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From deregulation to re-regulation

Trend reversal in German labour market institutions and
its possible implications

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From deregulation to re-regulation

Trend reversal in German labour market institutions and its possible implications¹

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Abstract

From the mid-1980s until 2005 the German labour market was characterised by continuous deregulation. In the period of an improving German labour market, the German governments have since imposed measures to re-regulate the labour market in order to strengthen employees' rights. At the same time one can observe a tendency towards atypical forms of employment and an increase in low-wage employment. Two closely interrelated questions arise: What role did deregulation play with respect to the overall improvement of the German labour market and shifts in the employment structure? How could re-regulation impact labour market performance and employment structure in the future? The paper presents evidence that institutional reforms were an important driver of the improvement of the German labour market as well as of changes in the employment structure but definitely not the only one. This result suggests that with regard to the potential effects of recent re-regulation neither concerns about severe job losses nor hopes for a much better quality of jobs should be overestimated.

Zusammenfassung

Der Zeitraum von Mitte der achtziger Jahre des letzten Jahrhunderts bis zum Ende der ersten Dekade des neuen Jahrtausends war durch eine fortwährende Deregulierung des Arbeitsrechts gekennzeichnet. Die aktuelle, wie auch die vorhergehende Bundesregierung leiteten zuletzt eine Re-Regulierung ein, die auf eine Stärkung von Arbeitnehmerrechten zielt. Dies geschah vor dem Hintergrund einer sich in der letzten Dekade deutlich verbessernden Arbeitsmarktlage. Gleichzeitig gewannen aber auch sogenannte "atypische Erwerbsformen" und Niedriglohnbeschäftigung an Bedeutung. Damit stellen sich zwei Fragen, die eng zusammenhängen: Welche Rolle spielte die Deregulierung des Arbeitsrechts mit Blick auf die Verbesserung der Arbeitsmarktlage und die veränderte Struktur der Beschäftigung? Wie könnte sich die gerade vollziehende Re-Regulierung in den beiden genannten Dimensionen auswirken? Das Papier liefert Hinweise, dass Deregulierung ein wichtiger, aber sicher nicht der einzige Treiber für Verbesserungen am Arbeitsmarkt und Umschichtungen in der Beschäftigung war. Das Ergebnis legt damit nahe, dass weder die mit einer Re-Regulierung verbundene Befürchtung von Jobverlusten noch die damit im Zusammenhang stehenden Hoffnungen in Richtung einer höheren Qualität der Beschäftigung überschätzt werden dürfen.

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1 Introduction

The situation on the German labour market has improved significantly in the last decade. The upturn began after the extensive labour market reforms between 2003 and 2005. Unemployment fell from just under 5 million by some 2 million or 40 % between 2005 and 2011. Currently it fluctuates around 2.9 million, which is equivalent to just over 6.5 % of the civilian labour force (see Fuchs et al. 2014). Employment has recently achieved one record value after another and, according to forecasts by the Institute for Employment Research, will reach its highest level since reunification in 2015, at just under 43 million.

Part of the reality on the German labour market, however, is the fact that the composition of employment relationships has undergone a change. Non-standard work arrangements, such as part-time work or fixed-term contracts and low-wage jobs, have gained in importance (see Dietz et al. 2013). This has resulted in a different structure of employment relationships from that in the past.

In Germany, both the labour market recovery and the shifts in employment are frequently seen as being associated with deregulation measures. The reason for this is that the period from the mid-1980s until the end of the first decade of the new millennium was characterised by a multitude of steps to deregulate labour law which placed emphasis on boosting the flexibility of labour input. In the more recent past, however, a certain trend towards re-regulation has emerged which is aimed at strengthening workers' rights. This becomes apparent especially in new regulations for temporary work agencies and the gradual introduction of minimum wages in a variety of industries. The recently concluded coalition agreement of the present government, with a whole set of measures including the planned national minimum wage, is further evidence of a turnaround in labour market regulation.

From today's perspective this raises two questions that are to be explored in this paper: what role did deregulation play in the past with regard to improving the situation on the labour market and changing the composition of employment? And on this basis: what effects could emerge from the re-regulation that is currently taking place in these two dimensions?

It is obvious that these two questions cannot be answered with an overall research approach. Yet scientific findings are available that permit sound statements, in the sense of circumstantial evidence, regarding the questions raised. First, the effects of the extensive deregulation measures in the context of the Hartz reforms will play a considerable role in this respect. Second, the recent decisions made in the agreement of the present grand coalition are also to be acknowledged from the viewpoint of labour market research. This can be done by delivering appraisals of the plans on the basis of available scientific knowledge. The analysis focuses mainly on the development of non-standard work arrangements and issues of wage inequality. It will also be necessary to clarify whether the shifts in employment are primarily longer-

term trends or a more recent phenomenon and what factors besides labour law regulations could have driven forward this change.

In the second section the paper begins by laying a theoretical and conceptual foundation. Here the focus is on examining labour law regulations from the viewpoint of institutional economics. It will become clear here that labour law can either impair or support the functioning of the labour market depending on the theoretical point of reference and the specific arrangement. The third section then outlines key trends in German labour law during the last three decades. Regulations concerning certain work arrangements and minimum wages are examined more closely. To this end a distinction is drawn between the earlier deregulation phase and the more recent phase of re-regulation. The fourth section, the most important part of the paper, assesses the relative significance of changes in labour law for the development of the labour market and shifts in employment. It is based on existing research findings and also permits cautious statements regarding the possible effects of the planned re-regulation measures. Finally, in the conclusion the main findings are summarised and used as a basis to derive implications for labour market policy.

