



## Press Release

### **GERMAN FEDERAL LABOUR COURT COMPLETELY REFORMS COLLECTIVE BARGAINING SITUATION IN THE CONSTRUCTION INDUSTRY - CRITISISM FOR THE FEDERAL MINISTRY OF LABOUR AND SOCIAL AFFAIRS**

Berlin/Erfurt, 23 September 2016 - By adopting two decisions (10 ABR 22/15 and 10 ABR 48/15) the day before yesterday, the Federal Labour Court (BAG) completely reformed the collective bargaining situation in the construction industry and all construction-related trades that had been almost unchanged for over 50 years. This radical change affects up to 50,000 companies in the construction sector as well as construction-related businesses and up to 1.6 million employees.

For over 50 years, the construction industry has been shaped by the Social Fund for the German Building and Construction Industry ("SOKA-BAU"). This Fund comprises different institutions of the collective bargaining parties in the construction industry. Collective bargaining agreements allow it to levy various contributions from the employers. As these collective bargaining agreements have been declared "generally binding" by the German Federal government for decades, they also apply for businesses that are not usually bound to these agreements. This has been met with a great deal of criticism from a variety of sectors which do not associate themselves with the construction industry or even have their own collective bargaining agreements - in particular businesses in the metal industries but also carpenters, electricians and installation businesses. Employers in these sectors are subject to contributions. However, companies often fail to pay contributions because they do not consider themselves part of the construction sector. This frequently has disastrous consequences because the contributions can still be collected for up to four years from their due date, which, in individual cases, can drive businesses into insolvency. Up to 40,000 annual proceedings initiated by SOKA-BAU against employers with alleged obligations and SOKA-BAU's balance sheet total of almost EUR 10 billion speak for themselves.

The Central Association of German Electronics and Information Technology Trade (ZVEH) decided to take legal action against this and was successful in every respect before the BAG. The Court held the declarations of general applicability of 2008, 2010 and 2014 to be invalid criticising the Federal Ministry of Labour and Social Affairs responsible for the extension of these declarations. Pursuant to findings of the BAG, in most cases it was not the competent



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German Federal Minister who dealt with the general applicability but merely staff in the respective departments or divisions. According to the Court, obviously unsuitable figures presented by the collective bargaining parties were taken at face value by the Ministry without being checked. As a consequence of these decisions, SOKA-BAU will presumably not have any contribution claim regarding any years up to 2015. *Wolf J. Reuter*, a Licensed Specialist for Labour Law and a Partner at the international commercial law firm BEITEN BURKHARDT in Berlin, played a leading role assisting ZVEH in these proceedings. "These decisions are a real game changer and will be a recurring issue in courts in the years to come. For example, it is not clear what this decision means for employers who were forced to pay these contributions for several years. Will they be reimbursed? It is also still uncertain what will happen with businesses for which yesterday's decision comes too late because they have already been convicted", Mr. Reuter states. "However, many employers will be able to benefit significantly from relief for past contributions - if they are prepared to take advantage of this new legal situation."

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