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**Unemployment and
Pensions Protection
in Europe: the Changing
Role of Social Partners**

Germany



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Unemployment and Pensions Protection in Europe: the Changing Role of Social Partners

Germany

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Executive Summary

Introduction

The report analyzes the development of Occupational Welfare in Germany, focusing on the fields of occupational pensions and unemployment prevention. Starting with an overview of recent developments in the German welfare state and the system of industrial relations, and building on empirical data and studies as well as collective agreements and information from interviews with representatives of social partners, it discusses the regulation and provision of occupational pensions and measures designed to prevent unemployment. While as a consequence of reforms of public pension insurance, occupational pensions turned from a HR tool to an instrument of social policy and now act as a partial substitute for reduced public pensions, collective agreements on short-time work benefits were measures used during an economic crisis in order to expand and extend public benefits. It can be shown that the provision of occupational pensions on the basis of collective agreements follows a rather different approach compared to measures used to prevent unemployment, especially short-time work schemes. It can also be shown that OW tends to be rather selective in Germany.

Context information

Germany has often been considered as the model case for conservative welfare states. Even after various reforms, including trends towards the privatization of welfare provision, social insurance systems remain the main pillars of the system of welfare provision. Compared to other OECD countries and compared to the countries covered in the project ProWelfare II, public and private mandatory expenditure on social security as a percentage of GDP is above average. Voluntary private expenditure is slightly below average but is increasing. Trade unions and employers' associations are involved in the self-management of the social insurance schemes. Reforms of public pension insurance shifted responsibility to social partners, who were given a new role in the governance of occupational pensions.

The system of industrial relations is characterised by a decrease in the coverage of sector-level collective agreements. Works councils can be found only in a minority of establishments. Compared to other countries, the German system can be classified as a 'Social Partnership Model', with intermediate organisational density, a comparatively high coverage by collective agreements and strong interaction between social partners and the state.

OW has a long history in Germany. It is, however, less prominent in public discourse than public social policy, even though some OW programmes received attention during recent years due to

debates about their further development. The recent crisis had consequences for the provision of OW: while not directly affected during the early years of the crisis, occupational pension schemes now have to deal with low interest rates. With respect to unemployment provision, the crisis acted as a trigger for 'crisis corporatism' between the state and social partners, which aimed at preventing unemployment by using statutory welfare and OW instruments. This was especially true of the industrial sector.

Key findings

The 2001 reform made occupational pensions a means of social policy. Among other details, the 2001 pension reform introduced a right to earnings conversion: employees can direct part of their income into occupational pension schemes. If wages are regulated by a collective agreement, social partners have a say in the regulation of this earning conversion. This reform has some consequences for the provision of OW: the spread of occupational pension schemes increased after the 2001 pension reform. In recent years, there has been stagnation with respect to coverage, triggering a political debate on how to further increase coverage. As of 2013, 59.5 percent of employees were covered (including public sector). Also, funding by employees gained importance. Finally, social partners agreed on collective agreements regulating the conditions of earnings conversion, including employers' subsidies. Thus occupational pensions were changed not only from a company-level means of HR management to a tool of social policy, but also to a matter for collective bargaining. As a consequence of the state of the German economy and the system of industrial relations, the landscape of occupational pensions is rather heterogeneous. Coverage, levels of savings and subsidies, and conditions of use differ between branches, collective agreements, companies, and groups of employees. While employees in the automotive sector may profit from company-based schemes and collective agreements, the situation in the retail sector looks much less favourable.

In the field of unemployment prevention, it is hard to identify OW measures as distinct from the more general regulation of wages, working conditions and working time. However, the means employed during the crisis provide an example of OW in this policy area. Here, statutory short-time work benefits were expanded with respect to the amount of benefit and the duration of benefit receipt, by collective agreements concluded in reaction to the crisis. Thus both state actions and OW were influenced by an external factor. A comparison by economic sector illustrates that in the metal and electrical industries this instrument was used more often, since this industrial sector was hit much harder by the crisis than the service sector. In addition, the regulation of labour is much more flexible in retail, allowing for other ways of adapting the volume of labour in times of economic stress.

In both fields of OW, the provision of OW is built on deals between the social partners: subsidies may be given to occupational pension schemes in return for lower rises of wages; employment guarantees are traded for cuts in wages. Both fields also illustrate the interplay of state regulations and the activities of the social partners. The actual impact of specific state interventions is, however, unclear in some cases.

Conclusion and Outlook

The story – or rather: the stories – of OW in Germany illustrates that a 'less state-more OW' approach is not applicable to every field of social policy. The field of unemployment protection provides an example of interaction between state welfare and social partners where both types of welfare provision are deployed to deal with the economic crisis. A comparison of economic sectors shows that OW may be highly selective due to the economic situation of sectors, power relations, but also the priorities of social partners in collective bargaining rounds. If left to social partners, provision of OW competes with issues such as wages, working conditions and working hours in collective bargaining rounds. Thus while provision or regulation of OW may contribute to the legitimacy of social partners and may even make them more attractive to (future) members, there may also be a risk of frustrating members' expectations in focusing on this area. As a consequence of the heterogeneity of OW provision and hence of protection of employees and restrictions on the social partners, it seems worthwhile considering strengthening public welfare provision given the current system of industrial relations.

