



Press Release

50,000 CONSTRUCTION AND CRAFTSMAN'S BUSINESSES AFFECTED BY UNJUSTIFIED CONTRIBUTIONS

Berlin/Erfurt, 25 January 2017 – Today, the German Federal Labour Court (BAG) decided on two proceedings that the 2012 and 2013 declarations of general applicability of the collective agreement regarding the social fund proceedings in the construction industry were invalid (10 ABR 34/15 and 10 ABR 43/15). The German Federal Ministry of Labour and Social Affairs (BMAS) had extended this declaration. These decisions mean that only employers bound by collective bargaining agreements were subject to a contribution obligation vis-à-vis the Social Fund for the German Building and Construction Industry (SOKA-Bau) for the period in question. Other employers in the construction industry were under no obligation to pay contributions during this period. Today's decisions affect up to 50,000 companies with up to 1.6 million employees.

"The current BAG decisions create legal certainty and are important for all companies which have paid unjustified contributions for years", says *Wolf J. Reuter*, a Labour Law Specialist and a Partner with the law firm BEITEN BURKHARDT, who represents the complaining Central Association of German Electronics and Information Technology Trade (ZVEH). "The Ministry should have never declared the collective bargaining agreement generally binding because it was clear that this was not in the interest of the public. On the contrary, this decision was solely based on the interest of the collective bargaining parties in the construction industry."

SOKA-Bau was established by the collective bargaining parties in the construction industry. Pursuant to the collective bargaining agreements, SOKA-Bau levies contributions from the members of the employers' associations which have entered into the agreement and provide services in holiday and vocation training procedures as well as - by means of an additional pensions fund - services regarding the pension scheme. On the request of the collective bargaining parties, the BMAS had declared the collective bargaining agreement generally binding for many years. As a consequence, it was not only the members of both employers' associations which had entered into the collective bargaining agreement that were obliged to pay contributions to SOKA-Bau but also all other companies rendering "construction services". Subsequently, SOKA-Bau also claimed contributions from all companies of the so-



Press Release

called construction-related industries. These included, in particular, businesses in the metal industries but also carpenters, electricians and installation businesses which do not generally associate themselves with the construction industry or even have their own collective bargaining agreements. In many cases, SOKA-Bau only levied these contributions after several years which often involved unexpectedly high additional claims threatening the existence of the craftsmen's businesses. Each year, there are more than 40,000 proceedings between SOKA-Bau and companies regarding contribution payments before German Labour Courts. Outnumbering their opponents, the construction-related industry thus took matters to the BAG. As early as on 21 September 2016, the Court had decided that the 2008, 2010 and 2014 declarations of general applicability were invalid (10 ABR 22/15 und 10 ABR 48/15).

It remains unclear if today's decision will allow the companies affected to claim reimbursement for the contributions which have been unduly levied. This is because Andrea Nahles, the Federal Minister for Labour and Social Affairs, does not want to accept the consequences of the BAG decision: There are plans for a new law which retroactively declares the collective bargaining agreement regarding the social fund proceedings generally binding. This week, the German Parliamentary Committee for Labour and Social Affairs discussed this draft law in an expert hearing, which *Wolf J. Reuter* attended. In regards to the legislative initiative of the BMAS, he stated: "The planned law is blatantly unconstitutional, not only because there are plans to apply it retroactively and because it overrules the decision of the BAG but, most of all, because it constitutes a serious violation of collective bargaining autonomy."

Contact

Wolf J. Reuter (available for further information and statements)

Phone: 030 26471-263

Email: wolf.reuter@bblaw.com

Public Relations

Markus Bauer

Phone: 089 35065-1104

Markus.Bauer@bblaw.com

Bettina Kaltenbach

Phone: 089 35065-1142

Bettina.Kaltenbach@bblaw.com

Press Release

Information about BEITEN BURKHARDT

- BEITEN BURKHARDT is an independent international commercial law firm with a focused range of services and some 280 lawyers working in 8 locations.
- Through our long-established offices in Germany, Brussels, China and Russia we advise large and mid-sized companies and corporate groups from various industries, banks and financial institutions as well as the public sector.