the MiArbG allows circumventing the 50 per cent quorum. In April 2009, revised versions of the AEntG and the MiArbG came into law. Table 7.2 illustrates the different rules for the two procedures.

7.3.3 Public Procurement and the Turn to the SMW

The question regarding sectoral minimum wages was not only debated at federal level. Various, mostly SPD-governed, *Länder* also sought to regulate wages when it came to public procurement. As early as 1999, the *Land* Berlin introduced a stipulation that all service providers receiving public contracts had to pay wages comparable to those negotiated in the respective sectors. Over time, several other *Länder* governments followed suit, including Bavaria and Saarland (2000), Saxony-Anhalt (2001), Bremen, Lower-Saxony and North-Rhine Westphalia (2002), Schleswig-Holstein (2003) and Hamburg (2004); in 2007, Berlin and Bremen furthermore introduced explicit minimum wages.⁸ The SPD's embracement of minimum wages – even if only at the *Länder* level and in the area of public procurement – must be seen in the overall political context. For one, the SPD had lost tremendous support from voters due to the highly unpopular Hartz reforms, the rapidly growing low-wage sector (Kalina and Weinkopf, 2008) and rising inequalities (OECD, 2008). Moreover, there was a strategic window of opportunity as public opinion surveys in early 2008 not only (repeatedly) showed a majority of Germans stating that Germany had become 'socially unfair', but more than 80 per cent of the populace preferred the introduction of a (sectoral) minimum wage, even amongst Christian Democratic voters (DGB, 2008).

The SPD strategy came to an abrupt, albeit temporary, end when in April 2008 the European Court of Justice surprisingly ruled in favour of a German company that had sued the government of Lower-Saxony for terminating their contract after it had become clear that the wages paid to sub-contracted workers from Poland were below the minimum specifications (Bücker and Warneck, 2010). While this infamous Rüffert decision shocked most observers – also because the ILO Convention No. 94, Article 2 specifies public contracts should 'not [be] less favourable than those established for work of the same character in the trade or industry concerned in the district where the work is carried on' – it could only temporarily stall the development. Over time, the vast majority of *Länder* governments strategically responded to the ruling and re-issued their procurement regulations, initially without specifying minimum wages. In early 2011, however, Berlin and Bremen also established hourly minimum wages of €7.50 and €8.50, respectively, Rhineland-Palatinate followed soon later that same year, and many other SPD-governed *Länder* in the subsequent years. Thus, a clear pattern became visible: SPD-ruled *Länder* governments introduced minimum wages 'from below' in a tactical move to increase the pressure on the – at least partially – still hesitant Christian Democrats.

By 2011, the SPD had fully committed to the introduction of a statutory minimum wage of €8.50 per hour, mirroring the DGB demands articulated a few months earlier. After regional elections which had shifted the distribu-

tion of power in the *Bundesrat* in early 2013, the *Länder* governments formed a voting coalition in the *Bundesrat* between the SPD-Green, Green-SPD, SPD-Left Party and CDU-SPD-governed *Länder* – the latter being Saarland – and voted in favour of an SMW. While the coalition was well aware that the CDU/CSU-FDP-dominated *Bundestag* would not have to discuss the law before the impending national elections in the fall of 2013, it nevertheless sent a powerful message to the electorate and set the stage for future coalition negotiations.

When the elections brought back another grand coalition government under the leadership of Chancellor Merkel in the fall of 2013, the Christian Democrats eventually also endorsed the introduction of the SMW – with the passage of the Minimum Wage Law on 11 August 2014 (*Mindestlohngesetz, MiLoG*) – and agreed to a revision of collective bargaining laws.⁹ The Christian Democrats' turnaround had been the result of the CDU's labour wings, the Christian Democratic Workers Alliance (CDA), continuous intra-party support for the introduction of a 'minimum wage floor' (Weishaupt, 2018). The party base was eventually persuaded about the adequacy, if not necessity, to introduce an SMW based on two arguments. First, the CDA argued that it was morally reprehensible to support employers who were only competitive due to a low-wage strategy, which also put pressures on 'good employers', willing to pay fair wages. And second, the CDA argued that the SMW was in accord with the principles of the *Tarifautonomie* as a bipartite Minimum Wage Commission set the level of the SMW, not the Minister for Labour or parliament.¹⁰

