

# Is Germany's dual system fit for purpose?

Both the state authorities and the accident insurance funds carry out workplace inspections in Germany. Even though the latter are bankrolled by the companies themselves, they appear to be no less efficient in their work. Yet is there any real need for this duplication of work?

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**Germany's occupational accident insurance funds play a similar role to a labour inspectorate, but would rather disseminate information and raise awareness than impose enforcement measures.**

Image: © Belga



Martin Wuttke's morning to-do list includes an inspection at Arxes Tolina, a company based in the north of Berlin which employs 145 people. According to the energetic 30-something, his task is "to check that they are complying properly with all the different laws and regulations on health and safety at work." Yet although he calls himself a workplace inspector, he is not employed by the state. He belongs to the "oversight team" of an employer's liability insurance association.

Workplace inspections are not the sole purview of the public authorities in Germany. Although the *Länder* operate their own federal workplace inspection services, the accident insurance funds – which were established in the Bismarck era (see box) and operate as independent bodies under public law – also oversee what goes on in companies. Their main task is to indemnify companies against all civil liability in the event of an industrial accident, and their funding stems exclusively from company contributions, unlike health or retirement insurance schemes.

They are organised according to the different sectors of industry, with a total of nine *Berufsgenossenschaften* (employer's liability associations for the various segments of the private sector) and 25 *Unfallkassen* (for the public). Yet objectives such as risk prevention, the rehabilitation and reintegration of victims of industrial accidents or occupational diseases and compensation payments are common to all of them. "Supervising and inspecting companies forms an integral part of risk prevention," explains Sabine Herbst from the umbrella association German Social Accident Insurance [*Deutsche Gesetzliche Unfallversicherung, DGUV*].

### One inspector for 5 000 companies

Martin Wuttke is employed by *Berufsgenossenschaft Handel und Warenlogistik*, the employer's liability insurance association for the trade and logistics industry. He is responsible for around 5 000 companies within a neighbourhood of Berlin. "That includes plenty of tiny shops with only one or two employees. Even so, it's impossible for me to visit them all every year," says the young inspector with regret. Although the fund dictates his schedule to a certain extent, he nevertheless has an element of freedom in terms of the establishments he visits. "I try to drop in on companies where several accidents have

happened in a row, and I might arrange a time in advance or pay a surprise visit. Whichever is the case, the business owner is obliged by law to allow me to enter his premises," explains Wuttke.

His inspection this morning was on the schedule provided to him by his employer. "I pay an annual visit which is organised in advance, so it's really just a question of ticking boxes," he assures me. Arxes Tolina develops and markets software used to test the strength of steel by ultrasound. "Most of the people who work there have office-based roles, and accidents are rare – four of the five accidents that took place last year happened during people's commutes. Although accidents of this kind are covered by our fund, they cannot be attributed to any failing on the part of the company. They are also far from uncommon, since half of the 84 fatalities which occurred in 2014 in our sector took place when people were driving to or from work."

When he arrives at the Arxes Tolina offices, Wuttke is welcomed by the company's safety officer. As the former explains, "All companies with more than 20 employees must appoint a safety officer who is responsible for checking compliance with safety and protection regulations on a day-to-day basis. They are expected to perform this role in addition to their normal tasks." The two men kick off the inspection with the necessary paperwork, and Wuttke casts his eyes over the risk assessment – a mandatory document for every company. "It lists all of the health and safety risks potentially faced by employees and the measures taken to mitigate these risks, for example the number of fire extinguishers, the provision of first aid training to certain employees and much more."

### Duplicating the efforts of the federal inspectors?

The visit proper can then start, and Wuttke checks that the emergency exits are not blocked, that the lift meets the relevant standards and so on. "There's a great deal more for me to do in a supermarket," he says. "There don't tend to be any problems on the shop floor, because everything is tidy and neatly arranged for customers. What happens in the warehouse is much more interesting, however. The first thing I look at is always the path travelled by goods right through from when they are unloaded to when they are put

on the shelves, and I take a particular interest in how pallets are lifted by employees, which machines they use, whether they are at risk of falling objects and so on."

Martin Wuttke's job is therefore similar to that of a federal labour inspector in many respects, and he freely admits that 90% of the checks they carry out are identical. According to Wolfhard Kohte, Professor of Law at the Martin Luther University of Halle-Wittenberg, however, "the employer's liability insurance associations are limited to a certain extent in their scope of inspection. They have no competence in the field of working time, for example – which is a shame, because this is a critical issue at a time when work is becoming increasingly digitised." The remit of a federal inspector also extends beyond employee protection alone, since they also monitor compliance with environmental legislation.

