



The German Vocational Training Reform Act of 2005: What is new, what is different?

► **The German system of dual vocational education and training enjoys worldwide recognition. To maintain this status, both the training and the legislation governing it have to keep pace with the challenges of the modern world. The Vocational Training Reform Act has comprehensively amended the Vocational Training Act of 1969 (BBiG 1969) and the Vocational Training Promotion Act of 1981 (BerBiFG), and combined them into a single law. The objective of the reform is to secure and improve training opportunities for young people and to guarantee that each and every one of them – regardless of social or regional background – receives high quality vocational training. The Act entered into force on April 1, 2005. This article sets out the most important reforms.**



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At the beginning of 2004, when the Federal Ministry of Education and Research (BMBF) set out its agenda for reforming the German law on vocational training, the road to reform seemed fraught with insurmountable hurdles. Essentially, the reasons for this were twofold:

Firstly, a lack of material consensus. The issue of reforming the 1969 Vocational Training Act had been a shared concern of all the stakeholder groups – the Federal and Länder governments and the social partners – for some considerable time. On the evidence of the position papers submitted by each of these groups at the beginning of the legislative process, however, this was the sole point of agreement that united all the stakeholders. Catchy headlines like "Higher quality in vocational education" or "More flexible pathways in vocational education" attracted a wide variety of interpretations which – to judge from the instrumental level – were often diametrically opposed or inherently contradictory.

Secondly, in parallel to the initiation of the legislative process, the Federal Government was confronted with the demand of some Länder during Federalism Commission consultations to transfer competence for "the law on vocational training in non-school settings" (and hence for the Vocational Training Act) to the Länder entirely. In view of the fact that the Vocational Training Reform Act – in whatever form it might have taken – would nevertheless require the approval of the Bundesrat, it is fair to say that the Federal Government's position was far from comfortable.

Principles under constitutional law

With specific regard to the latter point, the first priority was to secure the working basis for reform, i.e. Federal Government competence for vocational training in non-school settings. Thanks largely to the inclusion of the social

partners in the process, the shift of responsibility for this area of law from Federal Government to the Länder was struck from the agenda of the Federalism Commission before its final consultation (for the time being) in December 2004. It was particularly helpful in this regard that BIBB's Central Committee had passed a resolution on December 12, 2003, summing up the relevant educational and economic policy concerns, past and present, and presenting forceful arguments against such a transfer of competences:

“The fragmentation of nationwide training standards would engender

- increased costs and organisational overhead for companies with supraregional operations,
- increased administrative overhead for public bodies,
- additional burdens in terms of adaptive training,
- loss of standardisation in the vocational training system,
- restriction on mobility for employment,
- loss of legal security,
- loss of confidence in the dual system in the competitive international environment,
- loss of transparency, manageability and comparability, leading ultimately to a loss of training places” (cf. BWP 1/2004, Board Supplement).

Since these arguments will still hold if the Federalism Commission recommences its work, it can be assumed that competences for vocational training will continue to be shared, with vocational training in non-school settings remaining the preserve of Federal Government while responsibility for school-based vocational training is retained by the Länder.

The main reforms in the Act

The aspiration to draft a law which satisfied all the requirements of all the parties in every respect would have been impossible to fulfil. As we set about the task, we therefore endeavoured not to be influenced by entrenched vocational training policy ideas in the first instance, and not to become entrenched ourselves. The initial starting point for our considerations was therefore a point of fact and a line of enquiry:

Firstly, the core content of the 1969 Vocational Training Act (BBiG 1969) has stood the test of time. It was supported by a broad social consensus, and played a substantial part in opening up good future prospects for the vast majority of young people and securing the long-term role of ‘education and training’ in German society.

Secondly, which economic and social changes require a response from the legislature in order to sustain this in the



future? Three principal strands of change were identified to which the legislature needed to respond:

- German industry must now compete in global markets,
- the modern world of work is more complicated and subject to constant change, and
- in practice, a substantial proportion of initial vocational training takes place in schools.

INTERNATIONALISATION

The new provisions in § 2 subsection 2 of the Vocational Training Act establish the possibility of completing limited periods of initial vocational training in another country. Thus the period spent abroad is deemed by law to be a part of initial vocational training, as long as it is relevant to the training objective. This will be the case if the training elements taught abroad are essentially equivalent to the training provided in the home country, or if language skills are taught or other additional competencies are acquired.

Since the phase completed abroad in these cases does not interrupt the training contract, further provisions – on such matters as compulsory payment, recognition of the skills, knowledge and abilities acquired abroad or the trainee's tax and social security status – are superfluous.

