

Übersetzung durch Paul Skidmore und den Sprachendienst des Bundesministeriums für Arbeit und Soziales

Translation provided by Paul Skidmore and the Language Service of the Federal Ministry of Labour and Social Affairs

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Collective Agreements Act (Tarifvertragsgesetz, TVG)

Collective Agreements Act in the version published on 25 August 1969 (Federal Law Gazette I, p. 1323), last amended by Article 8 of the Act of 20 May 2020 (Federal Law Gazette I, p. 1055)

Section 1

Content and form of collective agreements

- (1) The collective agreement governs the rights and obligations of the parties to the collective agreement and contains legal rules which may regulate the content, the entering into and termination of employment relationships as well as establishment-level issues and staff and works council matters.
- (2) Collective agreements must be made in writing.

Section 2

Parties to a collective agreement

- (1) Parties to a collective agreement are trade unions, individual employers as well as employer associations.
- (2) Federations of trade unions and of employer associations (umbrella organisations) may enter into collective agreements in the name of their member associations if they have a relevant authority to do so.
- (3) Umbrella organisations may themselves be parties to a collective agreement if the conclusion of collective agreements is included among their functions as provided for in their articles of association.
- (4) If subsection (2) or (3) applies, both the umbrella organisations and their member associations are liable for the performance of the reciprocal obligations of the parties to the collective agreement.

Section 3

Binding force of collective agreements

- (1) The persons deemed bound by a collective agreement are members of the parties to the collective agreement and any employer which is, in its own right, a party to the collective agreement.
- (2) Normative terms of the collective agreement regulating establishment-level issues and staff and works council matters apply in relation to all establishments in which the employer is bound by the collective agreement.

(3) The parties bound by the collective agreement continue to be bound until the collective agreement ends.

Section 4 **Effects of the normative terms**

(1) The normative terms of the collective agreement that regulate the content, the entering into or termination of employment relationships apply directly and on a mandatory basis between parties that are both bound by the collective agreement and within its scope. This rule applies accordingly in relation to normative terms of the collective agreement governing establishment-level issues and staff and works council matters.

(2) If the collective agreement provides for and governs common institutions of the parties to the collective agreement (e.g. wage adjustment funds, paid leave funds, etc), these rules also apply directly and on a mandatory basis in relation to the articles of association of the institution and to the relationship between the institution and employers and employees who are bound by the collective agreement.

(3) Agreements that derogate from a collective agreement are only permitted if the collective agreement allows for this or contain an amendment of the terms in favour of the employee.

(4) A waiver of rights that have arisen by virtue of a collective agreement is permitted only by way of a compromise to which the parties to the collective agreement have given their consent. The forfeiture of rights provided for in a collective agreement is excluded. Time limits for the assertion of rights provided for in a collective agreement may be agreed only in the collective agreement.

(5) Following the expiry of the collective agreement, its normative terms continue to apply until they are replaced by another agreement.

Section 4a **Conflicts of collective agreements**

(1) To ensure the protection function, distribution function, peace function as well as the regulatory function of normative terms in the collective agreement, conflicts of collective agreements in an establishment are to be avoided.

(2) Under the terms of section 3 an employer may be bound by more than one collective agreement with different trade unions. If collective agreements whose content is not identical agreed with different trade unions overlap in scope (conflicting collective agreements), only the normative terms of the collective agreement concluded with the trade union which at the date on which the most recent conflicting collective agreement was agreed has the most members in an employment relationship in the establishment (majority collective agreement) are applicable in the establishment; if, in the adoption of the majority collective agreement, the interests of groups of employees, also covered by the collective agreement which is not to be applied in accordance with the first half-sentence, were not given serious and effective consideration, the normative terms of this collective agreement are also applicable. If the collective agreements conflict only at a later date, this date is decisive for determining the majority. An establishment as defined in section 1 (1) sentence 2 of the Works Constitution Act (*Betriebsverfassungsgesetz*) and an establishment formed by a collective agreement as provided for in section 3 (1) nos. 1 to 3 of the Works Constitution Act are also included as establishments unless this obviously contradicts the objectives of subsection (1). This is the case, in particular, where the establishments formed by the parties to the collective agreement have been allocated to different sectors or value chains of such sectors.