2 Labour law regulations from an economic point of view

Unlike the economic analysis of law, the special field of the economic analysis of labour law is still a far less highly developed field of research (for an overview see: Ott/Schäfer 2001; Sadowski/Walwei 2002; Alewell/Schott 2009). One explanation for this could be that research approaches in the economic analysis of law primarily refer to allocative efficiency and tend to neglect distributive aims. Yet the latter are of far greater importance for the legislator in labour law than in most of the other fields of law. Protecting workers from arbitrary acts and discrimination on the part of employers and strengthening their bargaining position are frequently the main intention of labour market regulations (see Brandes et al. 1989; Walwei 1990; Alewell/Schlachter 2000).

Alewell/Schott (2009) distinguish two forms of legal intervention. First, regulations associated with "material" aspects are intended to protect the worker from particular burdens. Examples of these are minimum conditions (e. g. minimum holiday or minimum wages) or upper limits (e. g. maximum working hours). The category of "material" regulations also includes provisions regarding the use of non-standard work arrangements, such as fixed-term contracts or temporary work via employment agencies. Second, regulations associated with "procedural" aspects, especially in collective labour law, are aimed at strengthening workers' bargaining power. This is achieved by involving workers in decision-making processes in the firm, e. g. by means of works councils or in the form of codetermination at plant level.

It is known from property rights theory that legal regulations distribute rights of disposition in a specific way (see Demsetz 1967). Thus in labour law the right of disposition of the protected worker (protected, for example, from dismissal by the employer) generally face restraints on the disposition of other parties involved, such as

the employer concerned (e. g. due to the restrictions on terminating the employment relationship) or jobseekers (e. g. because of access to the labour market being more difficult). If labour law regulations are changed, whether in the sense of deregulation or a re-regulation, it leads to a redistribution of rights of disposition between the parties involved directly and indirectly.

The crucial question in the field of law and economics is, however, whether existing regulations and possible changes to the law can be justified. Neoclassical approaches and classic welfare theory provide a clear answer in this respect. The underlying model of competition assumes individuals who act rationally and aim to maximise their utility and who can improve their position by means of exchange. Costs of defining property rights, setting up markets, obtaining information, processing transactions and entering and exiting from markets do not exist in the model. In such a model world any restrictions in contractual freedom must lead to suboptimal results and would therefore have to be eliminated without substitution. Traditional welfare theory, too, reaches no other conclusion. The Pareto criterion takes into account the fact that increases in welfare (so-called “Pareto improvements”) can only be achieved if no individual can improve his utility any more without other individuals being harmed. However, precisely this is generally the case when legal regulations are established or amended.

The economic justification of (labour) law regulations, and thus also of possible amendments, depends on whether the regulations or amendments actually impair the functionality of the market permanently or whether obvious market failure is corrected. Regarding possible market failure it is necessary to distinguish between distribution-related malfunctioning and market imperfections (Brandes et al. 1991).

Distribution-related market failure has already been addressed in connection with the legislator’s justification of labour law. It is to be taken into account here that the standard neoclassical model does not take into account issues of distribution and its fairness. Fair distributions arise at best when ideal conditions prevail, for instance equal initial chances for all market participants (see Sohmen 1976). However, because such conditions do not exist in reality, undesirable market outcomes in the form of extreme asymmetries in distribution are compatible with the standard model of economics (see Schäfer/Ott 2005).

An absence of protective regulations leads to another problem associated with distribution policy: potential power asymmetries between employers and workers. This provides a social justification for protecting employees from dismissal (see Dorndorf 1990). Workers’ special need for protection on the labour market can be justified in different ways (see Schrüfer 1988). With regard to the allocation of resources and risk, the employer can be said to be in possession of potential strategic advantages. Moreover, employees frequently rely solely on dependent employment for their livelihoods. And finally, the employees can be said to be bound by instruction and integrated into the particular firm. Further arguments are provided by segmentation the-

ory. This argues that if markets are not regulated, there is a risk of the labour market being clearly divided into primary and secondary labour market segments or into “good jobs” and “bad jobs” (see Krause/Köhler 2012). Especially in secondary labour market segments with a structural oversupply of labour, this may lead to the emergence of an employer market with particularly unfavourable conditions as regards employment stability and wages.

In addition to original distribution issues, it is necessary to acknowledge that distribution may have repercussions on allocation (see Alewell et al. 2009). The reason for this is that experimental economics is able to demonstrate that issues of fairness, distribution and justice can be of importance for efficient allocation. It is a matter of taking individuals’ distributive preferences into account in utility functions, for example inequity aversions (see Fehr/Schmidt 1999) or distributive or procedural perceptions of fairness (see Dietz 2004).

Another starting point for labour law regulations arises from the special features of the labour market and market imperfections associated with them (see Dörsam 1997). Two aspects are of particular interest in this respect: first, the information asymmetries between the two sides of the market, which are typical of the labour market, namely the worker’s “performance promise” and the employer’s “career promise” (see Okun 1981). According to this, employers frequently have insufficient information about the worker’s commitment and loyalty, and workers lack knowledge about career advancement opportunities in the firm and about actual employment security. In such a context, various labour law regulations, such as dismissal protection or restrictions on the use of non-standard work arrangements, can foster expectations based on reciprocity (see Buttler/Walwei 1994). Similar applies for the returns on relationship-specific investments (e. g. in human capital), which assume that the employment relationship will be continued (see Williamson 1975). Further training, for example, can thus create and foster the internal functional flexibility that can be of particular importance for firms.

Of course, the possible existence of distribution-related market failure or of market imperfections does not imply a licence for labour law interventions. The question remains as to whether specific protective norms give the parties concerned more freedom or whether they restrict it. Even if imperfect markets and power asymmetries are assumed to exist to a certain extent, labour law can impair or distort market outcomes in several respects:

- Labour law regulations may not be the right answer to an existing problem. For instance, minimum wages that are set too high due to ambitious distribution goals can become a barrier to recruitment (see Meer/West 2013). If a strong redistribution of incomes were desired, it would be possible to consider reducing the tax wedge for low-paid workers, either as an alternative or in addition to a minimum wage.