A stay abroad may only take place in consultation with those responsible for training. The length of placements abroad should be in proportion to the overall length of the initial vocational training. The duration of phases of training abroad was therefore limited to a maximum of one-quarter of the duration of training stipulated in the relevant training regulations. For this calculation, any credit for prior training or reduction in the length of training obtained under §§ 7 and 8 BBiG is not taken into account.

The revisions to §§ 2 and 76 provide for the option of organising periods abroad as an integral element of initial vocational training. An alternative option which has been retained is to complete periods of training abroad under sabbatical leave or release arrangements, and to apply to the competent assessment body for credit towards a qualification.

UPDATED PROVISION ON DELEGATED POWERS TO ISSUE TRAINING REGULATIONS

The provision on delegated powers to issue new training regulations in § 4 in conjunction with § 5 of the new BBiG is essentially based on the old provision on delegated powers in § 25 of the 1969 Vocational Training Act (BBiG 1969). A clear distinction is now drawn between the minimum provisions that a training regulation must contain, and other matters on which provisions may optionally be included in the training regulation.

Under § 5 subsection 1 the *minimum provisions* that must be included are:

- the name of the training occupation to be recognised,
- the duration of training, which should be no more than three and no less than two years as before,
- the occupational skills, knowledge and abilities to be taught, as a minimum, during the course of the initial vocational training,
- an outline of the syllabus and timetable to be followed for the purpose of teaching the occupational skills, knowledge and abilities, and
- the examination standards.

In § 5 subsection 2 there is a list of the *possible additional provisions* that a training regulation may contain. In this context, for example, it is made clear that in the case of genuine “multi-stage training” (§ 5 subsection 2 point 1), the training contract ends upon completion of the final stage (§ 21 subsection 1 sentence 2). In the case of “non-genuine” multi-stage training (§ 5 subsection 2 point 4), i.e. if an interim stage already results in qualification for a training occupation recognised according to the Vocational Training Act, this does not apply.

§ 5 subsection 2 point 2 now explicitly opens up the possibility of holding the final examination in two parts at different times (known as the *extended final examination*). If this possibility is used, corresponding regulations (e.g. timing of the first section of the final examination, training curriculum to have been covered by this time, weighting of the parts of the examination) must be set out in the training regulation. For this situation, § 37 subsection 1 sentence 2 clarifies that the first part of the final examination cannot be repeated in isolation. Other consequential amendments are found in § 37 subsection 2 sentence 3 (notification of examination results), § 55 (admission to the final examination when parts are taken at separate times) and § 48 subsection 2 (dispensability of interim examinations). Another newly introduced provision makes it possible within the framework of the training regulation itself to *teach and examine additional competencies* relevant to vocational training in the particular occupation. These may take the form of optional modules

in a training regulation or parts of other initial and further training regulations.

In this respect, the Act supports much wider relevance to the labour market and greater interpenetration of initial and continuing vocational education and training.

The ‘experimentation clause’ provided in § 6, i.e. the *basis empowerment to issue pilot regulations*, is extended in several respects. Firstly, by separating the basis for these delegated powers from the context of what is known as the “principle of exclusivity” under § 28 subsections 1 and 2 BBiG 1969, it is made clear that pilot regulations need not be restricted to exceptions from the exclusivity principle. Secondly, the general aims of pilot regulations, which previously focused on new forms of vocational training and occupations, will be extended to new forms of examination.

MODIFIED PROCEDURE FOR CREDITING PRIOR VOCATIONAL TRAINING TOWARDS THE PERIOD OF TRAINING

In contrast to § 29 subsection 2 of BBiG 1969, § 7 subsection 1 of the new BBiG delegates to the Länder the decision on whether to allow prior learning at a vocational school or other vocational training establishment to be credited towards a subsequent period of initial vocational training in a recognised occupation. The Länder governments may decide by ordinance whether periods of training at vocational schools or other establishments can be credited towards the duration of company-based initial vocational training, and what length of reduction to allow. As a rule, this possibility can only be contemplated if the syllabus contents and timetables of such training courses correspond to those set out in the training regulation of a recognised training occupation. Secondly, in future (from 2009 at the latest) the procedure will require a joint application for credit by all parties to the training contract, since the granting of credit inevitably shortens the length of in-company training, in effect modifying the contractual terms binding the respective parties.

In a similar vein, it was recognised that in special cases (e.g. apprentices who are lone parents or have caring responsibilities for a dependent relative), *part-time vocational training* may be possible.