7.4 INSPECTION OF MINIMUM WAGES: HORIZONTAL COORDINATION AND BROAD-BASED PARTNERSHIPS

Monitoring of minimum wage regulations lies with a variety of actors, depending on the type of minimum wage to be monitored (cf. Böhlke and Schulten, 2014). First, and most importantly, monitoring of the SMW as well as the minimum wages set under the AEntG (about 3,500,000 workers in 2017) and the AÜG (about 1,000,000 agency workers in 2017) rests with a special customs unit, the Financial Monitoring Unit (*Finanzkontrolle Schwarzarbeit, FKS*), which is subordinated to the Ministry of Finance. The FKS was founded in 2004 in the context of a revised law to combat illegal employment (*Schwarzarbeitsbekämpfungsgesetz, SchwarzArbG*). A year prior, the Federal Ministry of Finance announced that the labour inspectorates first established in 2002 in the context of the Hartz reforms should be replaced (Mügge, 2004, 74). The staff that had previously been responsible for detecting illegal employment were expected to monitor compliance with the AEntG and the AÜG instead. FKS officers are specially trained civil servants and have comparable compe-

tences to police officers. They may wear uniforms – but they can also choose to wear plain clothes – and carry a firearm (which is deemed necessary as these officers may also encounter drug traffickers, smugglers and other criminals). The new SchwarzArbG grants FKS officers the right to inspect firms, review firm documents and talk to staff, including both employees and contracted workers. If the FKS suspects irregular activities, legal procedures can be initiated. The FKS officers act either on demand, that is, when stakeholders (for example competitors, employees, work council members, trade unions or other citizens) suspect illegal or fraudulent activity, or on their own initiative (typically based on a statistical risk assessment tool, which identifies likely cases). Over time, FKS staffing grew from some 2,500 in 2005 to roughly 6,500 in 2018. With the introduction of the SMW, the government pledged to further increase personnel by 1,650 officers by 2020 (Bundesregierung, 2015). A staffing level of around 8,150 is considered adequate by most stakeholders (Deutsche Bundestag, 2018a, 17), even though the DGB, supported by some high-ranking Social Democrats, envision a growth to a total of 10,000 personnel (Mindestlohnkommission, 2018a, 66).

The German Social Security Office (*Deutsche Rentenversicherung*, DRV) also has an important role to play in minimum wage enforcement as it screens firms for fraud or for not paying (correctly grouped) minimum wages when they submit their payroll contributions. The DRV employs about 2,100 officers as part of a special audit unit (Lubinski, 2013). These auditing officers are in charge of regularly reviewing all firms' social security contributions, which in turn are based on wages. Hence, when the DRV reviews firms they may identify under-payment of wages, which – in many cases in the context of the AEntG – may be the result of wrong calculations rather than purposive fraud as there are very many sectoral agreements and pay categories (Böhlke and Schulten, 2014, 36). When fraudulent or incorrect behaviour is detected, the DRV contacts either the FKS (in case of AEntG, AÜG or SMW violations) or the public prosecutors at *Länder* level (in case of public procurement violations, see next paragraph below). Cooperation between the FKS and the DRV has been very close and has included the development of a joint database and information platform (also accessible remotely by mobile FKS officers), which has proven to be highly effective in fraud detection and law enforcement (Lubinski, 2013). At local level, the customs units also work closely with the regional tax authorities. Besides exchanging data and closely cooperating, the DRV and the tax authorities also organize joint seminars where FSK officers inform finance officers about their daily routines and exchange common problems, techniques and insights. Whenever FSK officers find minimum wage violations, they inform the finance ministries of the *Länder*, the regional finance administration, the Social Security Administration (DRV) as well as the respective trade licensing offices.

The payment of minimum wages in the context of public procurement, in turn, is monitored in different ways, depending on the *Länder*: most of the 13 *Länder* with minimum wages for public tenders have entirely decentralized inspections, meaning the local units issuing the tenders also monitor compliance. However, this system has been deemed relatively ineffective (Böhlke and Schulten, 2014, 37). Other *Länder*, including the (small) city states of Berlin and Hamburg as well as (large) North-Rhine Westphalia (NRW) have central offices with their own inspectors. Bremen represents a case with a mixed system in the sense that all tenders are reviewed by a central unit, which in turn – based on statistical risk analyses – identifies firms for inspections, which are then performed by the local units issuing the tenders. Whenever violations are found, the case is turned over to the respective public prosecutor (*Staatsanwalt*).

Finally, several other public offices may come across fraudulent activities within firms and report detected or suspected misconduct to the FKS, including PES officers, occupational health and safety inspectors, municipal trade supervisory inspectors, or the social partnership support bodies (*Sozialkassen*) created in the context of the TVG (Schulten, 2015). Qualitative interviews with employers conducted in 2010/11 show, however, that the FKS is the most effective of the involved actors (Bosch and Weinkopf, 2012, 62). Similarly, the qualitative findings suggest that the public monitoring of rules with the option of (harsh) sanctions¹¹ is more effective than those conducted by the social partners on a voluntary basis in the context of the TVG without sanctioning possibilities (Bosch and Weinkopf, 2012, 62). Not surprisingly, inspections and detection of fraud by other actors always lead to an involvement of FKS. Figure 7.4. summarizes the various actors involved.