- Too extensive protective rights may lead to the employment form in question being avoided (see Buch 1997). For example, extensive dismissal protection may encourage firms to opt for employment forms with a lower level of protection (e. g. fixed-term contracts or the use of agency workers or self-employed workers).
- Well-meant labour law regulations may, in certain cases, also turn against those people they are intended to protect (see Buttler/Walwei 1992). Special provisions (such as dismissal protection for people with severe disabilities) may offer protection for insiders in employment but can prove to be a barrier for outsiders without work.
- Finally, insufficient legal clarity can also make it difficult to apply regulations and impair the planning certainty of those involved (see Büchtemann/Höland 1989; Bielenski 1997). The introduction of fixed-term contracts that do not require an objective reason in 1985 and the reform of marginal part-time employment in 2004 are examples of effective simplification of laws in Germany (see Fertig/Kluve 2006).

At this point it can be stated that the economic analysis of labour law on the whole is not yet so well developed that it can be used to derive far-reaching conclusions about the functionality of individual labour market regulations and their optimisation. Nonetheless it does deliver relevant criteria for assessing developments in labour law.

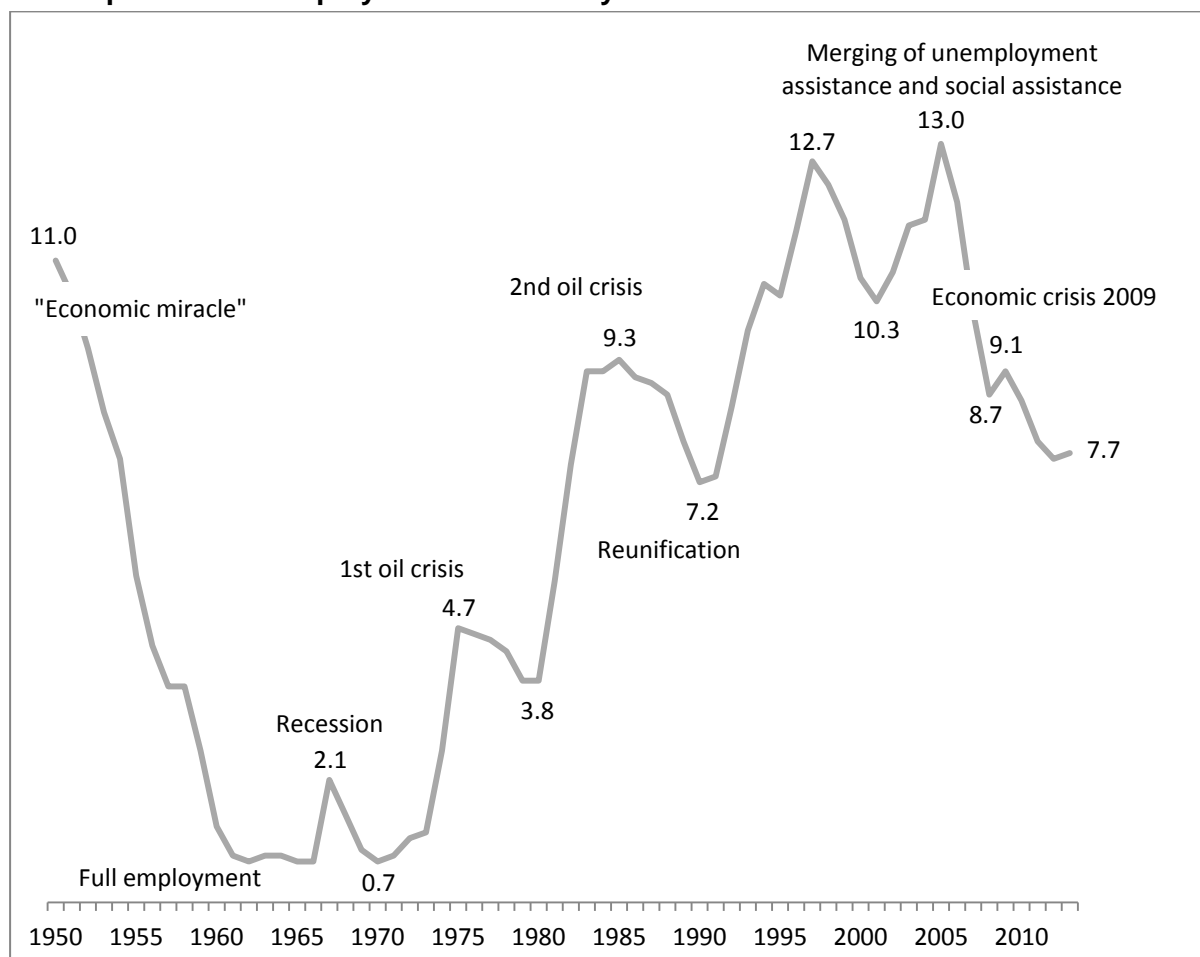
3 Long-term trends in German labour law

In retrospect, the period from the end of the Second World War until about the mid-1980s has to be seen as something like the “heyday” of employee protection in Germany. Dismissals were only permitted if they were due to good reason concerning the employee’s character or because of a verifiable decline of labour demand. In a judgment delivered in 1960, the Federal Labour Court (Bundesarbeitsgericht) ruled that the use of fixed-term contracts of employment should be made dependent on the existence of an objective reason (such as substituting an employee who is temporarily unable to work), in the sense of a warranting social protection. The supply of temporary workers by employment agencies was initially not permitted in Germany and was only officially approved and regulated in the sense of a minimum level of social protection in 1972. The relevant law, the Law on the Supply of Workers by Temporary Employment Agencies (Arbeitnehmerüberlassungsgesetz - AÜG), made licences obligatory for temporary employment agencies and ten years later prohibited the hiring out of labour in the construction industry.