(3) In relation to normative terms of a collective agreement governing a staff and works council matter specified in section 3 (1) and section 117 (2) of the Works Constitution Act, subsection (2) sentence 2 only applies where this staff and works council matter has already been regulated in a collective agreement agreed by a different trade union.

(4) A trade union may require the employer or association of employers to reproduce the normative terms of a collective agreement that conflicts with its collective agreement. The right to replication entails the conclusion of a collective agreement containing the normative terms of the conflicting collective agreement to the extent that the scope and normative

terms of the collective agreements overlap. The normative terms of a collective agreement agreed as a replication in accordance with sentence 1 apply directly and on a mandatory basis to the extent that the collective agreement of the trade union that signs the replicating agreement is not applicable on the basis of subsection (2) sentence 2.

(5) If an employer or an association of employers starts negotiations with a trade union on the conclusion of a collective agreement, the employer or association of employers is required to make this known in a timely and adequate manner. A different trade union whose functions, in accordance with its articles of association, include the conclusion of a collective agreement as referred to in sentence 1 is entitled to present its ideas and demands orally to the employer or association of employers.

Section 5

Universal application of collective agreements

(1) Upon a joint application by the parties to the collective agreement, the Federal Ministry of Labour and Social Affairs may in agreement with a committee composed of three representatives each from the umbrella organisations of employers and of employees (collective agreements committee) declare a collective agreement to be universally applicable where the declaration of universal application appears necessary in the public interest. As a rule, the declaration of universal application appears necessary in the public interest if

1. within its scope the collective agreement has acquired primary importance for the setting of terms and conditions of employment or
2. protecting the efficacy of regulation by collective agreement against the consequences of undesirable economic trends necessitates a declaration of universal application.

(1a) Upon a joint application by the parties to the collective agreement, the Federal Ministry of Labour and Social Affairs may in agreement with the collective agreements committee declare for the purposes of ensuring a common institution's functioning a collective agreement governing that institution to be universally applicable if the collective agreement governs the collection of contributions and award of benefits by a common institution having the following purposes:

1. annual leave, a leave bonus or an additional leave bonus,
2. an occupational pension scheme within the meaning of the Occupational Pensions Act (*Betriebsrentengesetz*),
3. the remuneration of vocational trainees or vocational training at supra-establishment level training facilities,
4. an additional employee savings scheme at establishment or supra-establishment level,
5. wage adjustment in the event of a loss, reduction or extension of working time.

The collective agreement may govern all rights and obligations associated with the collection of contributions and award of benefits including the entitlements of employees and obligations of employers on which the procedure is based. Section 7 (2) of the Posted Workers Act (*Arbeitnehmer-Entsendegesetz*) applies accordingly.

(2) Before a decision is taken on the application, employers and employees who would be affected by the declaration of universal application, trade unions and associations of employers interested in the outcome of the procedure as well as the highest labour authorities of the *Länder* in the areas covered by the collective agreement must be given the opportunity to submit written observations as well as to make statements at an oral public

hearing. In justified cases, the Federal Ministry of Labour and Social Affairs may provide for participation at the hearing via video or telephone conference.

(3) If the highest labour authority of a participating *Land* objects to the declaration of universal application requested, the Federal Ministry of Labour and Social Affairs may approve the application only with the consent of the Federal Government.

(4) By virtue of the declaration of universal application, the normative terms of the collective agreement also cover the employers and employees within its scope who were previously not bound by the collective agreement. A collective agreement declared universally applicable pursuant to subsection (1a) must be complied with by the employer even if the employer is bound in accordance with section 3 by another collective agreement.

(5) The Federal Ministry of Labour and Social Affairs may in agreement with the committee specified in subsection (1) revoke a declaration of universal application in relation to a collective agreement where revocation appears necessary in the public interest. Subsections (2) and (3) apply accordingly. In all other cases, the universal application of a collective agreement ends on the expiry of the collective agreement.