In order to obtain a maximally effective coordination of tasks between the central and sub-national levels and between the FKS and various other public authorities, several coordinating groups have been established and a series of joint agreements and guidelines put forward. These agreements and guidelines clearly outline how public authorities ought to react and get in touch with the FKS when a suspicious case is detected. The effective coordination is built on identifying respective contact persons, facilitating regular and personal exchanges of experience on all levels, and mandating the flow of (specific) information (Federal Government of Germany, 2013, 19–20).

In addition to these legally based forms of enforcement, in a variety of sectors the social partners have – jointly with the FKS – formed so-called ‘federal alliances against illegal employment’ (which are typically also supported by relevant regional alliances). One of the key tasks of these alliances is to monitor compliance with minimum wages, which is – as stressed by the public authorities – also a task for the social partners involved.¹² The first alliances were formed in the construction sector in 2004, followed by transport and

Source: WSI, cited in Schulten (2015, 3), author's translation.

Figure 7.4 Actors involved in the inspection of minimum wages

trucking (2006), the meat industry (2007), industrial cleaning (2008), painters (2010), textiles and laundry (2012), the scaffolding as well as electro sectors (2014), and most recently the hairdressing sector (2016). The involved actors jointly seek to inform firms about the (in the context of the AEntG often rather complex) rules and regulations, while increasing acceptance and tolerance for FKS firm audits. The alliance partners also meet twice a year to discuss arising compliance problems (Böhlke and Schulten, 2014, 35). Furthermore, the partners identify key contact persons at all levels to specify discussion points and to keep constructive dialogues going (Federal Government of Germany, 2013, 21). While the first alliances were formed on the initiative of the Federal Ministry of Finance, more recent alliances were the result of the social partners taking action. This development is interpreted as a sign of success for the work of these alliances, which are mainly based on voluntary and mostly informational and discursive practices (Bundesregierung, 2010, 6).

Data on inspections by the FKS are publicly available, most recently for 2017 after several Green Party Members of Parliament requested a 'formal answer' from the government (Deutsche Bundestag, 2018a). The FKS inspects firms based on risk profiles, which take sector-specific information into account as well as information from previous inspections or other related processes. The data show that some 52 000 employers – or 2.3 per cent of all employers – were inspected in 2017. The sectors mostly in the focus of the FSK include construction, hotels and restaurants, and shipping, transportation and logistics, even though regions somewhat vary. In 2017, a total of 2,518 cases were made

Table 7.3 *FSK ‘priority inspections’ by sector and year*

	Employer inspections	Administrative offences	Criminal proceedings
2015			
Main construction sector	686	3	124
Hotels and restaurants	1306	163	362
Shipping, transport and logistics	574	7	39
Taxi	516	3	6
SUM	3082	176	531
2016			
Scaffolding	672	6	146
Shipping, transport and logistics	635	26	81
Retail	1493	39	58
Hair dressers	2011	52	60
SUM	4811	123	345
2017			
Security services	1044	15	95
Building cleaners	1439	10	108
Dry and prefabricated construction	181	3	64
Hotels and restaurants	1421	221	277
Shipping, transport and logistics	1898	38	53
SUM	5983	287	597

Source: Deutscher Bundestag (2018b, 4–5).

due to non-compliance with the SMW, 2,102 due to non-compliance with sectoral minimum wages (plus 116 due to non-compliance with the minimum wage in temporary agency sector) (Deutscher Bundestag, 2018a, 7). Each year, the FSK conducts so-called ‘priority inspections’ during which specific sectors are inspected nationwide at the same time. These inspections receive full media attention and are often picked up by the trade unions and other actors to highlight the existence and need for inspections. Table 7.3 presents the inspections by sector as well as the resulting prosecutions.

