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STATUTORY MINIMUM WAGE IN PRACTICE – CONDITIONS FOR SUCCESSFUL IMPLEMENTATION

AT A GLANCE

With the statutory minimum wage of € 8.50 per hour introduced from January 2015 Germany now has a binding wage floor aimed at preventing wage dumping and bolstering fairness in the labour market. To realise that aim, the minimum wage must also be effectively implemented and enforced in practice. Experiences from the United Kingdom, where a minimum wage was introduced as early as 1999, show that this is a protracted process in which problems and regulatory loopholes have to be dealt with by means of legal clarifications, practical guidance and even new implementation strategies.

Since 1 January 2015 a minimum wage of € 8.50 per hour has applied to dependent employees. Despite many warnings of, in some instances, heavy job losses due to the introduction of the minimum wage, to date there has been no sign of such negative effects.

The large number of calls to the hotlines of the German Trade Union Confederation (DGB) and the Federal Ministry of Labour (BMAS), as well as numerous press reports on attempts by employers to thwart calls for a minimum wage in one way or another, indicate that in practice the minimum wage has yet to be implemented and enforced effectively. At the same time, during the first months there were still discussions at the political level concerning the regulatory details, in particular the obligation to keep a record of working time. In other countries with a statutory minimum wage, such as the United Kingdom, similar topics have been discussed as in Germany. In this contribution we examine what suggestions and conclusions can be drawn from the British experiences for effective implementation and enforcement of the statutory minimum wage in Germany.

TRANSPARENCY AND CLARITY

Only if employees are aware of the level of the minimum wage are they able to demand it in practice. To that end, employees and companies must be informed of the level of the minimum wage and must know to whom it applies. In Germany there are exemptions for apprentices, people under 18 years of age, volunteer workers, family members helping out in a business and previously long-term unemployed persons for the first six months of new employment. Interns are not entitled to the minimum wage only if theirs is a mandatory internship within the framework of training (school, university) or the internship is only for up to three months. Employees and firms also need to know which wage components may be taken into account in calculating the minimum wage entitlement. On this point the legal regulations in Germany leave a number of matters open. Thus some controversial issues have already had to be clarified by the courts – for example, the fact that holiday pay may not be taken into account in minimum wage calculations.¹ Furthermore, on-call time must also be remunerated with the minimum wage.

In the United Kingdom, too, the National Minimum Wage Act of 1998 contains numerous regulatory loopholes that have been closed only over the course of time. Considerable use has been made of ordinances for this purpose. For example, with the National Minimum Wage Regulations of 1999 the scope and precise methods of calculation were laid down – for instance, what working time is to be remunerated with the minimum wage, what allowances may be included and whether and to what extent accommodation costs may be deducted. Over the years numerous detailed regulations have been added or amended. In order to enhance the transparency of the current provisions the National Minimum Wage Regulations of 2015 were published recently to

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bring together and clarify the many additions and modifications to the detailed regulations in one document.

This underlines that not all conceivable questions and problems can be clarified and regulated in advance. Rather a continuous readjustment and adaptation of the regulations is required, also in response to available experience with implementation. This requires, accordingly, systematic collection, aggregation and evaluation of this information. This was a focal point of the British Low Pay Commission from the very outset. In the years after the introduction of the UK minimum wage, the Low Pay Commission time and again followed up sector and activity specific problems or issues of interpretation and developed proposed solutions for this purpose. In this connection it relies on the opinions of and consultations with relevant organisations and numerous studies that it commissions.

Given the complexity of the regulations both the Low Pay Commission and the trade unions and employers' organisations emphasise time and again that, beyond mere publication of the regulations, other practical guidance is needed in order to make the legal provisions comprehensible in practice. Thus, for example, the government prepared guidance on how to deal with internships² when it was evident that improper practices were widespread in this area. Furthermore, the guidelines on calculating the minimum wage were revised recently and the regulations on voluntary work, on-call work and travel time explained in more detail.³ Such guidance is also produced regularly by trade unions.

Finally, all actors in the United Kingdom are agreed that the regulations also have to be disseminated widely in order to become established. In contrast to Germany, the introduction of the minimum wage was preceded by major publicity campaigns. Comparable campaigns on implementation problems have been repeated several times since then, most recently in 2014.

CHECKS AND PENALTIES

Effective checks and penalties with regard to minimum wage violations are regarded in international research as an important condition of their acceptance. Employers make their peace with the minimum wage if they can assume that their competitors are complying with it. To this end there need to be sufficient checks and good cooperation between the various actors.

Minimum wage compliance can also be checked effectively only if employees' working time is recorded properly. A general recording obligation applies in Germany only to the sectors cited in the Act to Combat Clandestine Employment⁴ (*Schwarzarbeitsbekämpfungsgesetz*) and for employees in mini-jobs (in all sectors, with the exception of private households). Nevertheless, in recent months these recording obligations have been decried as bureaucracy gone mad, especially by the employers' organisations and in CDU/CSU circles. The Federal Ministry of Labour has pointed out, however, that minimum wage compliance cannot be checked without working time records and documentation on working time is already standard in many firms.

