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LABOR AND EMPLOYMENT LAW PROJECTS OF THE NEW GERMAN GOVERNMENT

"GroKo" is the new buzzword in German politics. It stands for "*Große Koalition*" or Grand Coalition, the new German government composed of the Christian Democrats and the left wing Social Democrats. In the general elections of September 2013, the previous government of Chancellor Merkel lost its majority in the German Federal Parliament (the *Bundestag*). The liberal party ("FDP"), which formed the previous government with Chancellor Merkel, suffered a tremendous defeat and is no longer represented in the Federal Parliament. Dr Merkel's conservative party ("CDU") and its sibling party CSU are now in a "Grand Coalition" with the Social Democrats ("SPD").

CDU and SPD reached agreement on a government platform, the so-called "*Koalitionsvertrag*" ("Coalition Treaty"). It describes their legislative plans for the next four years. The issues addressed in this treaty are not legally binding. They outline in broad terms (185 pages) the new government's general program. Each item still needs to be introduced into the Federal Parliament.

The following proposed changes of the Coalition Treaty with regard to German labor and employment law will be of interest to human resources and legal departments of companies doing business in Germany:

MINIMUM WAGES

In Germany, statutory minimum wages exist for a few industries only. For many industries, wage groups have been determined by the unions and the employers' associations in collective bargaining agreements ("CBA," *Tarifverträge*). These CBAs apply only if the employer is a member of the respective employers' association.

Where no such CBAs apply, the employment contract parties can basically agree on any wage they want to as long as they are not so low that they can be regarded as being in violation of the principle of good faith. One of the core political aims of

the Social Democrats were general minimum wages. The Coalition Treaty provides that as from 2015, there will be minimum wages of €8.50 per hour (approximately US$11.58 in February 2014). Until the end of 2016, current CBAs may provide for lower wages, and even new CBAs can be agreed upon with lower wages, as long as they do not apply beyond January 1, 2017.

The details of the law will be elaborated "in a dialogue with employers and employees."

What Does It Mean? For most industrial employers, the minimum wages will not be an issue as they generally pay higher wages.

AGENCY WORKERS

The new government plans to restrict the options for companies to use temporary agency workers on permanent jobs. The law so far simply states that agency workers can be used "temporarily." It does neither specify what this means exactly, nor does it tie any consequence to a permanent use of agency workers. In a recent case of December 2013 where an employer had used an agency worker for more than three years at the same workplace, the Federal Labor Court stated that it is not the judge's, but the parliament's task to decide what such consequence would be.

The new government intends to restrict the use of agency workers to a maximum of 18 months. It remains to be seen whether the new law will provide for any consequence if the maximum duration is exceeded. One option discussed is that in such a case, an employment relationship is established by law between the temporary worker and the company that employed him. Another plan is that, after nine months, agency workers must be paid equally to the regular employees.

What Does It Mean? Employers must be more cautious when using agency workers on permanent jobs. At least it will be necessary to exchange the employee after 18 months.

"ABUSE" OF SUBCONTRACTED LABOR

Media reports on low-wage service agreements have caused a huge political discussion in Germany. It relates to tendencies in the industry to contract out activities that have traditionally been performed by a company's "own" employees. Over the years, this has been standard in, for example, the automotive industry, where original equipment manufacturers ("OEMs") permit suppliers to produce and assemble entire components, such as front modules (grill, bumper, lights, parking distance control, etc.), directly on the OEM's assembly line.

While these models have become a standard in many industries, recent reports about supermarkets using low-paid service providers to fill their racks instead of their own employees ("in-store logistics"), and slaughterhouses using low-wage contractors from Eastern Europe, have caused much debate about the fairness of such labor conditions.

The Social Democrats consider these trends to be leading to a segmentation of the labor market. In the Coalition Treaty, the new government has thus determined that there should be a definition in statutory law to distinguish service contracts from "hidden temporary labor." Furthermore, it intends to strengthen and specify works council participation rights. If the employer wants to use external, non-employed service providers on the company premises for more than one month, the works council must be informed in detail and has, under certain conditions, a right to object, according to a draft bill brought into the legislative process by the Social Democrats in September 2013.