7.5 EFFECTS OF MINIMUM WAGES ON WAGES AND EMPLOYMENT

Minimum wages are often feared to lead to job destruction (cf. Möller et al., 2014). For instance, researchers at the prominent Institute for Economic Research (ifo) predicted in 2014 that a SMW of €8.50 an hour would destroy up to 900,000 jobs in total, or 160,000 jobs in full-time equivalents (Knabe et al., 2014, 152). Similarly, the employer-financed Initiative New Social Market Economy (INSM) published several core theses in April 2015 – that is, 100 days after the introduction of the SMW – about the consequences of the SMW (Knabe and Schöb, 2015), claiming that:

1. The SMW has had a negative impact on employment, especially in sectors where wages are a critical component of the overall business expenditures such as the catering trade, hotel, transportation or hairdressing sectors. The authors further stress that the eastern parts of Germany are particularly affected, as the SMW has led to wage increases of more than 20 per cent for some 4.8 per cent of all employees. In these areas, employers are often forced to reduce the working hours of their staff (for example by adjusting store opening hours) or let employees go.
2. The effects of the SMW will only be noticed in the longer run as wage increases first lead to price adjustment, which then may reduce demand for services and products.
3. The official unemployment statistics are not the best indicator to assess employment effects as people may lose additional employment and income opportunities but are not necessarily unemployed as these jobs disappear.

Even though these concerns are certainly valid for some employers, official aggregated evaluations tell a different story – both in previous years and with regard to the SMW. In 2009, the new coalition agreement between the Christian Democrats and the Liberals issued a government-sponsored, but independently conducted evaluation of the effects of sectoral minimum wages. The study included an assessment of eight sectors in which the AEntG was applied. The evaluations published in 2011 unanimously concluded that no systematic negative effects on employment levels could be found, which ended discussions about the termination of sectoral minimum wages due to negative employment effects (Bosch and Weinkopf, 2012).

Official evaluations of the SMW came to similar conclusions, albeit with some caveats. On the one hand, the introduction of the SMW has led to a significant increase in hourly wages for certain groups, especially for workers in East Germany, marginally employed, people without vocational training,

employees in small businesses and women (Mindestlohnkommission, 2018b, 47). However, monthly gross wages increased less significantly, if at all, as employers often reduced working hours for persons affected by hourly wage increases to contain their overall personnel costs (Mindestlohnkommission, 2018b, 49). On the other hand, various studies show that the employment effects were rather weak, ranging from zero to 80,000 jobs lost to statistically insignificant or inconclusive (Bossler and Möller, 2018, 5). The negative effects are mostly limited to persons marginally employed (Schmitz, 2017) or to firms in East Germany (Bossler and Gerner, 2016). Others even find a positive effect in some regions (Ahlfeldt et al., 2018). The overall number of workers subject to social security contributions has continued to increase since 2015, even after the SMW had been raised from €8.50 to €8.84 on 1 January 2017. This suggests that losses in marginal employment have led to a transformation into regular (even if part-time) employment, a trend empirical studies seem to confirm (Bossler and Möller, 2018, 5).

7.6 DISCUSSION AND CONCLUSIONS

This chapter has shed light on the reasons why – over time – most political actors, including the majority of Christian Democrats, endorsed the introduction of an SMW, illuminated how the SMW and other minimum wages are monitored and enforced, and summarized key reports on the effects of minimum wages on employment and income distribution. The necessity to introduce a statutory minimum wage and extend possibilities to make collective agreements generally binding can mainly be traced to two interrelated developments: (1) a gradual but significant decline of collective wage bargaining coverage from some 90 per cent of workers in the immediate post-war era to below 60 per cent today, and (2) the growth of the (mostly unorganized) low-wage sector, also especially after the introduction of the so-called Hartz reforms, which deliberately expanded the low-wage sector and increased pressures on the (long-term) unemployed to accept low-wage and atypical employment. Both trends led to a significant increase in inequality (Grabka and Goebel, 2017) and (in-work) poverty (Gerlitz, 2018). Out of a position of structural weakness, the trade unions mobilized the state to introduce a SMW and extend collective agreements. While this has not fundamentally changed the German model of industrial relations – also and especially as trade unions still prefer an increase in regular wage bargaining coverage, which not only covers wages but also working conditions and occupational benefits – it shows a broad political, and indeed public, consensus about the need for the government to regulate market forces and address social inequalities.

Compliance with the minimum wage, in turn, is monitored and enforced mainly via the FKS, that is, specially trained civil servants, who broadly

inspect employers' practices. Based on the findings in this chapter, the following conclusions and recommendations can be offered to improve compliance with the minimum wage(s):