In the United Kingdom firms' recording obligations are much more extensive than those in Germany because they concern all

employers. In the public debate, however, this general recording obligation has barely become an issue. Besides underpayment, infringements of this recording obligation can also be punished. However, a 2007 study indicates that sanctions are rarely applied in such cases.⁵ One reason for this is that in the first years after the introduction of the minimum wage by the previous Labour government efforts were made to avoid charges of over-regulation and disproportionality and thus checks and penalties were essentially light touch. This has since changed, however, under the influence of increasing complaints and reports of violations of the minimum wage law. In contrast to what had been expected at the outset, non-compliance with the minimum wage did not diminish over time, but rather increased.⁶

This points to a further condition for effective checks. The penalties in the case of violations must hurt; in other words, non-compliance with the minimum wage must be more expensive than compliance. Since 2009 there has been a series of amendments in the United Kingdom in accordance with this principle. On one hand, after the Employment Act 2008 was passed, checks were tightened up and fines applied automatically in the event of proven underpayment, with few exceptions. Since 2014 fines for minimum wage violations have been increased several times and raised again in May 2015. Furthermore, since 2013 the government has put more emphasis on the naming and shaming strategy: in the first quarter of 2015 the names of over 150 companies were published that had violated the minimum wage, including such major firms as Foot Locker, French Connection and H&M.

ENFORCEMENT OF DENIED MINIMUM WAGE CLAIMS

Because state inspection can be carried out only on a spot-check basis, individual and collective options for legal action are very important. As in Germany, the trade unions in the United Kingdom have also long called for a right for associations to take legal action. In addition, hotlines have been accorded considerable significance in the international minimum wage literature. Employees and employers must therefore have easy and un-bureaucratic access in order to be able to report (also anonymously) possible violations. In Germany, the DGB has set up its own hotline, in addition to the hotline of the Federal Ministry of Labour.

In the United Kingdom a similar hotline has been in existence since the introduction of the minimum wage.⁷ Among other things it provides (in over 100 languages!) detailed information on the scope of application of the minimum wage, as well as case-specific individual advice and compared with Germany is also more closely integrated with the supervisory authorities: in case of need, calls are forwarded directly to the relevant department of Her Majesty's Revenue and Customs (HMRC). Within the space of a year in 2012/2013 HMRC initiated over 1,400 investigations on the basis of such calls.⁸ In Germany callers to date have merely been invited to report the violation to the local customs authorities. In the United Kingdom, there is also the option of reporting violations using a form on the internet. After repeated requests by trade unions it is also now possible to report violations on behalf of a third party.

It is also decisive for the acceptance and use of such options whether employees believe that confidentiality will be maintained. The fear of serious consequences, in particular (wrongful) dismissal by the employer, may be one of the main reasons why employees in the United Kingdom, despite the comparatively low obstacles, refrain from reporting violations. Only in the past two years has the number of complaints to HMRC increased markedly.⁹ This may indicate enhanced trust in the consistent punishment of minimum wage violations.

In addition, employees in the United Kingdom receive more comprehensive support in the enforcement of wage claims than in Germany, where such claims have to be asserted in court on an individual basis. By contrast, in the United Kingdom HMRC requires employers to pay wage arrears by means of a notice of underpayment and in the event of a refusal to do so can bring the case to court on behalf of the employees. In 2012/2013 HMRC claimed back just under four million pounds in wage arrears for 26,500 employees.¹⁰

Despite the numerous recalibrations and amendments carried out in the United Kingdom since the introduction of the minimum wage in 1999, further improvements are currently being demanded. In order to shorten the waiting time for employees, wage arrears are promptly settled by HMRC and then claimed back from the relevant employer. Further demands concern, among other things, improved exchange of information between different authorities.¹¹

SUMMARY

The British experiences illustrate that the implementation and enforcement of a statutory minimum wage is a protracted and probably never-ending process, in the course of which problems and regulatory loopholes or ambiguities need to be dealt with by means of regulatory clarification, guidelines or even new strategies. In Germany, too, it will certainly be a good while before the most important controversies are cleared up and the results are clear to employees and firms. We consider it the responsibility of the social partners at sectoral level and company-based interest representatives to identify problem cases and, in cooperation with the political sphere, to develop solutions.

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Notes

- 1** – Judgment of the Berlin Labour Court, March 2015 (not yet legally binding).
- 2** – Department for Business, Innovation and Skills: National Minimum Wage: Work Experience and Internships, 15 May 2013; <https://www.gov.uk/national-minimum-wage-work-experience-and-internships>.
- 3** – Department for Business, Innovation & Skills: National Minimum Wage (NMW): Policy on HM Revenue and Customs enforcement, prosecutions and naming employers who break NMW law, London 2015; <https://www.gov.uk/minimum-wage-different-types-work>.
- 4** – These sectors include, hospitality, passenger transport, forwarders/transport/logistics, exhibitors, forestry, industrial cleaning, fair construction and the meat industry.
- 5** – Richard Croucher; Geoff White: Enforcing a National Minimum Wage, in: Policy Studies 28, 2 (2007), pp. 145–161.
- 6** – Stephanus le Roux; Paolo Lucchino; David Wilkinson: An Investigation into the Extent of Non-Compliance with the National Minimum Wage. Final Report to the Low Pay Commission, London 2013.
- 7** – From 2009 under the name Pay and Work Rights Helpline, transferred in April 2015 to the ACAS Helpline (<http://www.acas.org.uk>).
- 8** – Pete Burgess: Implementation of the National Minimum Wage in the United Kingdom, in: Thorsten Schulten (ed.): Umsetzung und Kontrolle von Mindestlöhnen. Europäische Erfahrungen und was Deutschland von ihnen lernen kann. Study commissioned by the Gesellschaft für Innovative Beschäftigungsförderung (Association for Promoting Innovative Employment), Bottrop 2014, pp. 12–23.
- 9** – Low Pay Commission: The Low Pay Commission Report 2015, London 2015.
- 10** – Pete Burgess, op cit, 2014, p. 19.
- 11** – Andy Hull: Settle for Nothing Less: Enhancing National Minimum Wage Compliance and Enforcement. Centre for London, London 2013.

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