

# With or without you – Occupational Welfare and public social policies in Germany

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## Introduction

Occupational welfare (OW) has a long tradition in Germany, dating back to the 18<sup>th</sup> century (Frerich and Frey 1996: 61)<sup>1</sup>. While public debates on welfare provision mainly focus on public welfare, OW-related issues have sometimes featured in political debates and even industrial struggles in past decades. This was the case with sick pay legislation established in the 1950s and 1960s, which followed the rules laid down in collective agreements: attempts to cut public benefits in the 1990s were countered by industrial action and collective agreements until legislation was later re-established (Bispinck 2012: 202-205). Another topic debated in public are occupational pensions. These were provided on the basis of employer decisions, and financed by them for a long time until the 2001 pension reform established these schemes as a way to compensate individuals for cuts in statutory pensions. Today's political debates on pension policies also focus on an increased coverage of occupational pensions, and the 2015 and 2016 collective bargaining rounds in the public sector proved that occupational pensions are now a collective bargaining issue taken seriously by trade unions and employers' associations. However, one has to keep in mind that the regulation of OW may not necessarily be high on the social partners' policy agenda, compared to other issues such as wages, working conditions and protection of jobs.

Scholarly analyses have dealt with various topics related to OW in recent years (cf. Bispinck 2012; Fehmel 2012 and 2013; Fröhler 2015). However, there are few data sources providing hints as to the quantitative significance of OW in general, even though there is some information available on various policies such as healthcare, work/family reconciliation policies, continuing vocational education and training (CVET), occupational pensions and unemployment-related schemes<sup>2</sup>. Statistical data and empirical knowledge about OW differs from field to field. These differences partly reflect the past and present importance of OW and its regulation in various policy

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1. Frerich and Frey note that the spread of OW increased especially from the 1830s (1996: 61). They refer to the company Krupp, where in 1836 a health insurance scheme was established for the then 50 employees, followed later by a pension and survivor's fund, housing and shops for employees. The reasons for employers' activities were (often paternalist) feelings of responsibility, rational calculus with respect to human resource management, and in some cases progressive ideals.
  2. While this chapter focuses on occupational pensions and unemployment protection, research conducted in the context of the Commission-funded project 'Providing Welfare through Social Dialogue – PROWELFARE I' (2012-2013) concentrated on healthcare, reconciliation policies and CVET.

fields, as well as differences between statutory policies, which make an active role of social partners more or less necessary.

This chapter describes the state of OW in Germany as well as recent developments in the two fields of occupational pensions and unemployment-related schemes, referring to empirical data, studies and collective agreements. In the wake of state pension reforms, occupational pensions, formerly a human resources (HR) tool, became an instrument of social policy and now act as a partial substitute for reduced state pensions. This had consequences for the funding of occupational pensions, the current usage of pension schemes, and social partner regulation of occupational pensions: social partners have concluded collective agreements regulating the conditions of so-called earnings conversion (i.e. occupational pension schemes financed by employees) including rules on employers' subsidies.

Collective agreements on short-time work benefits were measures used during the economic crisis to supplement state benefits, thus raising benefit levels, and to introduce rules to reduce working time.

The chapter will show that the provision and use of OW in Germany is characterised by its heterogeneity: employees' access to OW benefits differs not least among branches and companies. Also, it will be shown that OW constitutes a field of complex interactions between players and institutions – in particular, it does not develop without state intervention. While it can be shown that both fields evolved in reaction to external (economic and political) developments, the story – or rather, the stories – of OW in Germany illustrate even more clearly that a 'less state-more OW' approach only applies to pensions. Nevertheless, policies in both areas are built on deals and trade-offs between social partners, and both have – albeit very different – connections to the state system of benefit provision.

Even though the role of OW clearly increased in the fields of occupational pensions in general and of unemployment-related schemes during the 2008-2009 crisis, its future development is uncertain. In explaining the features of OW in Germany, two aspects seem to be of special importance: state regulations and fiscal measures to influence the development of OW; and the industrial relations system and its peculiar traits – especially its gaps – in Germany.

## **1. Occupational Welfare: many stories to be told**

OW is embedded in the wider systems of welfare provision and industrial relations. To understand the current state of OW and assess its potential as well as its (possible) future development, it is necessary to briefly describe both the main aspects of the German system of welfare provision and the key features of the German industrial relations system.

Germany is traditionally considered a conservative-corporatist welfare state (cf. Esping-Andersen 1990). Social partners take part in the self-administration of the social security system (cf. Ebbinghaus 2011; Rixen and Welskop-Deffaa 2015). While social security schemes account for the biggest share of benefit provision (61.0% of the total social budget of €888.2 billion, 2015, estimated; BMAS 2016a), benefits provided by employers amount to an estimated €84.9 billion (9.2% of the social budget). This includes paid sick leave, occupational pensions and other benefits. These numbers refer to employers as institutions of welfare provision. They do not show whether benefits are provided on the basis of legislation, on a voluntary basis, or on the basis of collective agreements. Also, these benefits may be financed by employers, employees or both. The total amount of benefits provided by employers has increased since the early 1990s, while the share of this category in the social budget decreased between 1991 and 2006, only to increase again from 2009 to 2015 (estimated numbers for 2015). A comparison of the percentages before and after 2009 is impossible for methodological reasons.