(6) The Federal Ministry of Labour and Social Affairs may in individual cases confer on the highest labour authority of a *Land* the right to declare a collective agreement universally applicable as well as to revoke a declaration of universal application.

(7) The declaration of universal application and the revocation of universal application require public notification. The notification must include the normative terms of the collective agreement covered by the declaration of universal application.

Footnote: Section 5 (1), (2) to (5) and (7) in the version as published on 25 August 1969 (Federal Law Gazette I, p. 1323): in accordance with the operative part of the judgment, compatible with the Basic Law, judgment of the Federal Constitutional Court of 24 May 1977 (Federal Law Gazette I, p. 1547) (2 BvL 11/74)

Section 6

Collective agreements register

A collective agreements register is kept by the Federal Ministry of Labour and Social Affairs in which the conclusion, amendment and termination of collective agreements as well as the start and end of universal application is recorded.

Section 7

Transmission and notification obligation

(1) The parties to a collective agreement are required to transmit free of charge the original or a certified copy and two further copies of each collective agreement and amendments thereto to the Federal Ministry of Labour and Social Affairs within one month of concluding the agreement; they must notify it of a collective agreement ceasing to apply within one month of that date. In addition, they are required to transmit free of charge three copies each of the collective agreement and the amendments thereto to the highest labour authorities of the *Land* whose territory is covered by the collective agreement within one month of concluding the agreement and also to notify them of the collective agreement ceasing to apply within one month of that date. If one party to the collective agreement performs the obligations, the remaining parties to the collective agreement are relieved of those obligations.

(2) A person who, contrary to subsection (1), deliberately or negligently fails to observe, fails to observe correctly, fails to observe in full or fails to observe within the prescribed period a transmission or notification obligation commits a regulatory offence. The regulatory offence may be punished with a fine.

(3) The administrative authority within the meaning of section 36 (1) no. 1 of the Regulatory Offences Act (*Gesetz über Ordnungswidrigkeiten*) is the authority in relation to which the obligation referred to in subsection (1) must be performed.

Section 8 **Announcement of the collective agreement**

The employer is required to publicise the collective agreements applicable in the establishment as well as final decisions taken pursuant to section 99 of the Labour Courts Act (*Arbeitsgerichtsgesetz*) on the collective agreement applicable in the establishment by virtue of section 4a (2) sentence 2.

Footnote: Section 8: according to the court's reasoning, compatible with the Basic Law (Article 100 (1)), judgment of the Federal Constitutional Court of 11 July 2017 (Federal Law Gazette I, p. 2663) (1 BvR 1571/15 and others)

Section 9 **Determination of legal validity**

Final decisions of labour courts delivered in legal disputes between parties to a collective agreement arising out of the collective agreement or concerning the existence or non-existence of the collective agreement are binding on courts and arbitral tribunals in legal disputes between parties bound by the collective agreement and between those parties and third parties.

Section 10 **Collective agreements and pre-1949 instruments governing terms and conditions of employment (*Tarifordnungen*)**

(1) On the entry into force of a collective agreement, pre-1949 instruments governing terms and conditions of employment (*Tarifordnungen*) having the same scope as the collective agreement or parts thereof cease to have effect with the exception of those provisions which are not governed by the collective agreement.

(2) The Federal Ministry of Labour and Social Affairs may revoke pre-1949 instruments governing terms and conditions of employment (*Tarifordnungen*); revocation requires public notification.

Section 11 **Implementing provisions**

The Federal Ministry of Labour and Social Affairs may with the participation of the umbrella organisations of employers and of employees adopt the statutory instruments necessary for the implementation of this Act, in particular on

1. the establishment and keeping of the collective agreements register and the collective agreements archive;
2. the procedure for declaring collective agreements universally applicable and for revoking pre-1949 instruments governing terms and conditions of employment (*Tarifordnungen*) and orders, the public notifications in connection with the application for, the declaration and cessation of universal application and in connection with the revocation of pre-1949 instruments governing terms and conditions of employment (*Tarifordnungen*) and orders as well as the costs arising in these circumstances;
3. the committee specified in section 5.