If the development of labour law since the mid-1980s is examined, it can be seen that it was characterised by deregulation for long periods. At least until the middle of the last decade a liberalisation of labour market regulations took place which culminated temporarily in the labour market reforms from 2003 to 2005. Since then we have observed a trend towards a re-regulation of labour law that gained new momentum in particular with the coalition agreement of the present government. There

is an interesting coincidence that should be pointed out in this respect: whereas the deregulation until 2005 took place during the employment crisis, the re-regulation picked up speed when the labour market began to recover from 2005 onwards (see Figure 1).

Figure 1
Development of unemployment in Germany since 1950*



* Unemployment rate (referring to the entire dependent civilian labour force) as %, Germany, 1950 to 2013
Source: Federal Employment Agency (Statistik der Bundesagentur für Arbeit)

3.1 Employment crisis and the deregulation of labour law

The temporal coincidence of the employment crisis and the deregulation of labour law that was mentioned above suggests that the steps towards liberalisation were aimed above all at improving the situation on the German labour market. This becomes evident, for example, when the cornerstones of the deregulation activity and the titles of the relevant amendments to the laws are examined. For instance, the first major step towards deregulating labour law can be linked to the Employment Promotion Act (Beschäftigungsförderungsgesetz - BeschFG) which was adopted in 1985. The reform of the Employment Promotion Act (Arbeitsrechtliches Beschäftigungsförderungsgesetz) in 1996 also sounds programmatic. The period finally culminated in the major labour market reforms of 2003 to 2005. The following paragraphs examine important changes in labour law in the past two decades. The main focus is on dismissal protection in so-called "regular employment relationships", the

provisions regarding (minimum) wages and the regulation of certain work arrangements.

The field of dismissal protection saw no extensive changes in the two decades from 1985 to 2005. Only the so-called “small firms clause” (Kleinbetriebsklausel) was adapted several times. Until 1996 the threshold for the applicability of the Dismissal Protection Act (Kündigungsschutzgesetzes - KSchG) was more than five workers employed regularly in the establishment (working more than 10 hours per week or more than 45 hours per month). In the reform of the Employment Promotion Act of 25 September 1996, the threshold was raised to more than ten workers, with part-time workers taken into account on a proportional basis. This regulation was revoked as of 1 January 1999 and replaced by the original regulation. However, the Law on Reforms on the Labour Market, which came into force as of 1 January 2004, reintroduced the higher threshold such that – apart from certain transitional regulations for part of the workforce – the 1996 regulation was ultimately valid again. Dismissal protection in standard work arrangements was therefore exhibiting a trend towards partial deregulation, enabling more small firms to adapt their workforce flexibly to fluctuations in demand.

With regard to regulations concerning wages, the two decades following 1985 were characterised by a large degree of stability. Wage setting was first and foremost the responsibility of the two sides of industry, also concerning the regulation of the lower wage groups. Minimum wages only existed to a certain extent, whereby it is necessary to differentiate between implicit and explicit minimum wages. Thus the social assistance of that time (like today’s basic social security) can be understood as an implicit minimum wage by converting the entitlement to social assistance into an equivalent gross monthly wage (see Cichorek et. al. 2005). However, the implicit minimum (hourly) wage varies depending on the size of the household and the assumed working hours. For a long time the only explicit minimum wage in Germany was the regulation according to § 138 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) which regards wages as contrary to public policy if they fall short of collectively agreed or local wage rates by a third. In addition, the application of the Posted Workers Act (Arbeitnehmerentendegesetz) also brought an explicit minimum wage. In 1997 a sector-specific minimum wage was introduced for the first time in the construction industry, making the lowest collectively agreed pay scale groups generally binding.

The strongest deregulation dynamics in the two decades from 1985 to 2005 are found in non-standard work arrangements, which made it easier to circumvent dismissal protection. Whereas the deregulation initially focused on fixed-term employment, the focus later shifted more to temporary agency work and marginal part-time employment. What was of utmost importance for the legislation on fixed-term contracts was the Employment Promotion Act (BeschFG), which was mentioned above and which permitted fixed-term employment contracts without an objective reason for a duration of up to 18 months for the first time. In 1996 the maximum duration for

fixed-term employment contracts without an objective reason was extended to 24 months. In 2001 the Employment Promotion Act was superseded by the Act on Part-Time and Fixed-Term Employment (Teilzeit- und Befristungsgesetz), with the aim of avoiding as far as possible the use of consecutive fixed-term contracts without an objective reason. Since then it has been possible to extend a fixed-term contract up to three times within the maximum permissible duration of fixed-term employment. In addition to that, a ban on concluding fixed-term contracts with individuals who were previously employed by the respective firm has been introduced.

The use of temporary agency workers was also made steadily easier in the two decades, first by gradually raising the maximum assignment duration for an agency worker, from six to nine months in 1994, then to 12 months in 1997 and finally to 24 months in 2002. As of 1.1.2003 the temporary work sector saw fundamental changes in connection with the so-called “Hartz reforms”: previously valid regulations, such as the extensive restrictions on the use of fixed-term contracts in the case of temporary agency work, the ban on synchronising agency worker assignment periods with their employment contracts, the ban on re-hiring former agency workers and the restriction of the maximum duration of temporary work assignments to two years, were revoked. The fundamental equal status of agency workers and core workers was laid down in the law in favour of the agency workers. At the same time, however, scope was created for collective agreements to be able to contain divergent regulations.