Compared to other countries, according to Organisation for Economic Co-operation and Development (OECD) data (OECD 2016), Germany's public and mandatory private social expenditure is above average with respect to all OECD countries and the nine countries under scrutiny in this volume. This holds true for both expenditure per head (constant prices and purchasing power parities [PPPs], 2005) and expenditure as a percentage of Gross Domestic Product (GDP). It has both lower expenditure per head and lower expenditure in relation to GDP if Poland is excluded from the analysis. Per capita expenditure and expenditure as a percentage of GDP increased between 1990 and 2011. Voluntary private social expenditure is below average both with respect to per capita expenditure and as a percentage of GDP, compared with OECD countries in general and more specifically compared with the other countries treated in this volume. Voluntary private social expenditure as a percentage of GDP, however, is only 0.2 percentage points lower in Germany than in all OECD countries.

The state system of welfare provision provides the environment for OW, and reforms of the state system may directly affect OW. OW is linked to statutory rules:

- by extending them (as seen with respect to parental leave and to supplements to statutory sick pay);
- by providing a blueprint for legislation (as shown by the history of sick pay in the 1950s and 1960s; cf. Fehmel 2012: 157);
- by compensating for cuts in statutory benefits (as shown by the history of sick pay in the 1990s and the regulation of occupational pensions and early retirement in recent years: here OW serves as a substitute for public welfare);
- by regulating issues neglected by legislation (as in the field of CVET);
- or by dealing with other consequences of legislation (as in agreements that regulate the relationship between employees and companies before, during or after statutory parental leave).

The second major influence on the provision of OW is the industrial relations system. German industrial relations can be described as a multi-level system with gaps or blank areas. From a comparative point of view, the German system is classified as an

example of the social partnership model: ‘The social partnership group clusters countries with a medium organisational membership density and high rates of collective bargaining coverage with a high level of centralisation. Another characteristic is the relatively high fragmentation of actors and high levels of social partner interaction with the state’ (European Commission 2013: 47; the European Commission’s report refers to a classification by Visser).

The German system has some distinct features (cf. Behrens 2013: 206-209):

- collective bargaining autonomy i.e. free of state interference (so-called *Tarifautonomie*);
- the so-called ‘dual system’ of industrial relations, made up of multi-employer bargaining, i.e. industry-wide bargaining mostly for a region, and company-/establishment-level representation of employees through works councils (so-called co-determination);
- and – with some notable exceptions – a unified trade union movement (*Einheitsgewerkschaften*).

Collective agreements are concluded between trade unions and employers’ organisations or single companies. ‘These industry-wide collective agreements are concluded for whole branches or sub-branches and apply regionally or nationwide to all companies belonging to the employers’ organisations party to the agreement’ (Dribbusch and Birke 2012: 7). In 2014, 50% of employees were covered by sector-level collective agreements, and another 8% by company-level ones. Of the remaining 42%, roughly every second employee works under conditions that resemble those set forth in sector-level collective agreements. Focusing on the company level, coverage is lower: in 2014, 28% of companies were bound by sector-level collective agreements, another 3% by company-level ones. Of the remaining 69%, less than half (44%) regulated conditions in a way resembling sectoral agreements (WSI-Tarifarchiv 2016: Tables 1.7 and 1.8). The coverage of employees and companies has decreased over the last few decades, while at the same time there has been an increase in the number of opening clauses in collective agreements permitting workplace deviations (Dribbusch and Birke 2012: 13-14). Coverage of both employees and companies differs between sectors and regions. From a comparative point of view, it should be noted that, according to the European Commission (2013: 22), overall collective bargaining coverage in Germany was below EU-27 and EU-15 averages.

At establishment (*Betrieb*) level, in establishments with more than five employees, employees may be represented through works councils (and in larger companies through workers’ representatives on the supervisory boards). Representation through works councils is not obligatory. In 2015, 9% of establishments with more than five employees had a works council. The bigger the establishment, the more likely it is that there will be a works council – works councils exist in 88% of establishments with more than 500 employees. Works councils represent 41% of employees in total, though there are significant differences between sectors (WSI-Tarifarchiv 2016: Tables 1.11 and 1.12). Works councils have co-determination and information and consultation rights regarding social, staff and economic matters relating to the

company. They are thus involved in decisions about working hours, regulation of holidays, recruitment and dismissals and other topics (Müller-Jentsch 2011: 85-91).

Collective bargaining is free from government interference. However, there are (seldom used) possibilities to declare the results of collective bargaining binding, thus making these agreements compulsory for employers and employees otherwise not covered by an agreement (Dribbusch and Birke 2012: 7; cf. WSI-Tarifarchiv 2016: Table 1.5).

The features of the German industrial relations system are of specific relevance in understanding both the spread of OW and social partners' room for manoeuvre. OW is provided in a multilevel system of bargaining and its actual provision may be influenced by social partners at sector and/or company/establishment level, and finally by individual employers within a public regulatory framework.

As a consequence of both the industrial relations system and the differences between policy fields in terms of public provision of benefits and regulation, the German OW landscape is rather heterogeneous. One aspect of this is the complex and changing interaction between OW and public welfare, causing differences between policy fields. Developments in public welfare make the regulation and provision of OW seem more or less necessary or rational for trade unions, employers' associations and/or single employers (see above for a list of different kinds of interaction between public and Occupational Welfare).

A second dimension of the heterogeneity of OW is related to the different levels and forms of OW regulation and provision, resulting to a large extent from the industrial relations system: Regulations established by social partners at sectoral level are often implemented or made more concrete through company-level agreements, and in some cases industry-wide agreements only provide a framework to be filled by social partners at company level. In other cases, the company level is the level of choice, without any framework contained in sector-level collective agreements. Finally, sector-level agreements may allow for deviations (opening clauses), if there are important reasons to do so.