Section 12 **Umbrella organisations**

Umbrella organisations within the meaning of this Act are – without prejudice to the provisions of Section 2 – those federations of trade unions or employer associations which are crucially important to the representation of employee or employer interests in working life in the federal territory. Trade unions and employer associations which do not belong to a federation of that kind are regarded as equivalent to umbrella organisations if they fulfil the requirements of the final half-sentence of sentence 1.

Section 12a **Employee-like persons**

(1) The provisions of this Act apply accordingly

1. in relation to persons who are economically dependent and in need of social protection comparable to an employee (employee-like persons), who work on the basis of a service contract or a contract to produce a work for other persons, perform the services they are obliged to perform personally and essentially without collaboration with employees and
 - a) work predominantly for one person or
 - b) on average receive from one person more than half of the remuneration they are entitled to in total for their work; where this is not foreseeable, for the purposes of the calculation, unless the collective agreement provides otherwise, the last six months are decisive or where the period of work is shorter such period,
2. in relation to the persons referred to in no. 1 for which the employee-like persons work and in relation to the legal relationships between them and the employee-like persons that result from a service contract or a contract to produce a work.

(2) Several persons for which employee-like persons work are regarded as one person where these persons are combined in the manner of a company group (section 18 of the Stock Corporation Act (*Aktiengesetz*)) or belong to a common organisational structure or a working group that is not merely temporary.

(3) Subsections (1) and (2) apply in relation to persons who provide artistic, literary or journalistic services and in relation to persons who are directly involved in the provision of such services, in particular the technical organisation thereof, also where, in derogation from subsection (1) no. 1 (b) first half-sentence, on average they receive from one person at least one third of the remuneration they are entitled to in total for their work.

(4) This section does not apply to commercial agents within the meaning of section 84 of the Commercial Code (*Handelsgesetzbuch*).

Section 13 **Entry into force**

- (1) This Act enters into force on its promulgation.
- (2) Collective agreements concluded before this Act entered into force are subject to this Act.
- (3) Section 4a does not apply to collective agreements that were in force on 10 July 2015.

Footnote

Section 13 (3): inserted by Article 1 no. 3 of the Act of 3 July 2015 (Federal Law Gazette I, p. 1130) with effect from 10 July 2015; in accordance with the court's reasoning compatible with the Basic Law (Article 100(1)), judgment of the Federal Constitutional Court of 11 July 2017 (Federal Law Gazette I, p. 2663) (1 BvR 1571/15 and others)

Annex Unification Treaty: excerpt from the Unification Treaty (*Einigungsvertrag*) Annex I Chapter 8 Subject area A Division 3 (Federal Law Gazette II 1990, p. 889, at p. 1023)

- provisos for the acceding territory (Article 3 of the Unification Treaty) -

Division 3

Federal law enters into force in the territory specified in Article 3 of the Treaty subject to the following provisos:

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14. Collective Agreements Act as published on 25 August 1969 (Federal Law Gazette I, p. 1323), amended by Article II section 1 of the Act of 29 October 1974 (Federal Law Gazette I, p. 2879), subject to the following proviso:
- Until a new collective agreement is concluded the applicable framework collective agreement or collective agreement together with all supplements and additional agreements continues to apply on condition that it was registered as provided for in the Labour Code (*Arbeitsgesetzbuch*). The framework collective agreement or collective agreement ceases to apply in full or in part when for the area covered by the agreement or parts thereof a new collective agreement enters into force. Provisions of existing framework collective agreements or collective agreements which are not revoked or replaced by the new collective agreement continue to apply. Agreements for protection against rationalisation that were concluded and registered before 1 July 1990 cease to apply on 31 December 1990 without any continuing effect; to the extent that by 31 December 1990 employees fulfil the requirements of the agreements for protection against rationalisation, subject to the provisions of new collective agreements, their rights and entitlements remain unaffected. This is without prejudice to the provisions of Article 20 of the Treaty and the annexes enacted in that connection.

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