The area of application of marginal part-time employment was also extended during the two decades up to 2005. In 1996 the wage limit was first raised from DM 390 to DM 590. Although the limit was raised again in 1999 to DM 630 (later EUR 325), the exemption of the second jobs from tax and social security contributions that had applied until then was cancelled at the same time. Since 2003 and the Hartz reforms, it has once again become irrelevant for fiscal and social law whether a so-called “mini-job” is the main job or a second job. Furthermore, the reforms increased the wage limit to EUR 400 and lifted previously existing restrictions on working time (of 15 hours per week).

3.2 Upturn on the labour market and re-regulation of labour law

Following the labour market reforms, the field of labour law initially demonstrated a certain stability. For some years now, however, a trend reversal has been noticeable, which is clearly being continued at a greater pace by the recently formed grand coalition. The most significant adjustments pertain to regulations concerning temporary (agency) work and wages.

Regulations regarding the standard employment relationship have remained virtually unchanged since 2005. Unlike in the two preceding decades, no adjustments have been made to dismissal protection. In fact, especially against the backdrop of the consequences of the serious economic and financial crisis, firms demonstrated a very strong inclination to retain well-trained staff (known as labour hoarding). The

firms made increased use of internal flexibility by keeping wage increases low or not offering any at all and making full use of options for flexible working time (e. g. by reducing positive balances on working-time accounts) (see Dietz et al. 2011). This course of action was supported politically by means of more generous regulations regarding the use of short-time working allowances, which helped to stabilise the labour market in times of economic difficulties.

Since the construction industry can be regarded as the forerunner of sector-specific minimum wages, sectoral minimum wages were agreed in more than a dozen other industries on the basis of the Posted Workers Act. The new Federal Government is planning even more far-reaching regulations in its “Law to Reinforce Collective Bargaining Autonomy” (“Tarifautonomiestärkungsgesetz”). For instance, the area of application of the Posted Workers Act is to be expanded to cover all sectors. This would give both sides of industry in all sectors of the economy the opportunity to set wages above the statutory minimum wage. What is of particular importance, however, is the introduction of a general statutory minimum wage of 8.50 euros per hour, which came into effect on 1.1.2015 for workers in Germany. It is primarily motivated by distribution-policy aspects and is intended above all to eliminate extreme downward deviations in hourly pay.

There are exceptions to the general minimum wage for people under the age of 18, for voluntary work, interns and long-term unemployed persons in their first six months of employment. More extensive downward deviations from the minimum wage are possible during a transition period until the end of 2016 in industries in which representative collective bargaining partners reach corresponding agreements. From mid-2017 onwards, the level of the statutory minimum wage is then to be monitored by a committee of trade unions and employers and adjusted if necessary.

The most important changes in the regulation of non-standard work arrangements since 2005 concern the temporary work sector. Aspects that must be emphasised here are the ban on companies setting up their own agency and hiring out these agency workers within their own group of companies (Konzernleihe), the introduction of a sector-specific minimum wage and the introduction of sector-specific bonus payments which depend on the duration of the agency worker’s assignment and are aimed at equal pay (see Möller et al. 2012). The Federal Government’s coalition agreement also intends that when agency workers are hired out to a firm they should generally be placed on an equal footing with other employees in the user firm in terms of pay nine months after the start of their assignment at the latest. Furthermore, the maximum duration of an agency worker’s assignment is to be restricted to 18 months again in future. Other changes regarding atypical employment forms are associated with part-time employment with a planned entitlement to a return to full-time work, the raising of the wage limit for mini-jobs to 450 euros, which has already been implemented (2014) and the extended possibilities to offer fixed-term contracts

to older workers over the age of 52 (2007), though this is somewhat questionable for legal reasons due to possible discrimination.

4 Implications of changes in labour law for the development of the labour market and the composition of employment

In the previous section it was shown that new trends emerged in key areas of labour law during the last decade. Whereas deregulation clearly prevailed until 2005, a moderate re-regulation has since begun to emerge. Various questions arise with regard to the effects of the previous and the current changes to the law, in terms of the effects both on the labour market development in general and on the composition of employment structures. For instance, the deregulation of labour law may have increased the absorptive capacity of the labour market on the whole, but this could have been accompanied by employment becoming more unstable and more unequal. Conversely, the ongoing re-regulation could jeopardise further progress or even the situation achieved so far on the labour market, but could help to curb unstable employment that is insufficient to secure the workers' livelihoods.

4.1 Effects of changes in labour law for the development of the labour market

While Germany still exhibited an extremely high level of unemployment in 2005, the situation has improved significantly more recently (see Figure 1 above). This raises the question as to what could be behind the upward trend on the labour market. There are various factors that could be responsible for this trend: higher economic growth, a declining supply of labour, a change in the way unemployment is recorded, the extensive labour market reforms or wage restraint (regarding the statements in the following paragraphs see Walwei 2011a).

First of all it can be shown that there are no substantial differences in the level of the economic growth trend before and after the reforms. Although the supply of labour in the economy as a whole, the so-called labour force potential, no longer increased as strongly after the reforms as it had previously, in view of the magnitude of the change over time it can have made at best only a small contribution to the improved situation on the labour market. There is also no evidence that labour market policy measures and a stronger activation policy have resulted in more individuals moving out of registered unemployment and into concealed unemployment (hidden labour force), as so-called "underemployment". The sum of registered unemployment and the hidden labour force has also decreased markedly. In addition, there are clear indications that employment became increasingly decoupled from economic growth after 2005 (see Klinger/Weber 2014). Employment grew strongly by 7.5 % from 39.3 million to 42.3 million between 2005 and 2013. The whole increase is based on a higher level of employment covered by social security. In contrast to the situation in the past, the number of hours worked in the economy as a whole (volume of work) also grew considerably in that period, by 3.8 % from 55.5 billion to 57.6 billion hours. The smaller increase in the volume of work compared to the increase in em-

ployment can be put down to the growing amount of part-time employment. The positive employment trend is remarkable because the development of the economy in this period has been characterised not only by periods of economic recovery but also by the Great Recession in 2008/2009. Consequently it is necessary to look for other factors that may have had a positive impact on the development of employment. This is no trivial matter, since, in contrast to the micro level, where it is possible to work with control groups, there are almost no comparable approaches at macro level. In the absence of suitable models that can identify macroeconomic correlations unequivocally, appropriate findings can be taken here as evidence of the relevance of certain influential factors.