As a consequence of different forms of regulation and interaction between occupational and public welfare, OW provision is fragmented. The German experience shows that OW can be highly selective (cf. Bispinck 2012: 217). What is granted to employees in one sector or company may be out of reach to others. Studies indicate that the provision of OW often differs by company size. Moreover, given the current state of the industrial relations system, in companies not covered by a collective agreement, employees will not be able to enjoy the benefits of such an agreement as a matter of right. While groups of employees are only rarely formally excluded by agreements at sectoral or company level, the notable exception are often employees not belonging to a company's core employees, i.e. workers with fixed-term contracts or employees new to a company. Since some OW rules may be linked to the duration of one's stay with a company, fixed-term workers may find it more difficult to cross the relevant threshold. Moreover, agency workers may be disadvantaged, since the

collective agreement for the core workers does not apply to them. On the other hand, special regulations exist for disadvantaged groups (positive discrimination); however, analyses suggest that these may not be widespread.

This heterogeneous picture is also a consequence of the social partners' objectives, relations and interventions. Sick pay – the most important OW topic in the field of healthcare – was regulated in collective agreements, and eventually in legislation, against the wishes of employers by means of industrial action. Employer opposition perceived these rules as costly. In other fields, employers may be more open to regulation because of HR concerns (family-oriented measures can be seen as a means to make an employer seem attractive to skilled employees), leading to a win-win situation. Still, even though there may be win-win situations for employers and employees, the level of regulation and hence the question of whether there should be a sector-level collective agreement enshrining employees' rights may be a matter of dispute.

Finally, when analysing OW it has to be kept in mind that there may be a gap between social partners' activities and agreements and actual company and employee behaviour. This is a further source of heterogeneity. Employers may provide additional benefits if they so wish (without a formal agreement), they may try to ignore collective agreements, and employees may not make use of their rights for various reasons. This makes it hard to assess the impact of formal agreements.

Current OW developments are strongly influenced by political decisions (directly or indirectly through changes in the public welfare system) and developments in the industrial relations system. Both OW and the institutional framework may also be influenced by macroeconomic developments such as the 2008/2009 economic crisis. Even though Germany was hit less hard than other countries, it will be shown on the following pages that the crisis impacted OW. While losses in the assets of occupational pension schemes were comparatively low during the crisis, they are now suffering from low interest rates. Both state and OW unemployment protection measures, by contrast, were developed and deployed as a direct response to the challenge posed by the crisis to companies in the industrial sector.

## **2. Occupational pensions: a new role for an old system**

The current pension system was shaped by the 2001 pension reform, defined by many observers as a 'paradigm shift' (cf. Schmähl 2007). The reform altered the overall structure of the pension system, switching from the pre-2001 single-pillar system to a multi-pillar system. The main driver of this change was the perceived need to contain future increases in contribution rates to the statutory pension scheme (*Gesetzliche Rentenversicherung*). These were projected to increase massively as a result of demographic change, a development seen as damaging to the German economy (cf. Schmähl 2007: 322-323). As a consequence, future state pension levels were reduced. According to the then governing coalition's plan, employees can achieve past benefit

levels by complementing their state pensions via either private or occupational pension schemes. Hence, citizens are expected to voluntarily take out funded private pension plans or use occupational pension schemes. Thus, the second and third pillar turned from a supplement to a (partial) substitute. While these ways of building up pension entitlements obviously existed before the reform, they were not seen as an integral feature of the pension system. Their official inclusion in the pension system was not least built on high (and exaggerated) expectations regarding investment yields in financial markets.

To encourage and support employees and their spouses in actively assembling their pension portfolio, tax breaks and subsidies for pension plans were introduced. Also, employees were granted a right to transfer part of their wages into occupational pension schemes and in doing so enjoy breaks in taxes and social security contributions (earnings conversion, *Entgeltumwandlung*). If wages are paid on the basis of collective agreements, these collective agreements must allow this kind of transfer (*Tarifvorbehalt*). This way, employers' organisations and trade unions play a special role in the new pension system.

Occupational pensions were thus assigned a new role in 2001, no longer being primarily an HR instrument (Kaufmann 2003: 283) under which the terms and conditions of protection for employees (inclusion of specific groups of employees, amount of employer payments, 'technical' details) were decided for each individual company within a broader public regulatory framework. After 2001, they became part of social policy, i.e. a substitute for reduced state pension levels (cf. Berner 2008).

As a consequence of these two origins – to cater for the needs of individual employers and the new socio-political objective –, the current system of occupational pensions is rather complex:

- there are five ways of organising occupational pensions (see below);
- occupational pensions may be financed by employers, employees or both;
- and they may be regulated by collective agreements at sector level, at company level or by neither of these.

To understand the new role of occupational pensions, it may be helpful to contrast somewhat stylised 'traditional' and 'new' occupational pensions. 'Traditional' occupational pension schemes were (mostly) financed by a company, serving its HR objectives or paternalist concerns or its needs for an additional source of investments. They were not a matter of social policy in a strict sense, albeit provided within a public regulatory framework, and also in many cases not subject to collective bargaining. 'New' schemes, however, are occupational schemes financed by employees alone or together with the employer. They are regulated by sector-level agreements (where these apply) and legislation that grants access to an employee-financed occupational pension scheme. If employees use these 'new' schemes without their employer contributing to this scheme, one can argue that these schemes resemble private pension plans organised within the context of employment.

The German system of occupational pensions is quite complex with respect to the various ways of actually administering the schemes (cf. Ebbinghaus *et al.* 2011):

- direct pension commitments (*Direktzusage*) financed by book reserves,
- support funds (*Unterstützungskasse*),
- superannuation funds (*Pensionskasse*),
- direct insurance (*Direktversicherung*), whereby an employer takes out insurance for its employees, and
- pension funds (*Pensionsfonds*, since 2002).

