Negotiated Restructuring in Germany

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The German Discourse

• ‘Structural change’ at macro and meso level constant concern in past 20 years
• Structural shift towards service industries and smaller units of employment
  • but employment in manufacturing still slightly above 30%
• Downsizing, outsourcing, off-shoring, and closures constant topics in the press.
• Overarching discourse on ‘restructuring’ as a political issue missing
• Focus on defending the *Standort* (location for production), i. e. maintaining Germany’s export position and thus employment in manufacturing
Characteristics of the Regulatory Framework

- no tradition of administrative control over dismissals or redundancies (unlike France, Netherlands…)
- highly legalistic framework of rights, obligations, and procedures – no prescription of outcomes (rules of the game)
- high autonomy of social actors and individuals in playing the game
- important role of labour courts as a negotiating and decision arena of last resort
- public authorities not defined as stakeholders in the restructuring process
Principal Actors

- “the employer”
- Works Council: elected by the whole workforce (voluntary)
  - substantial rights of co-determination with regard to both collective redundancies and each individual dismissal
  - 89% of establishments and slight majority of employees without works council
- Trade Unions:
  - may negotiate rules relevant for restructuring in collective agreements
  - may initiate, counsel and coach works councils
  - formally not negotiating partners of employers in the process of restructuring
- Public Employment Service:
  - general offers of counselling and job placement services
  - ‘job transfer’ instruments on request
  - no pro-active involvement in restructuring (despite obligatory advance notification on mass redundancies in accordance with and beyond European Guideline)
“Betriebsänderung”
(‘Change of Operations’): Pivotal Legal Concept in Negotiating Restructuring

• Definition:
  • reduction of operations in or closure of the whole or important departments of the establishment
  • transfer of the whole or important departments of the establishment
  • amalgamation with other establishments or division of establishments
  • important changes in the organization, purpose or plant of the establishment
  • introduction of entirely new work methods and production processes

• where the intended changes “may entail substantial prejudice to the staff or a large sector thereof”

✔ not restricted to dismissals – relocation of jobs or staff cuts through ‘voluntary’ separations covered!

✔ stakeholders of restructuring are employer & employees, no one else

✔ ‘Change of operations’ constitutes a claim of the works council vis-à-vis the employer, not a publicly recognized status of the company (like, e. g., insolvency)
Social Compensation Plan

• agreement between works council and employer on occasion of ‘change of operations’
• “…an agreement on compensation or mitigation for any economic disadvantages employees suffer as a result of the proposed change of operations.”
• no prescription as to content, but enforceable procedure of negotiations
  • in establishments with more than 20 employees
  + where a works council has been elected
  + if definition of ‘change of operations’ is fulfilled
  + if works council takes the initiative
  ⇒ in a survey, only 8% of dismissed workers reported to be covered by a social compensation plan
• traditionally, financial compensation in the forefront
• now increasingly supplemented by outplacement and career transition services
Individual Legal Employment Protection

- in establishments with more than 10 employees
  ⇒ 20% of establishments, 80% of the workforce
- after 6 months’ tenure
  ⇒ excludes ≈ 15%
  ⇒ plus 11% fixed-term contracts
  ⇒ applicable to 65-70% of the workforce
- independent of existence or activity of a works council
  • though objection of works council against an individual’s dismissal is a strong point in court procedure
- independent of trade union membership
  ⇒ legal employment protection ≈ civil right
  ⇒ interaction between collective and individual rights can be complex
Interaction of Redundancy Regulations on Three Axes

- Employer
- Public Employment Service
- Works Council
- Individual
- Collective
- Public

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Negotiated Redundancy: Trilateral Transfer Deal

framed in collective agreement between employer and works council

employer

exchange of
⇒ resources and
⇐ services

employee

↑ voluntary annulment of open-ended labour contract replaces imminent dismissal
⇒ no legal recourse possible
↓ prolongation of employment beyond notice period
↓ transfer services
↓ possibly: supplement to short-time allowance
↓ possibly: severance payment

‘transfer company’

↑ obligation to actively participate in transfer activities
↓ fixed-term labour contract on short-time basis
↓ transfer services

subsidiary by PES as ‘short time working allowance’ ≈ unemployment benefit not counting against eligibility period
Choice Presented to Workers Facing Redundancy

• voluntarily trade existing open-ended contract with employer company for fixed-term contract with transfer company, lasting longer than notice period

or

• be dismissed with notice period (and with possibility of judicial recourse)

  ⇒ compensation payments under framework of social compensation plan may be lower, if partners of the agreement so wish

  ⇒ individual bargaining on the sidelines of judicial procedure bears chance of getting higher compensation
The ‘Transfer Chain’

- **Notice of dismissal**
  - 'transfer measure'
  - 'short time' (0 hrs., max. 12 months) typically with 'transfer company' as legal substitute employer
  - vacancy information, training, work experience with other employers, job search coaching

- **Placement with new employer**

- **Unemployment**
  - Placement with new employer

- **Retirement**
Needs for Innovation

- more job creation ⇒ offer of job transfer more credible and successful
- new approach to local regeneration
- transfer into retirement creates deadweight impeding transfer into new jobs
- better outreach towards SME’s in restructuring
- outplacement providers should have better networks with companies in demand of labour – not only with companies in demand of outplacement
- more active role of Public Employment Service
- addressing the ‘soft factors’ impeding job transfer: health, attitudes, self-perception