Further reading and contact details

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1. Introduction

The German system of welfare provision is centred on a strong system of public social insurance schemes and other public policy programmes. Occupational welfare (OW) schemes – i.e. benefits provided on the basis of single employers' decisions, company-level agreements between employers and employees' representatives, and/or sector-level collective agreements – interact with these public schemes in different ways. This interaction may take the form of a reaction of social partners to political reforms. This happened in the case of pension policies, where new regulations of occupational pensions became the topic of collective agreements in the context of a retrenchment of public pension policies. This tendency of *Vertarifizierung* (i.e. a shift from public welfare provision to welfare provision on the basis of collective agreements, *Tarifverträge*, cf. Fehmel 2012 and 2013) received some attention in the research community as one direction of change of the German system of welfare provision. However, as will be shown in this report, other fields of OW show different modes of interaction of public and occupational welfare – modes that cannot be reduced to a 'less state –more OW-logic'. The case of short-time work provides an example for a rather different interplay of state, employers' associations, trade unions, and single companies and their employees.

This report describes and discusses the development of OW in the fields of pension policy and unemployment prevention and protection. Both fields received public attention and were subject to new regulations in recent years. Occupational pensions were assigned a new task as a consequence of the 2001 pension reform. Unemployment prevention measures in the guise of short-time work schemes regulated by collective agreements were used during the crisis of 2009 to prevent mass unemployment. Drawing on studies, various statistical data sources, and collective agreements, the report seeks to analyse the different modes of interaction of state welfare and OW. In doing so, it pays special attention to regulations in the metal and electrical industry (which includes, for matters of collective bargaining, the automotive industry) and the retail sector. By analysing OW in Germany and reflecting on the peculiarities of the German welfare state and the German system of industrial relations, the report is to contribute to a better understanding of OW. The report is structured as follows: after an overview of key facts and figures on the German welfare state and the German system of industrial relations (part 1), it introduces the system of OW (part 2). The third part analyses OW in the fields of pension provision (part 3.1) and unemployment protection (part 3.2) before presenting analytical insights (part 4). The conclusion sums up the most important results.

1.1 Germany's welfare state ⁽¹⁾

Germany is generally considered a conservative welfare state (cf. Esping-Andersen 1990, Palier and Martin 2007). Despite major reforms over the last decades, the system of public social insurance continues to be the central feature of public welfare provision. The five branches of social insurance provide protection against risks related to old-age and invalidity, sickness, unemployment, work-related accidents, and need for long-term care. Originally, social insurance in Germany protected workers (later employees) and their families (cf. Kaufmann 2003), the aim of public intervention being not least protection of status (and protection of achieved living standards). The social insurance schemes are mainly financed through contributions from employers and employees. However, during the last few decades there was a shift to additional tax-financed subsidies from the federal government's budget ⁽²⁾. Additional security systems exist for specific status groups and professions (such as civil servants or asylum-seekers). A tax financed system cares for the long-term unemployed (in general in the case of unemployment of more than a year); also a social assistance system serves as a last safety net.

Today the branches of social insurance account for 61.2% of the German social budget of a total 849.2 billion € (2014, estimated). According to the social budget, total social expenditure as a share of GDP was estimated at 29.6% in 2014 ⁽³⁾.

While social insurance accounts for the biggest share of benefit provision, benefits provided by employers amount to an estimated 81.7 billion € (9.2% of the social budget). This includes sick pay (wage continuation), occupational pensions and other benefits. This number refers to employers as institutions of welfare provision; it does not show whether these 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 the employers has increased since the early 1990s. The share of this category in the social budget decreased between 1991 and 2005 and increased from 2009 to 2014 (2014 estimated numbers). A comparison of the percentages before and after 2009 is impossible for methodological reasons ⁽⁴⁾.

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1. Parts of the introductory chapter and of the general introduction to occupational welfare in Germany were already published in the report for the project 'ProWelfare I'.
 2. Of the total expenditure of the federal government in 2012 of about 299 billion €, the entry 'other appropriations to public social insurance [*Sozialversicherungsträger*]' and the Federal Labour Office' makes up about 107 billion €.
http://www.bundeshaushalt-info.de/fileadmin/de.bundeshaushalt/content_de/dokumente/2015/soll/Haushaltsplan-2015.pdf p. 29.
 3. BMAS 2015: TI-2.
 4. BMAS 2015: TI-2, 4.

Social partners take part in the self-administration of social insurance systems (cf. Ebbinghaus 2011). The rules for involvement of employers' associations and employees' associations (which include trade unions but are not necessarily confined to them) and other organizations as well as the competences of self-administration bodies vary between the branches of social insurance. The current system of self-administration is subject to various strands of criticism, which include – among other aspects – the system of election or appointment of representatives and their limited competences vis-à-vis both the state and the professional management of insurance institutions (cf. Rixen and Welskop-Deffaa 2015).

Compared to other countries, according to OECD data, Germany's public and mandatory private social expenditure is above average with respect to all OECD countries and the nine countries under scrutiny in the project ProWelfare II (cf. Table 1). This holds true for both expenditure per head (constant prices and PPPs, 2005) and expenditure as a percentage of GDP. It has both lower expenditure per head and lower expenditure in relation to GDP if Poland is excluded from the analysis. Expenditure per head and expenditure as a percentage of GDP increased from 1990-2011.

Table 1: Public and mandatory private social expenditure: Germany compared to other countries

Total public and mandatory private social expenditure				
	1990	2000	2007	2011
Germany				
per head	6164.3	7485.5	7770.6	8320.8
% of GDP	22.9	27.5	25.9	26.8
Average nine countries				
per head	5277.1	6624.8	7640.4	8285.7
% of GDP	22.3	23.6	23.9	26.2
Average eight countries				
per head	5781.3	7148.3	8209.9	8863.1
% of GDP	23.3	24.0	24.5	27.0
Average OECD				
per head	4080.2	5375.3	6409.0	7077.5
% of GDP	17.9	19.2	19.5	22.1

Source: OECD SOCX database, constant prices and PPPs (2005) in USD.