The regulations governing admission to the final examination for “*Externe*” (employees beyond the scope of normal initial vocational training) were also amended. Sentence 2 of § 40 subsection 3 of BBiG 1969 gave the Federal

Ministry for Economics and Labour powers to determine by ordinance which schools and institutions offer courses which meet the standards of the BBiG. This

The Act supports relevance to the labour market

“confirmation of equivalence” would give trainees who had completed such courses the right to be admitted to the chamber examination. As yet, however, no use has been made of the power to pass such ordinances. § 43 subsection 2 now provides for delegating to Länder governments the decision on which training courses meet all the standards specified in the BBiG for an initial vocational training programme. This enables the Länder to offer full-time school-based vocational training courses run according to the structures and syllabus content specified in BBiG for a vocational training course, to provide high standards of training which is relevant to the labour market, and to conduct final examinations in accordance with the BBiG. Firstly, this provision brings together the decision-making authority (establishment by the Länder of school-based training courses leading to full qualifications) and the responsibility for incorporating these courses into the vocational training system. Secondly, it serves to reduce unnecessary and costly delay periods within the education and training system.

This part of the Act deliberately gives the Länder scope to exercise their responsibilities. It remains to be seen whether and to what extent the Länder make use of the opportunity. In recognition of this uncertainty, the plan is to carry out an evaluation to study the influence of the provision on the overall system of dual vocational training. This should enable conclusions to be drawn as to whether the current time limit imposed on this provision of up to August 1, 2011 should be retained or removed.

OTHER AMENDMENTS TO THE BBIG

The provisions which were spread across §§ 20 to 24 and Division 6 of the 1969 Act, concerning the *suitability of training premises and staff* are brought together in a new section of the reformed Act and numbered in a systematic order (§§ 27 to 33).

Apart from the possibility already mentioned, of conducting the final examination in two parts, attention is drawn to the following reforms of the examination system:

- Under § 39 subsection 2 the board of examiners may *request expert third-party reports* in order to assess certain examination skills which cannot be tested orally. The impetus for this arose from the long-running debate on whether and to what extent progress achieved at vocational school can be counted towards final examination results. The new BBiG has not embraced the demand to give credit for these vocational school results and not to allow corrective intervention by the board of examiners. However, it permits the board of examiners to make use of “expert” third-party reports, particularly from vocational schools, for the assessment of certain examination skills in future. It is essential for the board of examiners to retain the right to alter the suggested grades.

- Under § 42 subsection 3, the chairman of the board of examiners may also delegate at least two members to assess particular examination skills which cannot be tested orally, in preparation for the decision-making process. § 42 subsection 2 thus creates an *exception to the principle of collective responsibility*, without affecting its essential integrity. As in the case of § 39 subsection 2, when the ‘rapporteur principle’ is applied, all substantive facts must be documented. Here too, the collective body retains the right to alter the assessment result.

The special provisions previously included in Division 6 of the Vocational Training Act on “*Definition of the competent body*” are grouped in §§ 71 to 75 of the new Act. The existing principle of segregation according to business, industry, and occupational sectors is dropped in favour of a more transparent classification system. One reason in particular was that the legislative pairing of competent bodies to concrete training occupations caused difficulties in practice and was often overtaken by current developments in the reform process. For example, the occupational titles of “Lawyers’ Assistant” (§ 87 BBiG 1969) and “Dentists’ Assistant” (§ 91 BBiG 1969) have long been replaced by more up-to-date occupational titles.

FEDERAL INSTITUTE FOR VOCATIONAL EDUCATION AND TRAINING

A core element of the amended regulations on the Federal Institute for Vocational Education and Training (BIBB) is a reduction in the number of its committees. The responsibilities of the former Central Committee and the former Permanent Committee are combined and assumed by a *new Board*. At the same time, the number of Board members is reduced from 53 to 29 people. The expert committees and the Länder Committee are abolished.

This reduction in the number of committees is balanced by the *establishment of a new Research Council*, which is a response to developments in institutional research in the past few years. It is in keeping with the modern view of research institutions that their work should be subject to continuous quality control and quality assurance. By virtue of this external monitoring, in which some foreign scientists will take part, for example, some valuable input to research projects is likely to accrue.

(On the new regulations affecting BIBB, also see the article by MÖLLS in this issue – Ed.)

The Bundesrat unanimously approved the new Vocational Training Act in its session on February 18, 2005. This is an indication of the very broad consensus upon which the Act has been founded, in both the German Bundestag and the Bundesrat. None of the hurdles proved insurmountable after all. The Act entered into force on April 1, 2005. ■