Experiences from the Sectoral Bargaining System
Approach

• Point of departure after WW II:
  – Fundamental Right of Organisation
  – Unification of most important unions under the DGB
  – Collective Agreements Act with no specific approach for bargaining level
  – defensive position of employers, especially in the industry
• very liberal case law of Federal Constitutional Court
• establishment of a union-based system by the Federal Labour Court
• in principle no *erga omnes* enforceability
• direct and indispensable effects of agreements
• works councils at workplace level
• DGB and BDA as voices of workers and employers
Unions and employer’s associations

• Branch unions, DGB as umbrella organisation
• besides: Christian unions, growth of professional unions

• regional and sectoral employer’s organisations, *BDA* as umbrella organisation
Collective action

- no bargaining obligation
- balance of powers through collective autonomous bargaining
  - right to strike
  - right to lock out (without termination of contract)
- normally reference clauses in all labour contracts concluded by an organised employer
- staff is one unit in terms of collective bargaining, irrespective of union membership
- works council’s members often engage in collective bargaining “as union members”, not “as works councils”
bargaining levels

- typically sector level bargaining (with “pilot regions”)
  - general agreements (“Manteltarifvertrag”)
  - wage agreements
  - additional agreements, e.g. on pensions, professional training, social plans etc.
- seldom: nation wide bargaining (but: public sector, construction industry)
- enterprise level
  - with “outsiders”
  - acknowledgement agreements
  - ”on top conditions” in strong enterprises
- Workplace bargaining of works councils and management only on specific social matters and other matters that are not usually covered by collective agreements
Coverage

- 1/3 of enterprises bound
- ½ of employees covered
- + ¼ covered by “orientation”
- big differences between the sectors (98 % in public sector [West], less then 20% information technology [East])
- increase of “white spots” (e.g. information and communication industry, service sectors)
- extreme differences in working conditions in different sectors and regions (e.g. low wages for hair stylists in East; very high wages in metal and electrical industry and chemical industry)
Conflicts of legal sources in the labour relations

- favourability principle in conflicts cases with labour contract
- priority of collective agreements on works agreements
- conflicts of collective agreements
  - if not solved by autonomous solutions (e.g. subordination clause in a collective agreement):
    - unity of agreements in the plant in case of different unions:
      - majority principle if the interests of minority were represented in the bargaining process,
      - right to copy for the minority union
      - otherwise plurality
    - in other cases, according to case law, plurality of agreements in the enterprise
Role of government / State

- prohibition of censorship of collective agreements
- no interference in collective bargaining / action allowed (problem: unemployment benefits)
- autonomy of the parties concerning level, scope and contents of agreements
- generally binding declaration by Labour Minister after parties request and in consent with bargaining committee
- Minimum wages increase by Federal decree after proposal of minimum wages commission with respect to the former evolution of collectively bargained wages
Challenges

- decrease of union membership (individualisation after re-unification of the country, precariousness, ...)
- decrease of coverage degree ("white spots", unorganised employers, strategies of exodus)
- "OT-Mitgliedschaften"
- national system with few answers for global strategies
- organisational structure of the unions ("ein Betrieb – eine Gewerkschaft") is in conflict with outsourcing strategies and network structures of enterprises
- weak unions – weak employers’ organisations

- German Lawyer’s Association 2014: How to strengthen collective autonomy?
Successes

- Still social peace
- Still few industrial action cases
- Unions are still the voice of labour
- Political dialogue of social partners and government
Recent reforms

- *Tarifautonomiestärkungsgesetz 2014*
  - facilitation of generally binding declaration
  - minimum wages system
  - sector minimum wages on agreement basis

- *Tarifeinheitsgesetz 2015*
  - unity of agreements
  - regulating industrial action without regulating?