Voluntary private social expenditure is below average both with respect to expenditure per head and as a percentage of GDP compared with OECD countries in general and more specifically compared with the other countries treated in the ProWelfare II project. Voluntary private social expenditure as a percentage of GDP, however, is only 0.2 percentage points lower in Germany than in all OECD countries. Both expenditure per head and as a percentage of GDP increased 1990-2011.

Table 2: Voluntary private social expenditure: Germany compared to other countries

<i>Voluntary private social expenditure</i>				
	1990	2000	2007	2011
Germany				
per head	391.4	474.4	549.0	609.3
% of GDP	1.5	1.7	1.8	2.0
Average nine countries				
per head	454.0	717.8	769.5	818.8
% of GDP	1.8	2.3	2.2	2.4
Average eight countries				
per head	510.7	807.5	865.0	920.1
% of GDP	2.1	2.6	2.5	2.7
Average OECD				
per head	..	626.8	738.5	770.3
% of GDP	..	2.0	2.1	2.2

Source: OECD SOCX database, constant prices and PPPs (2005) in USD.

1.1.1 Specific focus on Pensions and Unemployment Protection

Pension provision

Today's pension system was shaped not least by the 2001 pension reform, which has often been called a 'paradigm shift' by observers (cf. Schmähl 2007). The reform altered the overall structure of the system of old-age benefit provision. What was before 2001 a single-pillar-system was turned in to a multi-pillar system of pension provision.

The statutory pension insurance (Gesetzliche Rentenversicherung) continues to be the core of the pension system. Membership in the statutory pension insurance is mandatory for most employees (and some groups of self-employed persons). Civil servants, farmers and some other occupations

such as physicians and lawyers are covered by specific pension schemes. In 2013, 53 million persons were insured in the statutory pension insurance; in 2014, 21 million pensioners received benefits (Deutsche Rentenversicherung 2015: 31, 51). The statutory pension insurance is financed by earnings-related contributions of employees and employers (in 2015 18.7% of individual gross wage shared by employer and employee) as well as subsidies from the federal budget. There is an upper limit for contributions and – because of a strong link between contributions and benefits – for benefits. Total revenues amounted to an estimated 264 billion Euro in 2013. In 2013 the tax subsidy was estimated at 61 billion Euro (Deutsche Rentenversicherung 2015: 20-21; without *Knappschaft*). Statutory pension insurance benefits made up 30.7% of the German social budget of a total of 849 billion Euro (estimated; BMAS 2015: Table I-2).

The statutory pension insurance works on a pay-as-you-go-basis with a strong link between benefits and contribution records, the benefits thus reflecting individual life courses (especially the employment career; cf. Blank and Schulze-Buschhoff 2013). The statutory pension insurance is organized as a *Parafiskus*, a somewhat independent public administration for whose day-to-day administration representatives of the contributors (employers and representatives of the insured members of the social pension insurance, often trade unions) are responsible ('self-administration', cf. Ebbinghaus 2011). Representatives are elected every six years in co-called 'social elections' (*Sozialwahlen*). The self-administration bodies have only limited powers. The most significant decisions on benefits and contributions are made by federal political bodies. Representatives involved in self-management may, however, decide on the use of part of the pension insurance's budget. This system also provides a link between the administration and insured persons through honorary counsellors and redress structures.

Prior to the reform of 2001, the main task of the statutory pension insurance was to protect the standard of living of beneficiaries; pensioners were able to maintain their level of income during old age. Other ways to save for old-age (such as occupational pension schemes or products offered by insurance companies) existed, but were not seen as an integral feature of the pension system.

While many features of the social pension reform are still intact today, its overall task was newly defined by the 2001 reform ⁽⁵⁾: in order to reduce future increases in contribution rates – which were projected to massively increase as a consequence of demographic change, a development that was seen as damaging to the German economy (cf. Schmähl 2007: 322-323) –, future benefits were reduced ⁽⁶⁾. Still the statutory pension insurance is considered to be the main pillar

5. For detailed accounts of the reform see Schmähl 2007, Blank 2011a, chapter 4.

6. 'The political debate was finally framed by the new government, which came to power in autumn 1998: a contribution rate of about 24 per cent in 2030 in social pension insurance would be economically unbearable and would burden the younger generations too much. "Intergenerational equity" as well as

of old-age security now and in the foreseeable future. The mechanism that regulates the annual adjustment of benefits (adjustment formula) was changed again in 2004, again with the intention to slow increases of contributions and benefits.