Apart from schemes run by single or multiple employers (with or without financial services providers being involved), some schemes are instituted at an industry-wide level and run or supervised by social partner representatives, such as the MetallRente in the metal and electrical industries or the SOKA Bau of the construction industry.

One specific feature of the German system is that it does not have defined contribution (DC) schemes in a strict sense. Even if pension schemes are built only on employers' promises to contribute or on employees' contributions, the schemes have to guarantee the nominal value of the capital saved.

New legislation and collective agreements were introduced during the 2000s with social policy objectives in mind. The use of occupational pensions as both an HR tool and an individual savings vehicle is supported by tax breaks or exemption of the converted earnings from social security contributions (cf. BMAS 2016b). The specific rules depend on the kind of pension scheme. For promises to provide occupational pensions made since 1 January 2005, the following rules apply: employer contributions are exempt from taxes and social security contributions if the occupational pension scheme is realised through a *Direktzusage* or an *Unterstützungskasse*; employee contributions are fully exempt from taxes and social security contributions up to a limit of 2,976 Euro p.a. (2016). For the other three types of occupational pension schemes, the following rules apply: employer contributions are exempt from social security contributions up to a per-employee limit of 2,976 Euro p.a. and exempt from taxes up to a limit of 4,776 Euro p.a. The same limits apply to employee contributions, insofar as they have not been reached by the employer contributions alone (i.e. the limits apply to the combined contributions, but employer contributions are taken into account first). Both the tax exemption and the treatment with respect to social security contributions are subject to ongoing political debate (cf. with respect to the problem of the interplay of occupational pensions and social security, Blank 2014). Occupational pensions are taxed if the retiree is subject to income tax. In addition, pensions are subject to full social security contributions (and not half, as are state pensions; i. e. pensioners pay both the employer's and the employee's share).

The number of persons covered by occupational pension plans increased after 2001. At the end of 2011, 50% of employees in the private sector were covered by occupational pension plans, and 50% of companies offered an occupational pension scheme (TNS Infratest 2012a: 19-23). These numbers are higher if account is taken of public-sector employees since public institutions' employees are covered by

mandatory systems: at the end of 2013, 59.5% of public- and private-sector employees subject to social security contributions were covered (TNS Infratest 2014: 12). Both with respect to employees and companies, the increase in the spread of occupational pensions slowed down considerably in the period 2009–2013. Focusing on employee-financed occupational pension schemes alone (earnings conversion), less than a quarter of employees use this kind of voluntary pension scheme (Blank 2014). There are significant coverage differences between economic sectors and individual companies with respect to occupational pension schemes and the use of earnings conversion.

Not surprisingly, the 2001 reform also caused a shift in the financing of occupational pensions. Schemes co-financed by employers or financed by employees alone are relatively more common today than prior to the reform (Baumann and Blank 2016: 5–6). The Federal Statistical Office states that in 2012 companies paid €3,385 p.a. for each employee with an occupational pension scheme (only companies with ten and more employees; Destatis 2015: 382). However, the amounts differ dependent on sector and company size (the higher the number of employees in a company, the higher the amount spent on occupational pensions per employee). There are notable differences between Western and Eastern *Länder*.

Employee contributions to occupational pension schemes paid via earnings conversion average €1,081 p.a. per employee, according to the Federal Statistical Office (Destatis 2015: 382; only companies with ten and more employees including the public sector). Again, there are huge differences between branches and regions. The absolute amount saved by employees, however, decreases, the more employees a company has. This latter finding can, however, be questioned on the basis of other sources (see for example Destatis 2012: 25). The amount saved by employees as reported by the Federal Statistical Office (Destatis 2015: 382) is roughly the same as that given by TNS Infratest (2012b: 59; 109 Euro per month) and another study of the Federal Statistical Office (Destatis 2012: 1,350 Euro p.a.). The sources indicate differences between groups of employees with respect to the use of earnings conversion and the amount of earnings used for occupational pension schemes. These differences are also gender-related, with men more likely to use this kind of scheme and save higher amounts but a lower share of their income (cf. Blank 2014 for a summary of the results of recent surveys). Differences are also partly the result of different employment contracts or working conditions.

The 2001 reform led to an increase in the use of occupational pensions in following years. Not surprisingly, the assets of occupational pension schemes also increased. The aba (German Association for Occupational Pensions, *Arbeitsgemeinschaft für betriebliche Altersversorgung*) stated that in 2014 occupational pension scheme assets amounted to €557.0 billion (plus €226.0 billion compared to 2000; aba 2016), representing about 19% of that year's GDP of €2,916 billion. The OECD states that such assets amounted to 6.1% of GDP in 2013 (€237 billion; OECD 2015: 191). However, the OECD's statistics do not cover the whole field of German occupational pensions (only *Pensionskassen* and *Pensionsfonds*, i. e. two of the five forms of occupational pensions).