The extensive labour market reforms between 2003 and 2005 are one possible explanation for the substantial improvement in the employment situation. There are various indications of their effectiveness. For instance, the more recent development of the unemployment rate points to a decrease in structural unemployment (see Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung 2013). For the first time since reunification unemployment did not reach a new record level during a downturn, and that although a serious economic and financial crisis during the Great Recession had to be coped with. The so-called “Beveridge curve”, which depicts the relationship between job vacancies and unemployment, also suggests a drop in structural unemployment, as the relationship between the number of vacancies and the number of people out of work has improved, which is expressed by the curve shifting inwardly. There are fewer and fewer unemployed persons for a given number of vacancies. This is to be interpreted as an improvement in matching efficiency and as a tighter labour market in favour of those supplying labour. In addition, following the reforms, the chances of unemployed individuals achieving a transition into employment rose until 2010, which, according to analyses, can be attributed to changes in labour law associated with non-standard work arrangements (see Klinger/Rothe 2012; Klinger et al. 2013). Possible reasons for this are the labour market being more absorptive, the unemployed being more willing to make concessions, and people in non-standard work arrangements increasing their search intensity after the reforms (see Kettner/Rebien 2007; Himsel/Walwei 2015).

Another factor for the recent positive development of employment is the development of wages, which is not entirely independent of the labour market reforms (see Dustmann et al. 2014). Wage development can contribute to job creation if it does not (fully) exhaust the scope for distribution and therefore limits the increase in unit labour costs. The scope for distribution is defined as the sum of the labour productivity growth trend and the inflation rate. Although a moderate wage policy has not been unusual in Germany in the last three decades, it was remarkable that between 2003 and 2007 – and therefore from 2005 onwards even during a period of strong economic growth – firms continued to exercise wage restraint. This is likely to have further fostered the absorptive capacity of the labour market and to have contributed towards coping with the Great Recession. Important reasons for the generally moderate wage development are to be found less in labour law, however, and more in

the declining union density, the decreasing coverage of collective agreements, the introduction and utilisation of “opening clauses” in collective agreements and growing wage disparities. However, as mentioned earlier, the labour market reforms have facilitated the use of specific work arrangements that are associated with relatively low hourly wages, such as mini-jobs or temporary agency work (Jahn/Pozzoli 2011; Kalina/Weinkopf 2013).

An important question for the near future will now be what effect the re-regulation planned in the coalition agreement could have on the further development of employment. The agreement aims at restricting atypical forms of employment on the one hand and on curbing wage inequality and poverty risks on the other (see Walwei 2013a). The planned changes to the non-standard employment forms can be classed on the whole as rather moderate. Nonetheless it is advisable to conduct an ex post examination of possible effects (e. g. with regard to the duration of employment in the temporary work sector) by using empirical findings. The planned right of part-time workers to return to full-time employment gives parents and carers more flexibility and planning certainty, but can lead to more uncertainty and instability for firms and for employees standing in for others. This regulation could reinforce insider-outsider problems. The regulations concerning temporary agency work, with the restriction of the maximum assignment duration and the binding introduction of equal pay after the agency worker has been deployed in a firm for nine months will probably have little effect because most employment relationships and assignments in this sector do not last that long anyway (see Haller/Jahn 2014). It is unlikely to make access to the labour market much more difficult. However, the planned changes would give the employment agencies incentives to conclude shorter contracts and to exchange employees.

The planned minimum wage regulation is likely to be of greater relevance, however. A general minimum wage is not per se good or bad (see Möller/König 2008). It is the level of the minimum wage that is decisive for its effect. The problem here is that it is difficult to determine in advance a minimum wage level that is in line with market conditions (see Möller/König 2011; Walwei 2011b). The minimum wage of 8.50 euros per hour that has been agreed on and is valid from 2015 onwards shows a considerable incidence in some segments of the labour market. The German Institute for Economic Research (Deutsches Institut für Wirtschaftsforschung - DIW), for example, calculates on the basis of the Socio-Economic Panel that 5.6 million individuals or 17 % of all people in dependent employment would have received a wage increase in the year 2012 if there had been a minimum wage of 8.5 euros per hour. This would be equivalent to about 15 % of workers in western Germany and more than a quarter in eastern Germany (see Brenke/Müller 2013). Even if the wage level is extrapolated and planned exceptions taken into account, the rates in Germany in 2015 are likely to be far higher than was the case when the minimum wage was introduced in the UK in 1999, which initially affected only six to seven percent of workers in dependent employment and no major job losses were subsequently observed. There is a risk of the minimum wage having negative employment effects

not only due to the regional distribution but also because the proportion of low hourly wages is not equally distributed in different sectors, for different groups and certain types of employment. People in jobs with low skill levels, the long-term unemployed and people with mini-jobs would be affected in particular. On the firm side, a high incidence is to be expected in sectors such as commerce or the hotel and catering industry and in small businesses.