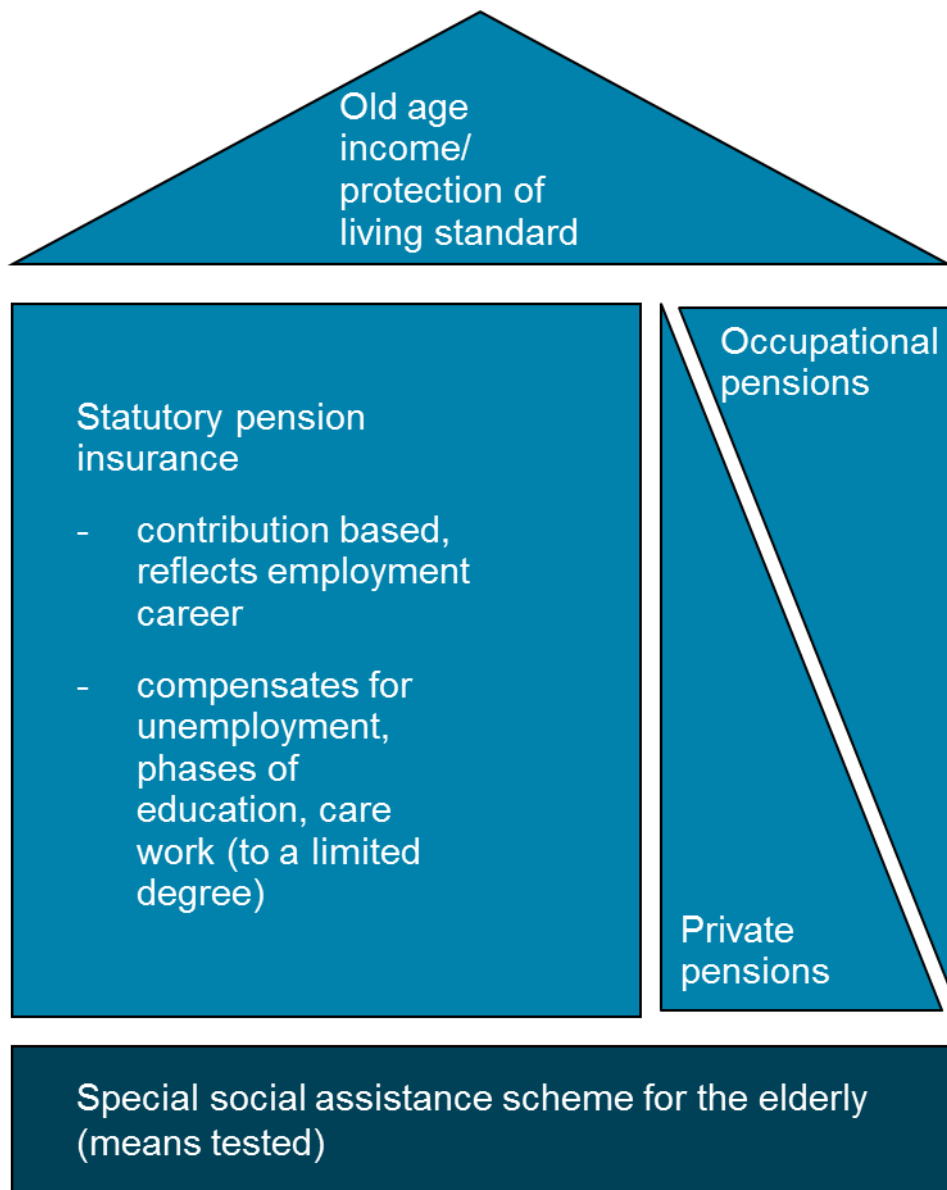
As a consequence of these reforms, citizens are now expected to individually close the difference between pre-2001 benefit levels and today's and future benefit levels of statutory pension insurance by voluntarily taking out funded private pension insurance or using occupational pension schemes. To encourage and support employees and their spouses in actively creating or rather buying their pension portfolio, tax breaks and subsidies for old-age saving plans were introduced. These can be used for certified pension plans provided by insurance companies or savings banks (so-called 'Riester'-plans after Minister Walter Riester who was responsible for the reform). 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 insurance contributions (earnings conversion, *Entgeltumwandlung*). However, 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 system of old-age security (⁷).

Thus, the second and third pillar turned from a supplement to a substitute. According to the then governing coalition's plan, employees can reach past benefit levels by using either private *or* occupational pension schemes in addition to the mandatory social insurance. It should be noted that the three pillars are expected to contribute to the protection of living standards – there is no division of labour among the pillars (as in the case of systems that consist of a public basic pension for citizens and mature occupational pension systems that aim to reflect employment careers). Empirical data show, among other problems, that the multi-pillar-model was never fully accepted by citizens (Blank 2014b).

"sustainability" became common catchwords in the political debate. The development of the social insurance contribution rate became the decisive indicator.' (Schmähl 2007: 323-324).

7. It is noteworthy that when an employee decides to use an occupational pension scheme through earnings conversion, both the employee's and employer's contributions to social insurance are reduced. But whether the employer gives the money saved to the employee as a subsidy to the latter's saving efforts or keeps it for himself is a matter for collective agreements or pure goodwill (Blank 2014a).

Figure 1: The German system of pension provision. Note: civil servants and some professions are covered by specific schemes



Source: illustration by author

Unemployment protection

The German system of unemployment protection consists of various programmes providing benefits in case of unemployment, employment services and preventive measures ⁽⁸⁾. Since the major reforms of the early 2000s (so-called 'Hartz'-reforms), unemployment benefits are provided by a two-tier system. For unemployed persons that were, prior to unemployment, in employment subject to social insurance contributions, the unemployment insurance provides unemployment benefits I for up to twelve months (older unemployed persons: up to 24 months) and grants access to active labour market policies. Benefits are calculated as a percentage of prior earnings. Unemployment benefits II are paid to persons who have no claim to unemployment benefits I (either because unemployment benefits I expired or because there was no original claim to unemployment benefits I). Unemployment benefits II – also known as 'Hartz IV' – are means-tested on a household-basis; conditionality of benefit receipt is stricter than for unemployment benefits I. The aim of unemployment benefits II is to provide a minimum for existence; hence the amount is not related to prior earnings. The receipt of unemployment benefits II is also connected to access to active labour market policies.