During the crisis, German pension funds (*Pensionskassen* and *Pensionsfonds*) lost 8% of their assets (OECD 2009: 33) compared to losses of 23% in OECD countries overall (weighted average, real investment returns; OECD 2009: 25). This comparatively good performance during the crisis may partly be the result of national regulations on investment policies (OECD 2009: 41). A new challenge to occupational pension schemes is posed by low interest rates, impacting both companies' book reserves and the development of assets in fully-funded schemes (Campagna 2016: 10-13).<sup>3</sup>

In the wake of the 2001 reform, employer associations and trade unions agreed on various collective agreements containing specific rules on earnings conversion. The regulations for individual sectors or even companies are quite different (Huke 2011; Blank 2014). The rules laid down in collective agreements usually apply to all employees of companies covered by a collective agreement, not only to trade union members. The social partners also set up or reoriented existing institutions to administer occupational pensions (*Versorgungswerke*), sometimes in cooperation with the finance industry. It should be noted that many collective agreements adapted benefits enshrined in earlier agreements on capital-forming payments. Agreements may include rules on the possibility and amount of earnings conversion as well as preconditions such as a certain period of employment with an employer; share of earnings to be converted; employer subsidies, which may be conditional on an employee's own saving efforts; the institutions that administer the pension schemes, such as joint ventures of employer associations and trade unions; and risks covered.

These collective agreements and differences between economic sectors can be illustrated by two examples. According to the Collective Agreement on Earnings Conversion and the Agreement on Pension Plans (*Tarifvertrag zur Entgeltumwandlung* and *Tarifvertrag über altersvorsorgewirksame Leistungen*) for the Metal and Electrical Industry in Germany (including automotive), employees receive an annual payment of €319.08 for full-time employees (apprentices: €159.48). These benefits replace earlier capital-forming payments. Employees may use this amount for different kinds of pension plans, including the treatment of the benefits in the context of earnings conversion as regulated by the respective collective agreement. The collective agreement on earnings conversion mentions the MetallRente – a joint institution of the respective employers' association and the trade union – as first choice for pension provision, but leaves other possibilities open to employers. The pension schemes have to include old-age pensions, widow's pensions and invalidity benefits, but it is possible to drop the latter two aspects. The Federal Statistical Office notes that in the automotive industry (WZ 29 *Herstellung von Kraftwagen und Kraftwagenteilen*), 80.6% of employees are covered by occupational pension schemes (above average); 38.4% use earnings conversion (above average); 84.2 of companies have occupational pension schemes (*Anwartschaften*, above average). Total contributions paid per employee covered by an occupational pension scheme amounted to €5,185 p.a. (a

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3. See also Flecken (2010) on the mechanisms and institutions to protect employee claims to occupational pensions.

number difficult to interpret in times of low interest rates), while those employees who themselves contributed to an occupational pension scheme paid €1,168 p.a. (both above average) (Destatis 2015: 383; all numbers refer to 2012).

The Collective Agreement on Occupational Pensions (*Tarifvertrag über tarifliche Altersvorsorge*) for the North-Rhine Westphalia retail sector (the same rules apply to the sector in the state of Brandenburg) states that the employer has to make an annual payment to an occupational pension scheme of €300.00 for full-time employees (€150.00 for apprentices). Employees have to individually apply to receive this amount, though the employer has to inform them of their entitlement. The pension schemes have to include old-age pensions, widow's pensions and invalidity benefits, but again it is possible to drop the latter two aspects. If employees choose to additionally invest their own money (earnings conversion), the employer tops up their investment by 10%. The collective agreement does not specify a way to run and administer the occupational pension scheme. These decisions are left to the employer after consulting the works council. The Federal Statistical Office notes that in the retail sector (WZ 47, without car dealers), 38.9% of employees are covered by occupational pension schemes (below average); 15.4% use earnings conversion (below average); 76.8 of companies have occupational pension schemes (*Anwartschaften*, below average). Total contributions paid per employee covered by an occupational pension scheme amounted to €847 p.a., and those employees who themselves contributed to an occupational pension scheme paid €944 p.a. (both below average) (Destatis 2015: 383; all numbers refer to 2012).

Also, additional rules may exist at company level, either based on sector-level rules or creating pension schemes independently of collective rules (cf. Laßmann and Röhricht 2010). Finally, companies where collective agreements do not apply may still have pension schemes.

As a consequence of the different traditions, economic structures, a sector's industrial relations system, social partners' power and the interplay of various levels of regulation, the OW landscape in the field of pensions is quite differentiated in terms of coverage, conditions and usage (cf. Blank 2015). Differences may be found between:

- economic sectors; the public sector has the highest take-up of occupational pensions due to collective agreements making occupational pensions mandatory. In the private economy, banking and financial services show the highest take-up;
- companies of different sizes. Occupational pensions are more widespread in bigger companies and among employees in bigger companies;
- companies bound/not bound by collective agreements. Companies bound by collective agreements are more likely to provide occupational pensions;
- collective agreements;
- employees. Data on the use of earnings conversion show among other details that occupational pensions are more likely to be found among persons with higher incomes.

The governance of occupational pension schemes is thus rather complicated, but employers continue to play a major role:

‘German employers decide whether or not to provide an occupational pension and in what form, though in some cases a collective agreement exists. Generally, all employees have the right, contingent on a collective agreement, to convert agreed earnings into an occupational pension. Direct pension commitments are governed by a company’s management and, in the case of co-determination with equal representation, by its employees, though the beneficiaries of direct insurances have no influence over asset management. The governance of pension funds is more complicated. Theoretically, employees can take part in decision-making on the board of trustees via their representatives, but in reality it is questionable whether this matters. In addition, there may be conflicts of interests, for instance, between younger and older insured people, and some beneficiaries are more interested in high-return but risky investments, while others prefer lower risk and social or ecological investments’ (Ebbinghaus *et al.* 2011: 138-139).

In sum, today’s occupational pension system runs with the hare and hunts with the hounds. It is designed to serve social policy purposes and is rooted in traditions that are the result of employer approaches to this field. As a consequence, occupational pensions only partly fulfil the aim of providing pension security, as employees are often not covered or are covered subject to rather different conditions.