The available evidence suggest that legal changes in the area of work arrangements are likely to have facilitated access to the labour market and to have boosted its absorptive capacity (see Jahn/Weber 2013; Hohendanner/Walwei 2013). The measures were also especially effective because they encountered a favourable environment with highly competitive industry and rather moderate collective agreements. The coalition agreements are associated with particular risks concerning the future development of employment. It is less the case that large-scale job losses are to be expected and more the case that less competitive groups will find it more difficult to find work, as the particular risk of the regulations is that it could become more difficult to hire new staff (see Meer/West 2013).

4.2 Effects of labour law on the composition of employment

Since 2005 the German labour market has not only exhibited a fundamental trend towards improvement; the recovery is also accompanied by changes in the structure of employment that show a tendency towards increasing inequality. This concerns wage disparities on the one hand and non-standard work arrangements with low levels of protection in some cases on the other hand. However, a look at the long-term trends shows that the influence of labour law regulations on the observable structural changes in the past and the future must not be overestimated.

The relative loss of significance of the standard work arrangement and the increase in the proportion of atypical forms of employment such as part-time work, mini-jobs, temporary agency work and fixed-term employment have not just emerged in the last few years but have been developing for more than two decades. Whereas in 1991 the proportion of so-called regular employment relationships (defined here as permanent dependent employment with a working week of more than 31 hours) was still a good 67 %, by 2011 it had fallen to just under 53 % (see Dietz et al. 2013a). The reverse development can be seen in non-standard work arrangements. However, it should be pointed out that the number of regular employment relationships in absolute figures did not only stabilise again after the labour market reforms but has since begun to grow once more.

The proportion of workers with low hourly pay apparently grew only marginally in the course of the labour market upturn. On the basis of the Socio-Economic Panel and based on a threshold value of 2/3 of the median hourly wage, Kalina and Weinkopf (2013) show a proportion of low-wage earners amounting to 23.9 % for Germany as a whole for 2011, which is only marginally larger than the corresponding percentage of 23.6 % that was calculated for 2005. The largest part of the growth thus occurred

before 2005. The rate of low-wage earners grew by just under four percentage points between 1998 and 2005 alone. The evaluations also demonstrate a strong correlation with atypical employment, as low hourly pay is found more frequently in part-time jobs covered by social security and in particular in mini-jobs. Furthermore, analyses of fixed-term jobs and temporary agency work also reveal sometimes considerable gross wage differentials compared to regular employment (Jahn/Pozzoli 2011; Keller/Seifert 2013).

This raises the question of what could be behind the considerable changes in the composition of employment over time. The first focus is on types of work arrangements. According to shift-share analyses, long-term changes in the composition of employment, such as the growth of female employment, the increasing importance of service jobs, the ongoing trend of gaining higher qualifications or the constant ageing of the workforce, have made at most a small contribution to the change in the composition of work arrangements (see Walwei 2013b). Consequently it is necessary to identify other factors that may have driven forward the changes in the employment forms. What is of importance in this context is, first of all, labour market institutions that open up and limit options for those concerned. The labour market reforms between 2003 and 2005 can be regarded as a significant turning point in this respect.

In this context the overall package of Hartz reforms, in particular the fourth stage, which emphasised activation and tightened the criteria of what constitutes a suitable job, is also of importance here. Since the reforms, recipients of basic social security (Grundsicherung) have to accept any employment at all, which not only affects the labour market entry of people who are in need of assistance but also affects the job-search behaviour of people who want to avoid having to claim basic social security, in the sense of a deterrent effect (see Erlinghagen 2010). In this connection, the labour market reforms could be said to have resulted in push-effects towards employment that is less stable and is not always sufficient to secure the worker's livelihood. These effects were accompanied by the pull-effects, in other words the increased scope for action for firms as a result of deregulating non-standard work arrangements as part of the Hartz reforms (see Dietz et al. 2013).

It is possible to examine whether there was an increase in the number of people in atypical employment after the implementation of the Hartz reforms on the basis of their annual growth rates from 2004 to 2012 (see Himsel et al. 2013). The development varies considerably for the individual types of employment. In the case of the deregulated forms of employment, such as temporary agency work and marginal part-time employment, early effects of the reforms in the sense of a strong increase can be seen in 2004. However, this appears to be a one-off effect, as the initially strong increase did not continue in that way after 2004. While the number of people whose only job is marginally part-time – in contrast to those who have a mini-job as a second job – showed only a rather small annual growth after 2004, temporary agency work is influenced in the longer-term by the economic situation like no other

employment form (see Antoni/Jahn 2009). Possible reasons why the growth of non-standard work arrangements did not accelerate permanently after the labour market reforms are the re-regulation in the temporary work sector, which was mentioned above, general recruitment problems experienced by firms in the case of temporary agency work and marginal part-time employment, and declining push-effects as a consequence of the recent labour market recovery.

Besides institutional changes, however, the players on the labour market themselves can also be major drivers of change with regard to work arrangements. The firm side is the first to spring to mind. For instance, enterprise surveys show that atypical forms of employment can assist flexible staff deployment and facilitate personnel selection (see Bellmann et al. 2012; Hohendanner 2012).

Changes in individual preferences could also be partly responsible for the change in the composition of work arrangements. In principle, most workers are expected to prefer a regular employment relationship which, due to the attributes of “permanent” and “full-time”, tend to offer a higher level of protection (e. g. job security, social protection and a higher income). Nonetheless some individuals may desire employment forms like part-time work because they can facilitate the compatibility of employment with other activities such as childcare or education and further training during certain periods of their lives (see Stops/Walwei 2014). It should be taken into account here, however, that the preferences expressed in connection with part-time employment in various surveys (such as the German labour force survey) also always reflect social basic conditions. First, this concerns forms of the household division of labour, with the standard of a man generally working full-time and a woman working part-time (“modernised breadwinner model”). Second, the responses reflect the (still inadequate) availability of affordable and sufficiently flexible facilities for childcare and nursing care. Taking into account such social basic conditions and their changes over time makes it easier to understand structural changes on the labour market.

