

Abstracts AuR 1 / 2018

Eva Kocher: The Salary Transparency Act: an act only for works councils?

The act's purpose is „to impose the rule of equal pay for male and female workers for equal work or work of equal value.“ The emphasis lies on “impose”, because the rule (Art. 157 TFEU) has hardly any effect in practice so far. This has got to do with the fact that in Germany there is practically only the option of individual lawsuits for imposing the principle though workers are hardly looking for conflicts in court proceedings while the employment relationships are in existence. Pay discrimination is often based on a salary system. A successful individual lawsuit attacks only a part or a single application of the of the salary system, without the system itself respectively its application in the employer company or its interpretation being the topic of the debate. The act on hand does not create effective transparency, because it does not give the workers demanding disclosure significant informations. When evaluating and further developing and adapting the rules (§ 23 Salary Transparency Act) one must look in particular at plants with up to 200 workers. The further development is of particular interest also because the act – even within its restriction to measures for better transparency of salary setting – stays far behind EC Commission recommendations in this field from 2014.

Dorota Kempster/Stanslava Rupp/Jochen Empen/Dominique John: „Project Fair Mobility” – backgrounds and transnational case constellations

The German Trade Union Confederation's „Project Fair Mobility” aims at supporting mobile workers from central and eastern Europe in exercising their right on free movement so that they can work under fair conditions here and are not treated worse than local people. They get information on labour law matters and advice how to protect themselves against exploitation. What's more: they get support in enforcing their rights.

Cross border employment like for example posting of workers on building sites often goes hand in hand with labour exploitation. Often due wages are not paid, or the wages paid are much too low. General contractor liability in the building sector may be conducive, but requires that workers have gathered informations about their employer's principals, documented their working hours and address themselves in time to an advisory body. In 24 h care, however, enforcing the legal right to salary is pure fiction for many workers.

Reiner Hofmann/Susanne Wixforth: The social dimension of the EU – between fundamental freedoms and European Pillar of Social Rights

The 4 fundamental freedoms (free movement of goods, capital, services, and labour) are the core of the European common market and were the starting point for the creation of wealth and the growing together of Europe. How did it come to the ever-faster shrinkage of the support for the European integration process in the last years?

By means of two theories the article analyzes why the internal market is not motor for convergence any more, but has become a centrifugal power instead. The first theory comes to the result that the unbalanced situation, in favour of liberalization and to the

detriment of social regulation leads to a legitimation problem and to the loss of democratic shaping. Theory two concludes that the radicalisation of internal market integration is the result of ECJ jurisdiction. Through extensive interpretation of the necessary transnational context the four fundamental freedoms are applied to national cases without direct internal market aspects. This form of liberalization causes encroachments on the division of responsibilities between market and state and dismantles national protection standards under the assumption that they are against Europe.

Such a development causes urgent need for political action in order to bring the European project back on the right track. There is need for a Social Progress Protocol establishing the priority of collective and individual labour and social rights over the internal market freedoms. Additionally, there must be a regression prohibition and the installation of a tribunal for social and labour law with the ECJ where competent laypersons participate as judges, just like it is the case in courts of various member states.