### **3. Occupational unemployment-related schemes: facing the crisis**

The German system of unemployment protection consists of various programmes providing unemployment-related benefits, employment services and preventive measures. Since the major reforms of the early 2000s, unemployment benefits are provided by a two-tier system. For unemployed persons who were in employment subject to social security contributions prior to unemployment, the unemployment insurance provides upper-tier unemployment benefits (ALG I) for up to twelve months (up to 24 months for older unemployed persons) and grants access to active labour market policies. Benefits are calculated as a percentage of prior earnings. Lower-tier unemployment benefits (ALG II) are paid to persons who have no claim to ALG I (either because it has expired or because ALG I access criteria are not fulfilled). ALG II – also known as ‘Hartz IV’ – is means-tested on a household basis, and the conditions for receiving it are much stricter than for ALG I. The aim of ALG II is to provide an existence minimum; hence the amount is not related to prior earnings. Receipt of ALG II is also linked to access to active labour market policies.

In addition to unemployment benefits (ALG I & II) and active labour market policies, further regulations and policies aim to prevent or cushion unemployment by hindering or compensating for lay-offs. These public policies may be supplemented by

OW, especially instruments to prevent unemployment: OW in this field is regulated by either collective or company-level-agreements. In some cases, agreements are directly linked to statutory programmes. OW employment protection regulations are, according to Bispinck (2012: 205) less significant than regulations in the fields of sick pay or occupational pensions. ‘While the trade unions’ collective bargaining policies aim at a redistribution of work and hence also at a protection of labour by reducing working hours [*Arbeitszeit(verkürzungs)politik*], public policies concentrate on financial compensation in the case of actual unemployment’ (Bispinck 2012: 205). Bispinck’s reference to the regulation of working hours as a means of protecting labour points to a conceptual problem regarding OW in the field of unemployment protection. Social partner agreements may focus not only on providing welfare benefits, but also on regulating working conditions or setting wages in a way helping to prevent job losses. In this case, collective agreements may build on statutory rules. However, it seems difficult to classify these regulations as OW. This difficulty follows from unemployment protection being either independent of the employment contract (as is the case with unemployment benefits paid after termination of employment) or aimed at maintaining an employment contract. The latter case is not something that *follows* from employment. It is centered on the regulation of work. It thus seems to be difficult to speak of ‘Occupational Welfare’. In other words: the concept of OW may reach its limits when it comes to the foundations of employment itself. The link between statutory benefits and collective agreements in the case of short-time work benefits may hence be a one-off example, as the provision of benefits on top of statutory benefits is more prominent.

Irrespective of these conceptual problems, the German case provides several instances of how unemployment prevention can be the focus of social partner efforts. Employment can be protected by different means, directly or indirectly.

- Short-time working schemes target a temporary reduction of working hours. They cannot be introduced by the employer alone, requiring collective agreements or agreements with works councils or individual employees. Statutory rules and collective agreements include regulations compensating for loss of income due to short-time working. This instrument was often used during the 2009 economic crisis (see below).
- Rules on protection against dismissal. In addition to statutory rules on dismissal, works’ councils have limited abilities to influence dismissals. Also, sector-level collective agreements may add regulations going beyond statutory rules, for example by extending periods of notice.
- In the case of company restructuring, there may be attempts to find ways to prevent job losses or reduce their impact through redundancy packages (*Interessenausgleiche* and *Sozialpläne*).
- If companies bound by collective agreements are facing a crisis, under specific circumstances deviations from sector-level collective agreements (opening clauses) are possible. Also, company-level pacts for employment (*Bündnisse für Arbeit*) may be concluded. These are built on the promise not to cut jobs and on concessions with respect to working hours and/or wage reductions. They may be based on opening clauses in collective agreements.

- Working hours and time accounts may also be used to prevent unemployment: instead of working short-time or getting laid-off, employees may use time saved earlier. However, these schemes were initially not intended as a means to protect employment but rather as a tool to achieve more internal flexibility or as an instrument of work/family reconciliation policies. There are several collective agreements containing provisions for flexible working hours (Herzog-Stein and Seifert 2010: 2). The rules for temporary reductions of working hours differ between sectors. Herzog-Stein and Seifert (2010: 2-3) note that reductions of between 2.5 and 8.5 hours/week may be possible (6.75%–25% of regular weekly working hours). These reductions may apply to a whole company, parts of it or specific groups of employees. Flexibility is ‘rewarded’ by unemployment protection: ‘During the period of validity of agreements the employees affected by a reduction of working hours cannot be laid-off for business reasons’ (Herzog-Stein and Seifert 2010: 3).
- Early retirement schemes may serve as an instrument of labour market policies, preventing redundancies among older employees. In Germany, these schemes were used from the 1970s onwards to reduce labour supply (Fehmel 2012: 160). State instruments were altered over the years and finally state support of early retirement was terminated in 2009 (Fehmel 2012: 161-162; Fröhler 2015: 97). Collective agreements served to specify and implement state rules. Since 2009, they have had to be adjusted to the new legal framework and now serve together with company-level rules and instruments as the main regulation, i.e. replacing statutory rules. Following an empirical analysis based on the 2010 WSI survey of works councils, Fröhler (2015: 104) now speaks of a ‘much diversified establishment-level landscape of transition [from work to retirement] and a considerable range of different transition options and conditions of usage.’
- The transition from initial vocational training (IVET) to regular employment and the integration of persons with a low level of education into the system of vocational training may be regulated by collective agreements. Also, CVET may serve as a means to adjust employees’ skills to the needs of companies and hence act as a tool to prevent unemployment; CVET may be regulated by sector-level and/or establishment-level agreements.
- Finally, collective agreements may regulate the use of temporary agency workers in a company, with a view to both protecting core employees and offering agency workers prospects within the company (transition to regular employment).