What Does It Mean? Probably not much in practice. The existing draft bill submitted by the SPD provides for relatively small amendments of the existing law, and there are ways for employers to overcome the works councils' objection. Depending on the final wording of the Act, the consequences are not likely to be significant for most companies.

"ONE PLANT–ONE COLLECTIVE BARGAINING AGREEMENT"

The government intends to change strike laws in order to prevent employers from having to apply more than one CBA in a plant and to reduce strikes organized by small elite unions.

Over the past few years, strikes have been called by unions of certain specialized employee groups, such as train drivers and airline pilots. These small unions were not prepared to accept the tariff results negotiated by the large and powerful industrial unions organized in the DGB.

Unions, employers, and politicians have criticized these developments where a small group of employees in critical positions can paralyze an entire company (other examples could be the plant fire brigade in a chemical company or IT employees).

Thus, the Grand Coalition wants to determine that the collective bargaining agreement relevant for the majority of the workers in a plant shall prevail, and strikes shall be permissible only regarding such majority CBAs. Details of such regulation remain to be seen. The parliament will have to consider the constitutional right to go on strike.

What Does It Mean? This project is positive for employers as the risk of strikes organized by small, specialized unions is to be reduced.

WOMEN'S QUOTA IN MANAGEMENT BOARDS AND SUPERVISORY BOARDS

A highly controversial topic in recent years is the question of whether listed companies should set aside a quota of seats on the supervisory board for women.

The coalition intends to provide that, as of 2016, one third of a publicly traded company's supervisory board must be female. The same shall apply to companies with a codetermined supervisory board, i.e., with employee representatives. This is the case in companies (AG, GmbH) with more than 500 employees. In addition, by 2015, such large or listed companies must define and publish their plans to raise the percentage of women on the management board (*Vorstand/Geschäftsführung*) and on the "highest level" of management.

What Does It Mean? There will be no quota for companies that are not listed in Germany and have less than 500 employees and therefore no supervisory board with employee delegates.

For the others, many open questions will have to be answered by the lawmakers, such as how "one third" is calculated in a supervisory board of 20, or what happens if the employees in a production site with a predominantly male workforce are not able or willing to nominate a woman. In such case, do the shareholders have to appoint additional women to make up the quota?

FAMILY-RELATED CARE: RETURN TO FULL-TIME WORK AFTER PART-TIME AND 10 PAID DAYS OFF

Another employment law project of the new government is to enable parents or relatives to return to full-time employment after "family-related" part-time work.

Any employee in plants or offices with more than 15 employees can claim to reduce his or her working time at a proportionally reduced salary. To return to full-time employment, however, requires the employer's consent. Only in the case of parental leave does the mother or father have a legal entitlement to temporarily work on a part-time basis and return to full time later on.

The new government wants to implement such a legal entitlement for any kind of family-related situation. So if an employee wants to take care of his or her older children for a year, or if someone must organize permanent care for his or her aging parent, those employees shall be allowed to reduce their working time for a certain period and then resume their full-time job. The Secretary for Family Affairs even wants to have full-time jobs be generally reduced for parents from 40 hours per week to 32 hours, but this idea is likely to be blocked by the conservative party.

A paid leave of up to 10 days for the care of a family member in need is another coalition project. Currently such claim exists only for parents caring for a sick child.

What Does It Mean? To facilitate the part-time work request, currently the employer must organize substitutes or otherwise cover the shortfall in working time. If the employee shall be entitled to return to full time again, the employers will need predictability (announcement requirements sufficiently in advance) and laws enabling him to hire substitutes temporarily. Otherwise, he will have too many employees on board when the part-time employee returns to full time. It would be desirable (and can be expected) that the new laws will follow the pattern of the regulations on parental leave where such claim already exists. If the new model, once implemented, is widely used, this will mean an increasing administrative burden for employers, who once more will be encumbered with sociopolitical objectives of politics. The additional paid leave to care for family members will mean costs for the employers.

We shall keep our clients and other interested parties posted as to if and how these plans are realized in the legislative process in Germany.

LAWYER CONTACTS

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