

labor law related effects of Outsourcing

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1 Contents

1	CONTENTS	2
2	IMPORTANT LAWS	3
2.1	§ 613A BGB (GERMAN CIVIL CODE)	3
2.2	TARIFVERTRAGSGESETZ (LAW FOR COLLECTIVE LABOUR AGREEMENT).....	3
2.3	BETRIEBSVERFASSUNGSGESETZ (LAW FOR WORKS CONSTITUTION)	3
2.4	MITBESTIMMUNGSGESETZ (LAW FOR WORKERS‘ PARTICIPATION)	4
2.5	UMWANDLUNGSGESETZ (LAW FOR CHANGE OF CORPORATE FORM)	4
2.6	ARBEITNEHMERÜBERLASSUNGSGESETZ (LAW FOR EXTERN TEMPORARY WORKERS)..	4
3	THREE WAYS OF OUTSOURCING	5
3.1	EXTERNAL PROCESSING.....	5
3.2	TRANSFER OF RESOURCES.....	5
3.3	OPERATOR MODEL	5
5	ABBREVIATIONS	6

2 Important laws

- § 613a BGB (German Civil Code)
- Tarifvertragsgesetz (law for collective labour agreement)
- Betriebsverfassungsgesetz (law for works constitution)
- Mitbestimmungsgesetz (law for workers' participation)
- Umwandlungsgesetz (law for change of corporate form)
- Arbeitnehmerüberlassungsgesetz (law for extern temporary workers)

2.1 § 613a BGB (German Civil Code)

This article provides rules to judge about rights for employees in case of “Betriebsübergang”. It means the change of ownership of a part of a company. This part may be a production facility, a service area or a whole branch. In this change of ownership all resources like equipment and personnel are included.

In each case of Outsourcing it must be decided if it is a matter of “Betriebsübergang”. In case of doubt a labour court has to judge. (e.g. BAG or EuGH)

The rules in detail:

- new owner (= new employer) has to take over the existing work contracts including all conditions
- validity of collective rights and labour agreements (e.g. wage agreements, “Tarifvertrag”)
 - If new employer is not bounded to collective rights, the former rights will transformed to every single work contract and will stay valid for at least 1 year.
 - If new employer is bounded to collective rights, this rights will be valid as far as they concern the same matters but independent from the level of content. Other matters will be transformed to single contracts.
- old and new owner are liable for existing outstandings/debts
- no employment contracts may be cancelled because of “Betriebsübergang”
- employers will be informed before the change and can contradict

2.2 Tarifvertragsgesetz (law for collective labour agreement)

This law does not directly provide rules that can be connected to Outsourcing. But it has to be considered if working conditions controlled by collective labour agreements will be changed by Outsourcing processes. (→ 2nd rule of § 613a BGB (German Civil Code))

2.3 Betriebsverfassungsgesetz (law for works constitution)

Every kind of Outsourcing processes will cause changes in the company that influence the employees. Concerning §111 to §113 BetrVG the workers' council has

to be informed in sufficient time. But the participation level of the workers' council is very low – only consulting and informing activities.

Also workers' participation issues controlled by BetrVG may be influenced by Outsourcing processes.

- liability of company to social plan (> 20 employees)
- participation in companies economy committee (> 100 employees)
- participation in personnel decisions
- exemption from work for members of workers' council (> 200 employees)
- existence of a workers' council

2.4 Mitbestimmungsgesetz (law for workers' participation)

Workers' participation in the board of directors can be omitted due to Outsourcing processes.

2.5 Umwandlungsgesetz (law for change of corporate form)

Among other things this law rules different ways of splitting companies, that can be interesting for Outsourcing. But there are also a lot of labour related protection rights.

- claims of the workers' council for information according to §126 (1) Nr.11 UmwG
- liability of dismissal protection
- assignment of employees in balance of interests
- liability of §613a BGB according to §324 UmwG
- saving the workers' participation in companies according to §325 (1) UmwG
- saving the rights of workers' council according to §325 (2) UmwG

... and more

2.6 Arbeitnehmerüberlassungsgesetz (law for extern temporary workers)

In case of Outsourcing by lending employees to an other company the Federal Employment Office and the workers' council of the company has rights to decide about work permission and work duration.

The other possibility is to use consultants for the jobs. They are not underlying these restrictions.

3 Three ways of Outsourcing

From the labour law related point of view it is possible to divide Outsourcing into 3 types.

- external processing
- transfer of resources
- operator model

3.1 external processing

Assignment of former intern tasks/processes to other companies without transfer of resources like equipment or personnel.

e.g. use the service of a cleaning company instead of employing cleaning personnel

- normally it is not a „Betriebsübergang“
 - no effects to employees according to §613a BGB
 - but possible canceling of jobs if there are no other tasks
- there are some exceptions where external processing is not a sufficient reason for cancelling jobs
 - e.g. outsourcing to “Organgesellschaften“ (“Organgesellschaften“ are own companies but completely included into a bigger company and controlled by this)

3.2 transfer of resources

A whole branch/production line/service area will be handed over to an other company including all resources. (normally done by sale)

3.3 operator model

A whole branch/production line/service area will be organized and managed by an extern company but owner stays the same.

e.g. to lease a production line

- are not regulated clearly by laws
- can be regarded as “Betriebsübergang” according to §613a BGB
 - if the manager (not the owner) is responsible for all decisions
 - if it is a temporary solution for planned transfer of resources

4 Abbreviations

	German	English
BGB	Bürgerliches Gesetzbuch	(German) Civil Code
TVG	Tarifvertragsgesetz	law for collective labour agreement
BetrVG	Betriebsverfassungsgesetz	law for works constitution
MitbestG	Mitbestimmungsgesetz	law for workers' participation
UmwG	Umwandlungsgesetz	law for change of corporate form
AÜG	Arbeitnehmerüberlassungsgesetz	law for extern temporary workers
BAG	Bundesarbeitsgericht	(German) Federal Labour Court
EuGH	Europäischer Gerichtshof	European Court of Justice

collective agreements

employer-employee relationship

external processing

fluctuating order situations

labour (industrial) law

labour management relation

operating transition

operator model

operatingconditionally

outsourcing suppliers

outsourcing customer

representors of interests

resources transmission

right of codetermination

social contributions

tariff validity

work legal

work council

Tarifverträge

Arbeitsverhältnis

Fremdvergabe

Auftragsschwankungen

Arbeitsrecht

Betriebsverfassung

Betriebsübergang

Betreibermodel

betriebsbedingte

Outsourcinganbieter

Outsourcingkunde

Interessenvertreter

Ressourcenübertragung

Mitbestimmungsrecht

Sozialleistungen

Tarifgeltung

arbeitsrechtlich

Betriebsrat