The following description and analysis concentrates on short-time work schemes, illustrating the interaction of public policies and OW, as well as the motives of the social partners.

Short-time working schemes played an important role in reducing the negative labour market effects of the 2008-2009 economic crisis. Companies used this instrument – among others – as part of a strategy of labour hoarding and for internal flexibility (cf. Möller 2010: 335), even though internal and external flexibility (i.e. lay-offs) were realised in some cases side by side with short-time working (Bogedan *et al.* 2009: 5). During the crisis, statutory rules on short-time working benefits were expanded and programmes established to give employees access to CVET schemes during short time

(financed by the European Social Fund, among others) (Bogedan 2010: 314). Collective agreements aimed to link public social policy and collective bargaining policies. Agreements such as *Zukunft in Arbeit* for the metal and electrical industries in North-Rhine Westphalia (concluded in February 2010) adapted short-time work for a limited time to deal with severe economic troubles (cf. Glassner 2010: 483). The link between social partner activities and social policies was fostered by governmental action that made the use of short-term work cheaper for employers by reducing social security contributions. As well as the specific collective agreements, these statutory regulations were terminated after the crisis.

The introduction of short-time work (i.e. reduction of working hours and wages) to deal with economic problems has to be regulated by collective or company-level agreements or by individual contracts. If short-time work is accepted by the public employment agencies, employees receive a state benefit (*Kurzarbeitergeld*) that compensates for part of the income reduction. While the general regulation on the introduction of short-time work and the payment of the associated state benefits may not be labelled as OW in a strict sense, additional collective regulations are so if they top up statutory benefits. In a comparative analysis of the regulation of short-time working in European countries, Glassner (2010: 482) assesses both the sectoral and the company level as ‘dominant’ in Germany.

Rules laid down in collective agreements may deal with the rights of works councils, the priority of other rules on working time, the timeframes for announcing short-time work, the volume of short-time work, calculation of wages, clauses that regulate the treatment of employees laid-off during phases of short-time work and specific rules on the treatment of non-wage labour costs (*Remanenzkosten*) (Bispinck and WSI-Tarifarchiv 2010). Last but not least, state benefits may be topped up by benefits paid on the basis of collective agreements. Additionally, company-level agreements regulate the introduction and design of short-time work within the framework of legislation and collective agreements (Bispinck *et al.* 2010).

Compared to service-sector companies, industrial companies were hit harder by the crisis and therefore resorted more often to employment protection measures (Bogedan *et al.* 2009: 8-9). While the manufacturing sector (including automotive industries) relied heavily on short-term work schemes, companies in the service sector used this tool much less (Brenke *et al.* 2010: 8 also demonstrate the use of short-time work in industry-oriented branches of the service sector). Two examples – the automotive sector and the retail sector – may serve as an illustration. In December 2010, in the automotive sector, 664 companies used short-time work schemes, covering 111,555 employees (168 employees per company, 14.3 employees on short-time work per 100 regular employees, while in the retail sector 1,897 companies used short-time work schemes for a total of 7,658 employees (4 employees per company, 0.4 employees on short-time work per 100 employees subject to social insurance) (Brenke *et al.* 2010: 9, Table 3). These differences between manufacturing and service sectors may be explained by the specific shape of the economic crisis. Also, as pointed out by an interviewee, it should be kept in mind that employment in the retail sector is characterised by various forms of employment– including temporary agency work,

service contracts and marginal employment – that give employers possibilities to adjust the volume of labour to their needs without resorting to short-time work; this, however, is criticised by trade unions as an increase of precarious forms of labour.

The collective agreements currently in force in the two sectors reflect the needs and possibilities for dealing with this issue. The *Manteltarifvertrag* (framework collective agreement) of the metal and electrical industry in Northern Württemberg/Northern Baden states that options for applying existing time accounts have to be used up before the provisions in the collective agreement on employment protection and short-time work are applied. The corresponding collective agreement on short-time work and employment for the metal and electrical industry in Baden-Württemberg (*Tarifvertrag zur Kurzarbeit und Beschäftigung*) regulates subsidies to wages during short-time work: employers must compensate employees so that net incomes remain at 86.5-97% of prior wages depending on the volume of reduction of working hours. Company-level agreements may deviate from this regulation, reducing the subsidy so that net incomes remain at 80.5-95.5%; these lower subsidies are connected to job guarantees. Any such company-level agreement has to be binding for at least 12 months. Additional rules regulate short-time work in cases where public regulations do not apply. The regulations found in the retail sector mirror the overall minor significance of short-time work in this sector; they are included in the framework collective agreement: the retail *Manteltarifvertrag* for North-Rhine Westphalia merely states that after consultation with the works councils, short-time work can be introduced with a period of notice of four weeks. If there is no works council, employers and employees must reach an agreement.

