

The Co-employer (Mitarbeitgeber)



The Co-employer

■ I. Introduction

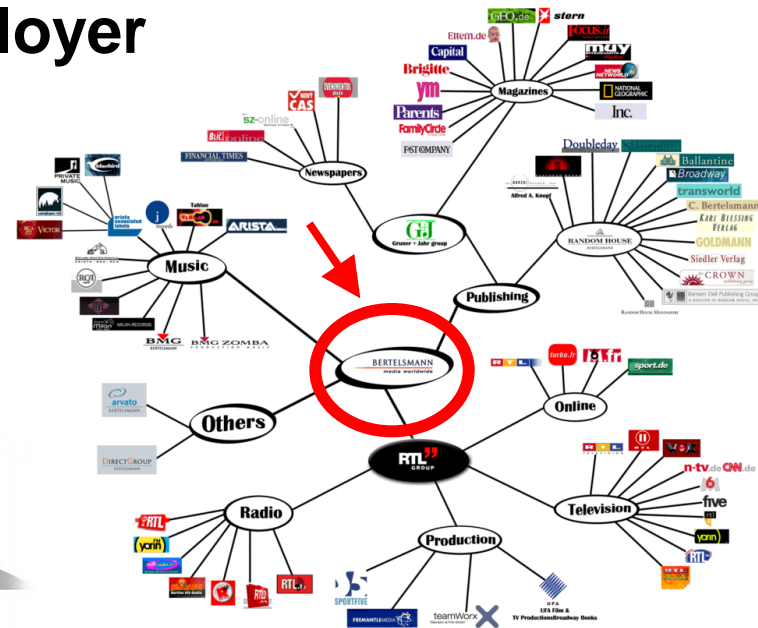
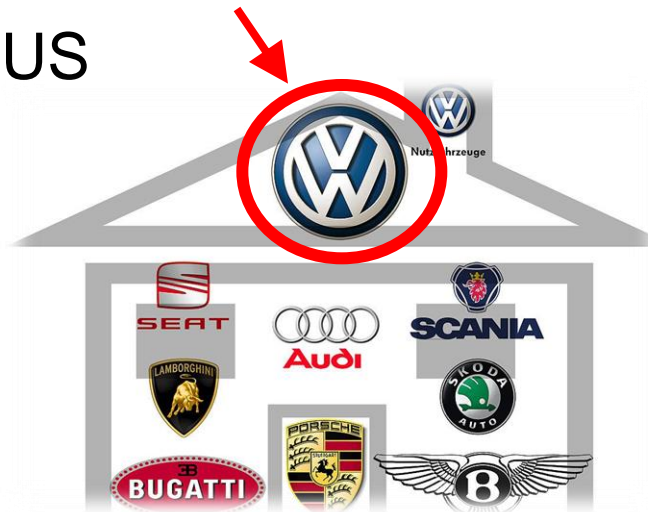
- Germany – a developing country when it comes to labour law in corporate groups?
- Remedy: co-employer / joint employer
 - Extension of obligations
 - Corporate veil piercing
- Outline of main part
 - Concept
 - Relevance
 - Comments

The Co-employer

II. Main part

1. The concept of co-employer

- Spain
- France
- UK
- US



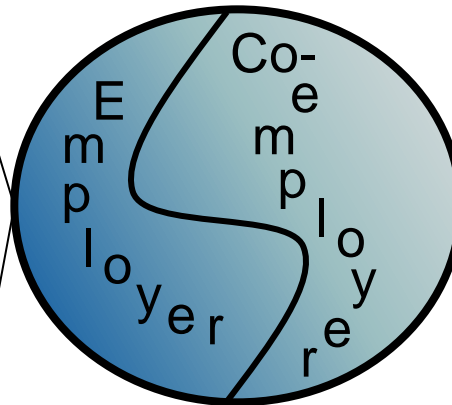
The concept of Co-employer

Spain:

- Grupo laboral
- Judge-made concept
- Since the 1960ies
- Criteria related to company law and labour law
- Case by case analysis

France:

- Co-employeur
- Judge-made concept
- Since the 1960ies
- Authority to give directives
- Criterion of triple commingling
- Case by case analysis



US:

- Integrated employer
- Definition laid down e.g. in § 825.104(c) [29 CFR 825]
- Criteria related to company law and labour law
- Case by case analysis

UK:

- Associated employer
- Definition laid down e.g. in section 231 ERA 1996
- Mere control suffices
- Obligations mainly set by Parliament (eg. in ERA)

The Co-employer

- **II. Main part**
 1. The concept of co-employer
 - 2. The relevance of this concept**

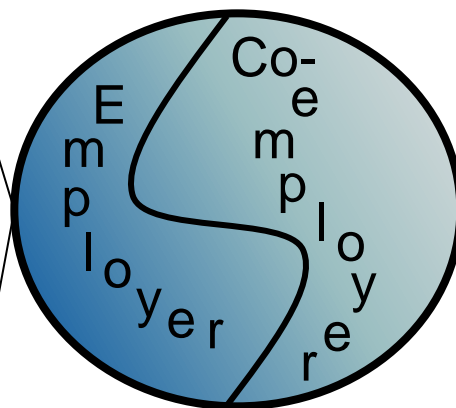
The relevance of Co-employer

Spain:

- Redundancy and mass redundancy situation
- Most importantly: mother company is liable for redundancy and severance payments

France:

- Redundancy and mass redundancy situation
- Most importantly: mother company is liable for redundancy and severance payments



US:

- Computing the numbers of employees to check if the necessary threshold for the application of employment statutes is reached (e.g. FMLA - 50 employees)

UK:

- e.g. equal pay legislation
- e.g. continuity of employment rules
- e.g. redundancy and re-engagement
- quantitative thresholds

The Co-employer

■ II. Main part

1. The concept of co-employer
2. The relevance of this concept
3. **Comments**
 - a. Protection of employees' rights
 - b. Level of intervention
 - c. Justification

The Co-employer

■ III. Conclusion

- Concept of co-employer safeguards the rights of employees belonging to a corporate group
- Leitmotif is to prevent that employment statutes are circumvented when dealing with corporate groups
- Startling discrepancy between the level of protection in Germany vis-à-vis UK, US, Spain and France
- Fruitful comparative legal journey