Unemployment insurance, a branch of the wider social insurance system, includes mechanisms of self management at federal and local level (Rixen and Welskop-Deffaa 2015). Representatives of public institutions (municipal bodies, *Länder*, federal state), employers' associations and trade unions are appointed to these bodies. These bodies act as boards of governors with competences in the fields of budgeting, supervision, and strategic matters. The institutions linked to the provision of unemployment benefits II do not feature this kind of self-management. There may be, however, advisory councils established, with representatives of different organizations.

In addition to unemployment benefits and active labour market policies, regulations and policies aim at the prevention or ease of unemployment by hampering or compensating for lay-offs. The various statutory schemes and rules are often supplemented by sector-level collective agreements; also they may be directly linked to decisions at company level. These schemes include:

- Rules on dismissal protection. In addition to statutory rules on dismissal protection, works' councils have limited abilities to influence dismissals. Also, sector-level collective agreements may add regulations that go beyond the statutory rules, for example by extending periods of notice.
- Short-time work. Reduction of working hours can under specific conditions partly be compensated by public benefits. This instrument was often used during the economic crisis of

8. Education, vocational training and continuing vocational training measures are not covered in this section.

2009. It is subject to co-determination (if there is a works council) and may be regulated by additional rules laid down in collective agreements (see below) ⁽⁹⁾.

- Flexibility in terms of wages and working hours may also provide protection against lay-offs (time accounts, e.g.). This flexibility may be allowed by collective agreements.
- Flexibility of a different kind is possible if companies bound to collective agreements are facing crisis: Under specific circumstances, deviations from sector-level collective agreements are possible (company-level pacts for employment).
- Also, pension policies and especially early retirement schemes may prevent older workers from being (officially) unemployed. While the pensionable age will rise to 67 and public support for early retirement schemes was stopped, collective agreements are used to allow at least some employees early retirement.

Figure 2: Programmes of unemployment protection and prevention



Source: illustration by author.

9. While short-time work benefits (*Kurzarbeitergeld*) are meant to compensate for a temporary reduction of working hours due to a lack of work affecting at least a third of employees with at least 10 per cent reduction of wages, the special *Transferkurzarbeitergeld* is meant to ease integration into the labour market for employees whose establishment is (partly) shut down causing a permanent loss of work and income.

1.2 Germany's industrial relations

The German system of industrial relations has some distinct features:

- the autonomy of collective bargaining from state interference (*Tarifautonomie*);
- the so-called 'dual system' of industrial relations, which is 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 (cf. Behrens 2013: 206-209).

Collective agreements are concluded between trade unions and employers' organizations or single companies (*Branchen-/Flächentarifvertrag*, *Firmen-/Haus-Tarifvertrag*). While agreements on remuneration may be seen as the core of the system of collective bargaining, in Germany collective agreements regulate a broad range of workplace-related issues such as the weekly hours of work, but also social issues such as occupational pensions and the topics described above (Dribbusch and Birke 2012: 7; Bispinck 2012).

Collective agreements

In Germany, there were about 70,000 valid collective agreements at the end of 2014, of which 30,000 were sector-level (or industry-wide) collective agreements (*Flächentarifvertrag*) and 40,000 company-level collective agreements (WSI 2015: table 1.3). '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 that are party to the agreement' (Dribbusch and Birke 2012: 7).

In 2013, 49% of employees were covered by sector-level collective agreements, another 9% by company-level collective agreements (Table 3). Of the remaining 42%, roughly every second employee works under conditions that are somewhat similar to sector-level collective agreements. These numbers hide differences between sectors and regions: In West Germany 52% of workers were covered by sector-level collective agreements, but in East Germany 35% were covered; 88% of employees in the public sector (including public social insurance) were covered by sectoral agreements, but in the information and communication sector only 19% were covered.

Table 3: Collective agreements: coverage of employees in 2013 (in per cent)

	Coverage 2013								
	Sector-level agreement (<i>Branchen-tarifvertrag</i>)			Company-level agreement (<i>Haus-/Firmen-tarifvertrag</i>)			No agreement (of which following [<i>orientiert am</i>] sector-level agreement)		
	West	East	Total	West	East	Total	West	East	Total
Farming <i>et al.</i>	50	14	38	(2)	5	3	48 (47)	81 (43)	59 (49)
Energy/Water/Waste & Mining	75	42	68	15	29	18	10 (48)	40 (60)	14 (45)
Manufacturing (<i>Verarbeitendes Gewerbe</i>)	55	20	51	12	14	12	33 (62)	62 (51)	38 (59)
Building industry	69	51	65	2	6	3	29 (65)	46 (61)	32 (65)
Whole sale, automobile trade and –repair	37	17	34	7	12	8	56 (58)	74 (56)	58 (56)
Retail Trade	41	27	39	2	6	3	57 (65)	58 (45)	58 (63)
Transport & Warehousing	42	20	38	13	12	13	45 (39)	62 (35)	50 (41)
Information & Communication	15	7	14	19	16	19	65 (32)	72 (26)	67 (31)
Financial and insurance services	81	57	79	2	0	2	16 (39)	35 (44)	19 (37)
Hotel and restaurant industry & other services	40	26	38	3	6	4	57 (50)	68 (48)	59 (49)
Health & Education	54	30	49	10	23	12	37 (65)	50 (55)	39 (62)
Economic, research and free-lance services	43	45	44	4	7	4	53 (37)	46 (35)	52 (37)
Non-commercial organizations (<i>ohne Erwerbscharakter</i>)	53	28	48	12	13	13	35 (61)	52 (53)	40 (59)
Public administration /Social insurance	89	83	88	9	16	11	2 (63)	0 (13)	2 (67)
Total	52	35	49	8	12	9	40 (53)	51 48	42 (52)

Source: WSI 2015: table 1.7 (based on IAB-Betriebspanel 2013).