- The rules should be simple and exceptions should be kept at a minimum. Experiences with the (rather complex) AEngG suggest that complexity of the system can lead to lower rates of compliance as employers may make mistakes, while employees may not know their rights.
- Enforcement through regular (FSK) inspections with the possibility of (harsh) sanctions is crucial. The (voluntary) inspections by social partners (in the context of the TVG), in turn, were found less effective in deterring violations.
- Regular (risk-based) inspections necessitate an appropriate number of well-trained staff.
- Inspections work best if employers and employees cooperate with inspectors. As most employers comply with the regulations, inspectors need to be friendly and professional. At the same time, information sharing builds trust and acceptance of inspections. The 'federal alliances' between the FSK and the social partners are considered an important tool to reach this understanding and to build channels of communication.
- Close cooperation between all relevant public authorities is needed. In order to detect violations, the FSK needs partners (for example tax, social security or trade licensing officers) with whom networks can be built and data can be exchanged quickly. Regular exchanges between authorities and formalized codes of conduct increase predictability and ensure a clear division of labour and responsibility between different public administrations.
- Operation of an official contact point for employees who seek information or assistance is a welcome service. The experiences with the DGB, BMAS and SMW Commission phone lines suggest a high demand for a contact point for individual workers.

These conclusions also illustrate that the recently evolved German wage-setting regime captures many of the United Nation's (UN) 11 Principles of Effective Governance for Sustainable Development centred on effectiveness, accountability and inclusiveness. The SMW rules can be deemed *effective*, as the law has been reached in an over-arching consensus, allowing for the drafting of 'sound policy'. Moreover, 'competences' are clearly assigned to both the FSK, monitoring and enforcing the law, and the tripartite Minimum Wage Commission, setting appropriate and agreeable wage levels. Finally, 'collaboration' is part and parcel of daily governance procedures and actions both in administrative terms, as the FSK closely engages with a wide range of actors, and in political terms, embodied in the various federal alliances. The SMW rules can also be

considered accountable, as FSK officers are well-trained and respected civil servants, while parliament ensures transparency via the publication of official data on inspections and violations. Hence, the principles of integrity, transparency and oversight are honoured. Finally, when it comes to inclusiveness, the SMW is applied nationwide with practically no noteworthy exemptions, thus ensuring that no one is left behind or discriminated. Moreover, but related to inclusiveness, this chapter has also shown that the impact of minimum wages regulations on overall employment levels has been negligible if not positive, despite massive fears about its negative impact. This is to say, job losses in some areas have remained minimal, while overall employment has continued to grow after the introduction and subsequent increases of the SMW. Whether the introduction of the SMW has reduced income inequality and (in-work) poverty, however, remains unclear: even though the hourly wages have significantly increased, the associated reductions in working times have often offset the effects on monthly incomes.

NOTES

1. Interviews were conducted with the German Customs Headquarters and the German Trade Union Confederation. The SMW was also a topic in several conversations with employer associations and the social affairs ministry, interviewed in the context of other research projects.
2. The Christian Democrats include the Christian Democratic Union (CDU) and the Bavarian Christian Democrats, who have their own faction called the Christian Social Union (CSU).
3. In 2017, the law covered 13 sectors with about 3.5 million workers (Deutscher Bundestag, 2018b, 3).
4. Cf. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52003DC0458>, accessed 27 November 2018.
5. Cf. http://www.boeckler.de/pdf/ta_mindestloehne.pdf, accessed 27 November 2018.
6. The PDS was a political party that operated almost exclusively in East Germany and included many members of the former Social Unity Party (SED) that had ruled in the authoritarian German Democratic Republic (DDR). In 2007, the PDS merged with the Election Alternative Work and Social Justice founded in 2004, which comprised disillusioned SPD members and trade unionists under the leadership of former Finance Minister Oskar Lafontaine. Later the new party was renamed The Left Party (*Die Linke*).
7. By the end of 2003, painters were also included in the AEntG, de facto establishing a minimum wage for that sector.
8. Cf. Heiko Glawe and Thorsten Thorsten (2010), 'Tarifreue nach dem Rüffert-Urteil des EuGH – ein aktueller Überblick, Powerpoint Presentation', available at http://www.boeckler.de/pdf/wsi_ta_tarifreue_glawe_schulten.pdf, accessed 26 May 2015.
9. The new Law to Strengthen the Collective Bargaining Autonomy simplified and expanded procedures to make collective agreements generally binding and thus

reinforced the role of the state. Due to the enhanced role of the state, the law is often sarcastically referred to as the Law to Weaken Collective Bargaining Autonomy (Hennsler, 2015, 43).

10. The Minimum Wage Commission consists of six members with voting rights (three representatives each from employers and trade unions) as well as two scientific advisory members and a chair (whose vote only counts if no consensus can be reached).
11. The new law introducing the SMW includes the possibility to impose fines of up to €500,000 (see MiLoG §22).
12. While the interest of unions is obvious, employers also may be eager to ensure compliance with minimum wages and other labour regulations in order to ensure fair competition and an equal playing field.

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