### Oft-forgotten psychosocial risks

Wuttke does not uncover any major shortcomings during the morning's visit to Arxes Tolina, and his only finding is the subject of his closing comments: "Your risk assessment is missing an analysis of psychosocial risks. I don't expect it to throw up any major concerns, but it's important to get it done as soon as possible." Many companies fall down in this area, even though mental health problems are extremely common in the commercial sector. "Stress is ever present – unpredictable work schedules, the impossibility of achieving a work/life balance and so on." The accident insurance funds have accordingly

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been taking more interest in this subject over the past few years. "We provide business owners with training in this field, and people are becoming increasingly aware of the risks. Assessing these risks is a difficult task, however. When someone is asked to carry a heavy load, the effect that this will have on their spine can be calculated scientifically. It's impossible to measure stress and its effects in the same way."

Wuttke is optimistic that Arxes Tolina will remedy this problem without delay: "I won't need to put any pressure on them," he assures me. He does have ways and means of encouraging less law-abiding companies to comply with the regulations, however; in particular, he can enforce the temporary shutdown of machinery or even whole businesses which he believes to be dangerous. He can also impose fines of up to EUR 10 000,

but he claims to do so only very rarely. "Companies in the services sector do not generally pose any challenges. Fines are imposed much more frequently in the building and construction sector," he explains.

### Challenges specific to the services sector

Compliance with health and safety standards is not always a matter of course in the commercial sector, however: "Discount retailers in particular are notorious for precarious minimum-wage jobs, and they expect employees to work rapidly and efficiently around the clock. A safe workplace can be achieved only if you put the time in, and many employees just don't have that luxury."

Lena Rudkowski, Professor of Law at the Free University of Berlin, believes that, "labour inspections are more challenging in the services sector than in any other. Many people have unconventional employment arrangements – irregular work schedules, part-time work and so on. Many people also work on a temporary basis at the same time as studying, for example in the catering industry, which means a high level of staff turnover." This makes it more difficult to put in place the necessary measures and monitor compliance.

Harald Müller, who works for *Berufsgenossenschaft Nahrungsmittel und Gastgewerbe*, the employer's liability insurance association for the food and catering sector, is an expert on these matters. As he sees it, the most pressing problem is the short lifespan of companies: "It's not uncommon for restaurants in Berlin to vanish only a year or two after opening. This makes it hard for me to establish a working relationship with business owners, which is far more effective than sanctions in terms of persuading them to take steps to protect workers."

### Advice rather than action

As was the case for Martin Wuttke, punitive measures are therefore a last resort for Harald Müller. "Our main job is to provide business owners with advice and information on regulations and help them achieve compliance," he stresses, and inspections are only one facet of that role.

Wuttke backs him up; "I spend between 90 and 100 days each year inspecting

companies, and I run training courses the rest of the time. Insurance bodies are responsible for providing training to in-house safety officers, but we also offer more targeted training to business owners or HR managers, on electrical hazards for example."

Wuttke and Müller also investigate instances of occupational disease. "My job is to find out whether an employee's illness is a direct result of his work," explains Wuttke. "This involves looking back over his entire working career – in the case of back problems, for example, we need to know exactly what he carried on how many occasions and how he carried it. This involves a lot of work, but fortunately we have databases full of very useful information, such as working practices in the port of Hamburg in the 1950s."

Wuttke enjoys being an inspector and has no regrets about leaving his job as an engineer at Siemens four years ago. "Engineering was better paid, but I wanted to be at home more for my children," says the father of two. Many of the inspectors employed by the insurance funds come from similar backgrounds. "Lots of them were previously engineers or physicians," says Wuttke. "Large companies often operate technical facilities, and the general trend for automation means that we need to be able to understand how all these different machines work. At the same time, however, more and more psychologists are being employed by the insurance funds in view of the importance of psychosocial risks."

Harald Müller also trained as an engineer before working as a labour inspector in the former East Germany. He applied for jobs with the insurance funds after reunification, and – like Wuttke – completed a two-year training course provided by his new employer. As well as in-depth training on workplace safety legislation, inspectors have to find out how to put their new-found knowledge into practice by accompanying experienced inspectors on visits to many different companies.

### A leading role for trade unions

The fact that an organisation tasked with inspecting companies is funded by these very companies may appear to be a contradiction in terms, but Horst Riesenberger-Mordeja, who works for ver.di, a trade union for service workers, sees nothing wrong with it: "The accident insurance funds have a joint management structure, with business owners

## GDA: a joint strategy for improved worker protection

The Joint Strategy for Occupational Health and Safety was published by the German government in 2008, and lays down shared objectives with a view to improving cooperation between the various bodies responsible for health and safety at work. Its implementation is overseen by the National Health and Safety Conference [*Nationale Arbeitsschutzkonferenz, NAK*] made up of representatives of the federal state, the *Länder* and the accident insurance funds.