Focusing on the company level, coverage is lower: in 2013, 28% of companies were bound by sector-level collective agreements, another 2% by company-level collective agreements (Table 4). Of the remaining 70%, less than half (43%) regulated their matters in a way somewhat similar to

sectoral agreements. As with coverage of employees, there are differences according to sector and region.

Table 4: Collective agreements: coverage of companies in 2013 (in per cent)

	Coverage 2013								
	Sector-level agreement (<i>Branchen-tarifvertrag</i>)			Company-level agreement (<i>Haus-/Firmen-tarifvertrag</i>)			No agreement (of which following [<i>orientiert am</i>] sector-level agreement)		
	West	East	Total	West	East	Total	West	East	Total
Farming <i>et al.</i>	34	6	28	(1)	1	1	65 (45)	92 (47)	71 (46)
Energy/Water/Waste & Mining	62	29	54	6	7	6	32 (43)	62 (33)	39 (40)
Manufacturing (<i>Verarbeitendes Gewerbe</i>)	30	12	27	3	3	3	67 (54)	83 (48)	70 (53)
Building industry	54	41	51	1	1	1	45 (55)	59 (59)	49 (56)
Whole sale, automobile trade and -repair	24	9	22	2	2	2	73 (48)	89 (43)	76 (47)
Retail Trade	30	13	26	1	2	3	69 (51)	83 (43)	72 (49)
Transport & Warehousing	27	8	23	4	4	5	70 (27)	86 (40)	73 (30)
Information & Communication	4	1	4	4	4	3	92 (26)	96 (20)	93 (25)
Financial and insurance services	40	15	36	0	(0)	1	60 (33)	85 (9)	64 (27)
Hotel and restaurant industry & other services	26	12	23	1	1	1	74 (37)	86 (35)	77 (36)
Health & Education	35	15	31	3	4	4	62 (58)	78 (53)	65 (57)
Economic, research and free-lance services	16	13	16	1	1	1	82 (33)	86 (36)	83 (33)
Non-commercial organization (<i>ohne Erwerbscharakter</i>)	39	17	34	15	14	11	46 (59)	72 (44)	52 (55)
Public administration /Social insurance	85	94	87	10	9	8	5 (61)	2 (95)	4 (66)
Total	30	17	28	2	2	2	67 (44)	80 (42)	70 (43)

Source: WSI 2015: table 1.8 (based on IAB-Betriebspanel 2013).

The coverage of employees and companies has decreased during the last few decades: in West Germany, coverage of employees by sector-level agreements dropped from 69% in 1996 to 52% in 2013, coverage of establishments dropped from 49% in 1996 to 30% in 2013 (WSI 2015: table 1.9). For East Germany, the respective numbers are 56% to 35% (employees covered) and 28% to 17% (establishments; WSI 2015: table 1.10). 'This development has been accompanied by a sharp increase in opening clauses in such agreements, permitting workplace-level deviations from centralised agreements. Sometimes this takes the form of a company agreement, sometimes of an agreement between the works council and the company' (Dribbusch and Birke 2012: 13-14). From a comparative point of view, it has to be noted that according to the European Commission (2013: 22) total collective bargaining coverage in Germany of 62.5% 2007-2009 (1997/99: 66.25%) was below EU-27 and EU-15 averages (EU-27 2007-2009: 65.82%, EU-15 2007-2009: 70.96%).

Trade unions

Collective agreements are made by trade unions and employers' associations or single employers. Most agreements are made by the member unions of the DGB (German Confederation of Trade Unions) (Dribbusch and Birke 2012: 7). The DGB has eight affiliated unions. Their central organizational features are traditionally those of unified trade unions (*Einheitsgewerkschaften*, no specific links to ideologies or parties), and industry trade unions, '[...] organising all employees in the branches, companies and departments within its organisational remit. Furthermore, large multi-branch trade unions have emerged as a result of mergers and regroupings' (Dribbusch and Birke 2012: 2). In addition to the unions affiliated to the DGB, which have about 6 million members, there are other organizations. Among these is the DBB (German Civil Service Federation), whose member organizations represent about 1.25 million persons. Also, there are Christian trade unions (their peak organization being the CGB) and some other unions which often concentrate on specific professions such as hospital doctors or pilots (Behrens 2013: 210).

8.1 million employees were members of unions at the end of 2010; the DGB-affiliated unions had 6.2 million members at the end of 2011. Total union density was about 19% at the end of 2010 (Dribbusch and Birke 2012: 2). According to the European Commission (2013: 23) union density was 19.12% in 2008, which is below average with respect to both EU-27 (23.43%) and EU-15 (24.26%). Union density dropped from 24.6% of the employed dependent labour force in 2000 to 17.7 in 2014 (European Commission 2013: 24, AIAS 2016).

Employers' associations

Employers are organized in about 700 organizations, their peak organization being the BDA (Confederation of German Employers' Associations). In industry-level bargaining they represent the counterpart to trade unions ('multi-employer-bargaining'; cf. Behrens 2013: 211). However, since the 1990s, many associations have introduced 'OT'-memberships, which means a company can join the association without being affected by the collective agreements signed by this association (OT stands for *ohne Tarifbindung*). 'Based on survey data, it is estimated that between a third and a half of all German employers associations offer their members such an opt-out' (Behrens 2013: 212).