Furthermore, atypical employment following a period of unemployment can facilitate labour market entry (see Hohendanner/Walwei 2013). However, little evidence has so far been found of flexible employment functioning substantially as a bridge to regular employment (see Gensicke et al. 2010; Lehmer 2012; Brülle 2013). Yet it must be taken into consideration that regular employment relationships do not necessarily entail a better level of protection than atypical employment. Temporary forms of employment need not be less stable in the long run than a permanent job (see Boockmann/Hagen 2005), as fixed-term employment contracts can be converted into permanent ones, and permanent employees can be dismissed. Likewise, even full-time and permanent employment does not necessarily guarantee an income that is sufficient to secure one’s livelihood if the job is in the low-wage sector (see Bruckmeier et al. 2013).

As regards the causes of the wage inequality, reforms of economic and labour market policy cannot be seen as the sole cause of the increase in wage inequality since

the mid-1990s, as no radical changes have been observed in this period. The relevant literature cites a whole range of factors that may have fostered this development (see Card et al. 2013). The heavy job losses in eastern Germany after reunification put the collective bargaining system to the test and contributed to a decline in union density and collective agreement coverage (in western Germany, too). Recent studies indicate that the reduction in the coverage of collective agreements between the mid-1990s and the middle of the last decade can explain a considerable part of the growing wage inequality (Antonczyk et al. 2010a; Antonczyk et al. 2010b). Other possible explanatory factors for the stronger wage disparity are growing international trade, outsourcing trends in some sectors of the economy (Autor et al. 2013), the increasing immigration of workers with low skill levels, specific effects of technological progress on various skill groups and an increased heterogeneity of firms. Although the different elements of the Hartz reforms might have extended the trend towards wage disparity, they can definitely not be seen as the initial impulse, since they only became effective from 2003 onwards.

On the whole, the effects of the planned minimum wage on the distribution of wages are likely to be limited. Until 2017 the minimum wage will remain at 8.50 euros, such that – if general wage rises have been taken into account by then – deviations from it will be cut off in the lowest wage levels at most. Spillover effects of the minimum wage in the sense of wage increases for wage groups immediately above the minimum wage are conceivable, but require an empirical analysis (see Dickens/Manning 2004). According to model calculations, the number of people receiving in-work benefits to top up low incomes will barely decrease as a result of the minimum wage, at least in the short term (see Bruckmeier/Wiemers 2014). The main reason for this is that currently many recipients of such in-work benefits are in part-time employment and that people who work full-time and receive in-work benefits are more likely to live in larger households that are therefore especially needy. Consequently it is no surprise that the introduction of the minimum wage will presumably not lead to any considerable changes in the poverty rates (see Brenke/Müller 2013).

5 Conclusion

Labour law has always been characterised by fierce controversy. An important issue in this respect is not only whether the workers' protection interests are taken adequately into account and whether the level of protection envisaged by the legislator is achieved. What is also of key importance for this paper is whether labour law regulations have a lasting impact on the employment trend and employment structures. Analyses in law and economics are not (yet) so well developed as to be able to make far-reaching statements about the functionality of labour law, in the sense of an optimal regulation of the labour market, for example. A factor that is especially difficult from an analytical viewpoint is the fact that labour law aims at and develops distribution effects. However, these effects are beyond the standard approaches of economic analysis.

If the last three decades are examined, a deregulation trend can be seen in labour law that initially lasted more than two decades and culminated temporarily but tremendously in the Hartz reforms. Since then we have observed a certain trend towards re-regulation that appears to be picking up speed as a result of the recent agreements reached by the grand coalition.

The paper presents evidence on potential effects of the deregulation and the assessment of the ongoing re-regulation. It makes clear that the effects of labour law should be neither underestimated nor overestimated. Although circumstantial evidence show that the strong labour market upturn was certainly also fostered by the labour market reforms, the reforms encountered a favourable environment such as competitive industry and a moderate collective bargaining policy and can therefore ultimately not be regarded as the sole factor contributing to the recovery trend. By implication, the possible negative effects of a re-regulation on employment and unemployment are therefore likely to be rather limited. However, possible risks could have been reduced even further if the British way had been adopted when the minimum wage was introduced. This made provisions for the minimum wage to begin at an initially low level and subsequently to raise it gradually while analysing the impact scientifically.

Similar applies for the effects of labour law amendments on work arrangements. Greater wage inequality and more atypical employment forms are not solely the result of changes to labour law, such as the major labour market reforms between 2003 and 2005. The structural changes began long before and reflect a variety of possible influential factors. However, they have diminished recently, which can also be put down to the improved situation on the labour market. The re-regulation in labour law that is envisaged by the new government is likely to limit extreme distribution asymmetries in earnings, but in view of its scope it is not a cure-all for the trend towards wage inequality that has long been apparent.

If the quality of employment is to be addressed and propagated in a sustainable way, a massive conflict of aims emerges, as the chances of entering the labour market have improved recently. Even stronger regulations could hamper labour market entry unduly. Consequently, the focus should be on interactions between the labour market and the education and training system in future. For instance, the introduction of the minimum wage means that developing the employability of labour market problem groups will become an even more important topic if people are not to be excluded from work permanently. Training will have a crucial role to play here, as people have to (be able to) make a contribution to the value added expected of them. Avoiding educational deprivation and promoting upward mobility will therefore become considerably more important in the future. The latter is aimed above all at people with unstable employment histories that are often insufficient to secure their livelihoods. For these people what often matters most is gaining access to the labour market in the first place in order then to be able to develop their individual employability by participating in training alongside work to gain qualifications.

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