An example from the metal and electrical industry illustrates how different programmes and instruments may be used and how they interact with statutory regulation. According to Ohl (2011: 24-32), employment protection became the top priority in the metal and electrical industries during the 2009 crisis, which hit export-oriented industry especially hard. He distinguishes between different phases, in which instruments at state, collective and company level were used to make sure that downturns in orders and production were not followed by cuts in employment. While during a first phase, time accounts, company holidays and a reduction of temporary agency work took place and collective bargaining led to wage increases (with a possibility to postpone these increases in single companies), later on the use of short-time work increased. IG Metall (the metal workers' union) supported a government move to facilitate the use of short-time work (max duration of short-time increased to 24 months and exemption of employers from social security contributions). During the second phase a third of employees in the metal and electrical industry was affected by short-time work; the automotive industry was especially affected by a decrease in production. As a reaction, in addition to the use of time accounts and short-time work, the collective agreement *Tarifvertrag Beschäftigungssicherung* was applied to protect jobs by reducing working time. Finally, a new collective agreement was concluded (in North Rhine-Westphalia under the heading *Zukunft in Arbeit*, ZiA) as a reaction to the danger of an ongoing crisis. It served the interests of employers who wanted to retain their skilled workforces. Also, wage increases were agreed on. The ZiA agreement was directly linked to statutory rules (regulation of wages during short-time work or

working time reduction). However, only a few companies applied the new regulations. This specific agreement was valid till June 30<sup>th</sup>, 2012.

Larger companies used short-time work more often than smaller ones in June 2009; also, the share of employees working short-time increases with company size (Münstermann 2012: 765). In addition to the capacities to deal with the bureaucratic effort required to apply for this scheme, Münstermann (2012: 765) notes as a reason that '[...] companies without work councils can introduce short-time work only by individual agreements, which is a much higher effort [compared to company-level agreements; FB]. Since larger companies are more likely to have a works council, this is an explanation for the differences between companies of different size with respect to the use of short-time work compensation'. According to this account, 80% of employees subject to short-time work were in the manufacturing industry, with large industrial companies using these schemes to an above-average extent (see also Brenke *et al.* 2010).

In sum, the regulation of short-time work was a joint reaction of public players and social partners to a specific situation. Statutory policies and sector- and company-level approaches were connected. The actual agreements reflected the needs of specific economic sectors. Other sectors were hit less hard by the crisis or could resort to other means of 'flexibility'.

## **Conclusion**

In Germany, the provision of OW relies on the activities (independently or jointly) of individual employers, individual employees, works councils, social partners at sectoral level and the state (and sometimes commercial service providers).

The provision of occupational pensions on the basis of collective agreements follows an approach different to the measures used to prevent unemployment, especially short-time working schemes. Occupational pensions have been 're-purposed' as a result of state pension reforms and thus fit a 'less state-more OW' narrative. Regulation seeks to establish or further develop a system of OW to provide supplementary pensions. By contrast, the instruments developed and deployed to protect jobs during the economic crisis (short-time work) were ad hoc measures built on existing rules and terminated after the crisis. They were built on a joint reaction of the state and social partners to a temporary crisis. It should be noted that, in line with Bogedan's (2012) observation, state involvement (i. e. financial support) seems to be a powerful indicator in predicting whether companies will use short-time work. The discussion on unemployment protection also raises the question of whether such policies are examples of OW, since many of these instruments were designed not to provide benefits topping up wages but to stabilise work itself.

A comparison of the two fields of OW under scrutiny shows some similarities. Not only were recent developments in both fields triggered by external factors, but OW is

fostered in both cases through tax benefits and reductions in social security contributions. Both policy fields thus show not only considerable interaction between social partners at different levels, but also the strong state role in the development of OW. OW does not develop autonomously, but as the result of complex interactions between social partners, public welfare and specific incentives and regulations from the state, seeking to realise its own objectives through OW by interacting with social partners.

Both cases also serve to illustrate the heterogeneity and highly selective nature of OW in Germany, following not least from the current industrial relations system but also from differences between economic sectors and companies. The gaps in the collective bargaining system – in terms of the coverage of collective agreements and the spread of works councils – has resulted in a situation where the regulation and provision of OW is often left to individual employers and hence is not a matter for social partnership at sector or establishment level. This is at least partly a consequence of employers' decisions to leave the system of collective agreements but also a consequence of a lack of a works council in many companies.

This leads to the question of which differences between economic sectors, companies and employees can be accepted. With the reforms of the state pension scheme affecting all employees and retirees, it could be argued that OW should be more widespread. Moreover, the economic crisis hit the manufacturing industry harder than the service sector, making specific solutions for specific problems appear a sensible choice (but it should be kept in mind that the retail sector's use of various forms of atypical or even precarious employment enables employers to use strategies other than OW to 'cope' with crises).

From a social policy point of view, however, the heterogeneity of OW provision and the constraints of collective bargaining – including the trade unions' needs to meet competing claims of their membership (cf. Fehmel 2012) – lead to the question of how (and whether) the provision of OW should be further developed through public incentives or framework regulations. Both fields under scrutiny show that state interventions greatly influence the development of OW. The regulation and use of short-time working measures provide an example of 'crisis corporatism', a joint reaction to a common challenge. Here the development of further measures does not seem to be necessary, because the instruments used successfully once can be used again, if the state and social partners again share a common understanding of the problem and its remedies.

Current debates on reforms of the pension system are based on widespread disillusion with the multi-pillar system established in 2001, especially with the private pillar (*Riester-Rente*). While there are good arguments to strengthen the public pillar and also an increased willingness of politicians to discuss such proposals, in the current policy debate, occupational pensions play a prominent role. In this field, debates actively involving social partner representatives focus on both the reform of fiscal incentives and framework regulations, and other state interventions, i.e. the introduction of an employers' obligation to offer occupational pension schemes, and

mechanisms to declare collective agreements binding for companies that do not take part in the system of collective bargaining. While at the time of writing (September 2016) it is still not known what the results of the deliberations will be, it seems clear that reforms of the public framework will (again) result in further developments in this OW policy field.

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