Employer density amounted to 60% in Germany in 2007/2009. Employer density is above average with respect to the EU-27 (57.81%) but below average with respect to the EU-15 (62.89%) (European Commission 2013: 23). Employer density dropped from 63% in 2002 to 58 of employees per cent in 2013 (European Commission 2013: 25; AIAS 2016).

The government

Collective bargaining is free from government intervention. 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 2015: table 1.5). In addition, it can be argued that the state has a supporting or enabling role in the German system of industrial relations: it sometimes sets minimum standards (as in the case of working hours) and provides the background for industrial relations through comprehensive welfare state programmes. 'While some of these benefits [i.e. welfare benefits; FB] have been reduced since 2000 – a process which triggered protest from the trade unions – in most areas, the German welfare state still frees unions and employers from regulating welfare state issues through collective bargaining. For example, in contrast to their counterparts in the USA, German unions do not have to negotiate provisions for providing workers with elementary health insurance (although several German unions, however, have included provisions on supplementary private pensions in their collective agreements)' (Behrens 2013: 208).

Finally, it has to be kept in mind that the state acts as an employer directly or indirectly: directly with respect to civil servants and other employees of public bodies; indirectly by directing funding to private sector- or non-profit sector-organizations that provide services to the public (as in the case of kindergartens or hospitals run by charities).

Works councils

On the 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) ⁽¹⁰⁾. Representation through works councils is not obligatory. In 2013, in 9% of establishments with more than five employees there was a works council. The bigger the establishment the more likely it is that there is a works council – in 88% of establishments with more than 500 employees, works councils exist. Works councils represent 42% of employees in total. There are significant differences between sectors (WSI 2015: table 1.11 and 1.12).

Works councils have rights to co-determination, consultation and information regarding social, personnel and economic matters relating to the company. Thus they are (with varying intensity) involved in decisions about working hours, regulation of holidays, placement and dismissals and other topics (Müller-Jentsch 2011: 85-91). They are also involved in the regulation of continuing vocational education and training (CVET) measures, for example with respect to the contents and target groups of measures (Moraal and Schönfeld 2012: 334). However, there are limits to the works councils' activities. 'The works council is not entitled to conduct collective bargaining or call for strike action. It can only reach agreements that do not conflict with existing collective agreements' (Dribbusch and Birke 2012: 10). In areas where agreements are possible, works councils and employers may strike deals that are legally binding and cover all employees of the establishment.

Classification and current developments

From a comparative point of view, Germany's system of industrial relations 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). However, the individual economic (private) sectors may substantially differ from this assessment. Another analysis quoted by the European Commission refers to the 'Social Partnership system' as 'Political system'. 'Similar to the Social Partnership system, the Political system is characterized by rather high levels of collective [word missing, probably "bargaining"; FB] as well as an intermediate organisational density (especially of trade unions)' (European Commission 2013: 47; the EU refers to Bechter *et al.* 2011, 2012).

10. See Dribbusch and Birke 2012: 11 for information on enterprise codetermination.

The German system of industrial relations is subject to ongoing change. 'Today, German employment relations look very different from the system depicted in academic accounts up to the early 1990s. [...] they are more European than they used to be (for better or worse), they are more decentralized and they have lost some of their power to provide social equity. [...] Although German levels of income inequality have recently matched British levels, and there are growing sections of the German economy where key institutions such as multi-employer collective bargaining hardly exist at all, there is still a stable core of institutions within the system' (Behrens 2013: 222). Behrens notes that current developments would support hypotheses of re-embedding and of the disorganisation of employment relations. Among the three developments identified by Behrens – decentralization, Europeanization, growing inequality –, the trend towards decentralization seems to be of special importance for an analysis of OW. 'Observations of decentralization mostly refer to the area of collective bargaining where it is assumed that powers to determine wages, hours and working conditions by establishment-level actors such as works councils, workers and management, have been increased at the expense of industry-level actors such as unions and employers' associations' (Behrens 2013: 215). Opening clauses in collective agreements but also the declining employer density and an increase in OT-memberships (i.e. the membership of an employer in an employers' association that is not connected to taking part in the system of collective bargaining) are responsible for the declining coverage of sector-level collective agreements. However, according to comparative data, bargaining centralisation remained fairly stable over time: from 3.0 in the late 90s (1997-1999) to 2.67 in 2007-2009 to 3.0 in 2010. This is above the (weighted) average with respect to both the EU-27 (1.85) and the EU-15 (1.89) (European Commission 2013: 26).

Summing up, the German system of industrial relations may be described as a multi-level system with gaps or blank areas. While the state provides a framework consisting of minimum regulations in some areas and general labour market and social policies, social partners interact on sector, company and establishment levels. The employers are either represented by employers' associations or act independently from other employers. The employees are represented through trade unions and/or works councils. Since membership of associations is voluntary and the establishment of works councils is not mandatory there is a possibility that companies do not belong to or dispose of any system of regulated bargaining. The developments summarised above point to a decentralization of collective bargaining. But company-level bargaining also depends on the existence of bargaining partners. Table 6 summarizes key facts and figures.