The GDA sets out three priority objectives for the period between 2013 and 2018:

- improving health and safety at work from an organisational perspective, with particular reference to more effective risk assessments within companies;
- reducing the prevalence of skeletal diseases;
- stepping up measures to mitigate psychosocial risks.

The "Psyche" work programme was launched in 2015 with a view to reducing stress in the workplace and achieving the last of these objectives. One of its aims is to provide training for managers, HR representatives and labour inspectors on psychological risk factors.



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and employees represented on a 50/50 basis." Their boards of directors are appointed every six years in trade union elections. "Unlike the health or retirement insurance funds, most of the accident insurance funds have chosen a negotiation approach to elections," explains

Riesenberg-Mordeja. "Both business owners and trade unions have to agree on the division of seats on the basis of lists. A real election will be held only if an agreement cannot be reached. Unfortunately, this is complicated by the fact that the companies rather than their employees are insured by the funds, and we therefore have no direct access to the names of employees eligible to take part."

As well as taking decisions on budgetary allocations and risk prevention priorities, the boards of directors of the insurance funds can also lay down new safety and protection rules to supplement or clarify existing legislation, which must be complied with by companies. The trade unions are generally more enthusiastic than business owners in this respect. "Since each group holds half of the votes, it can sometimes take a while to push through new developments," admits Riesenberg-Mordeja. "When new standards are adopted, however, there's a high likelihood of compliance. Companies are also aware that it's in their own interests to avoid workplace accidents and industrial diseases." In the words of Martin Wuttke, "Every euro invested in health and safety in German workplaces provides a return of EUR 1.60. In economic terms, the figures speak for themselves."

that they are not subject to austerity measures in the same way as state-funded bodies, and their staffing levels remain stable." A further advantage: "The insurance funds are less removed from companies and in a better position to recognise problems and areas for action." Yet federal labour inspectors have a broader remit than the insurance funds, which means that they still have a vital role to play. According to Kohte, "It's also worth noting that the state bodies take a greater interest in psychosocial risks than the insurance funds."

This dual system can operate effectively only if both sides cooperate, however, which has not always been the case. In 2008, the government therefore carried out a far-reaching reform of German legislation on health and safety at work, resulting in the Joint Strategy for Occupational Health and Safety [*Gemeinsame Deutsche Arbeitsschutzstrategie, GDA*]. "The strategy lays down guidelines and objectives to be achieved, such as better protection against risks to mental health, which can then serve as a basis for aligning the efforts of the various stakeholders," says Kohte (see box).

"The GDA also provides for ongoing cooperation between our services and the federal inspectors," adds Martin Wuttke. "In theory, we are obliged to consult each other before visiting companies. In practice, however, I inevitably have to ask the companies themselves whether they have been visited recently by a federal inspector in order to avoid duplicating efforts." Sometimes he works together with his counterparts in the state-funded service: "I can ask a federal inspector to support me and even to accompany me on a visit if I come up against business owners who are genuinely resistant and refuse to comply with the legislation."

Although there is still room for improvement in terms of cooperation between the services, there appears to be an underlying consensus that this dual system is the right approach to labour inspections, and even the ver.di representative has no real bones to pick. However, Sabine Herbst, from the umbrella association DGUV, believes that changes are needed: "Only staff employed within a company are insured by our member bodies, and this model is a poor fit for the dawning era of Industry 4.0. Providing insurance for the ever-expanding ranks of self-employed workers is a huge challenge, but it is one that we must not neglect." ●

### **Bismarck's legacy**

"What's known as the 'social question' became a matter of pressing concern in the late 19<sup>th</sup> century in Germany," explains Lena Rudkowski, Professor of Law at the Free University of Berlin. "The working class was expanding in step with the rapid industrialisation of the country, but the meagre pay and poor health of its members placed them in a precarious situation. An accident or illness could leave them with no income and nowhere to turn, and the government of the time realised the potentially explosive consequences of this state of affairs." It therefore set up a system of social insurance designed to protect workers against the risks of illness (1883), industrial accidents (1884), old age and disability (1889).

The arch-conservative Bismarck originally intended to alienate workers from the emerging trade union movement by making the state responsible for establishing, funding and monitoring social protection, but was forced to abandon this idea as a result of opposition from the federated states and powerful industrialists. This led to the situation we have today, where the German insurance funds are managed independently by boards of directors comprising employer and worker representatives in equal parts. What we now call the "Bismarck system" therefore has little in common with the original intentions of the celebrated Chancellor.

### **Plugging the gaps left by the federal inspection service**

Yet the question which remains is whether there is any real need for two different labour inspection systems. Wolfhard Kohte believes that the insurance funds must do everything in their power to retain their inspection duties, not least in order to plug the gaps in state provision: "Back in 1995 there were 4 451 federal labour inspectors, but by 2013 there were only 2 935. The insurance funds are bankrolled by companies, which means