Table 5: The German system of industrial relations: overview

Union density (per cent)	2000: 24.6	2007: 19.9	2013: 17.7
Employer density (per cent of employees)	2002: 63.0	2008: 60.0	2013: 58.0
Collective bargaining coverage: employees (per cent, both sector- -level and company-level agreements)	2000 70 (West) 55 (East)	2007 63 (West) 54 (East)	2013 60 (West) 47 (East)
Collective bargaining coverage: establishments (per cent, both sector- -level and company-level agreements)	-	-	2013 32 (West) 19 (East)
Total number of collective agreements (2014)	70,000 (30,000 industry-wide/sector-level – 40,000 company level)		
Dominant bargaining level	Sector- and company-level bargaining		
Type of representation at the enterprise level (works councils, or other reforms)	Works councils Works councils exist in 9% of establishments with more than five employees; 42 of employees are represented by works councils (2013)		
Main trade union organisations	German Confederation of Trade Unions (DGB): eight affiliated unions with about 6 million members; biggest affiliates: IG Metall and ver.di (service sector union)		

Sources: Sources are indicated in the text above.

2. Germany's occupational welfare

2.1 General overview

While occupational welfare (OW) has a long tradition in Germany, it plays a rather limited role in current public discourse compared to public welfare provision. Nevertheless, there are some sub-fields of OW that have received limited and sometimes even repeated public attention during recent years:

- As an 'evergreen', initial vocational training and the (perceived) lack of employers' enthusiasm in providing traineeships regularly features in media and political debates. Continuing vocational education and training measures and respective collective agreements are also – albeit probably less often – mentioned in the context of European or national political initiatives connected to life-long learning and the shift towards a knowledge society (cf. Bahn Müller and Hoppe 2011: 319-320). These measures played, however, a role in the metal industry's last bargaining round in 2015.
- That OW can play an eminently political role was proved by past struggles: sickness pay legislation followed the rules laid down in collective agreements in the 1950s and 1960s, and attempts to cut public benefits in the 1990s were countered by collective agreements until legislation was re-established (Bispinck 2012: 202-205).
- The link of OW to welfare state development is obvious with respect to the current regulation of occupational pensions. While occupational pensions have been provided at the employer's decision and expense for a long time, the 2001 pension reform included new rules on occupational pensions in order to establish these as a way to compensate individuals for cuts in the statutory pension scheme (see below for more details). Current political debates focus on an increase of coverage of occupational pensions and the role social partners should play in pension provision. Also this year's collective bargaining rounds in the public sector proved that occupational pensions are now a matter of collective bargaining that is taken seriously by both sides.
- Also, reconciliation policies are regularly a topic of media and political debate, not least with respect to gender equality or the general impression of a lack of skilled workers (*Fachkräftemangel*).

In addition to public debates, scholarly analyses have dealt with various topics related to OW in recent years. These analyses are often connected to wider debates about reforms of the welfare state (cf. Bispinck 2012, Fehmel 2012, 2013). Still there are few data sources that provide hints as to the quantitative significance of OW in general, both from a national and a comparative perspective. As shown above, benefits provided (but not necessarily financed) by employers make

up 9.2 cent of the German social budget. This also includes mandatory benefits. In recent years, there has been an increase of this category ⁽¹¹⁾. Statistical data and empirical knowledge about OW differs from field to field, even though there is some information available. Differences are not least due to the current relevance of the different topics and the quantity of regulations.

Table 6: Social expenditures as per cent of GDP – Germany and OECD

<i>Year</i>		<i>1990</i>	<i>2000</i>	<i>2007</i>	<i>2011</i>	<i>dif. 2011-1990</i>	<i>% dif. 1990-2010</i>
Source	Branch						
Public	Old age	6.6	8.6	8.5	8.6	2	30.3
	Survivors	2.9	2.6	2.1	2	-0.9	-31.0
	Incapacity related	1.9	2.2	1.9	2	0.1	5.2
	Health	6.1	7.6	7.5	8	1.9	31.1
	Family	1.8	2.1	1.9	2.2	0.4	22.2
	Active labour market programmes	0.9	1.2	0.8	0.8	-0.1	-11.1
	Unemployment	0.8	1.3	1.4	1.2	0.4	50.0
	Housing	0.2	0.3	0.7	0.6	0.4	200.0
	Other social policy areas	0.1	0.2	0.1	0.2	0.1	100.0
	Total	21.4	26.2	24.8	25.5	4.1	19.2
	OECD average	19.2	20.6	21.3	na	-	-
Mandatory private	Incapacity related	1.5	1.3	1.1	1.2	-0.3	-20.0
	Family	0.1	0.1	0.1	0.1	0.0	0.0
	Total	1.6	1.3	1.1	1.2	-0.4	-25.0
	OECD average	na	na	na	na	-	-
Voluntary private	Old age	0.6	0.7	0.7	0.8	0.2	33.3
	Incapacity related	0.1	0.1	0.1	0.1	0	0
	Health	0.6	0.9	1	1.1	0.5	83.3
	Other social policy areas	0.2	0.1	0.1	0	-0.2	-100
	Total	1.5	1.7	1.8	2	0.5	33,3
	OECD average	Na	na	na	na		

Source: OECD-SOCX.

11. BMAS 2015: TI-2.

Looking more into the qualitative details of OW and its relation to collective bargaining, it can be shown in the following that in Germany the history and current practice of VOW differ from issue to issue. This is not least caused by differences between statutory policies in each field, which make an active role of social partners more or less necessary. However, one has to keep in mind that the regulation of OW may not be necessarily high on the social partners' policy agenda, compared to other issues such as wages, working conditions and protection of jobs. While the rather hands-on topic of sick leave pay was 'dealt' with by means of industrial action, Klenner *et al.* (2013: 39) come to a rather sober assessment as to the social partners' efforts in the field of reconciliation of work and private life.

Social partners at both sectoral and establishment level strike deals about the provision of welfare to employees. An analysis of different fields of OW shows the different kinds of interplay of legislation and OW, as well as the connections between different levels of OW: regulations set 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, if there are important reasons to do so. As could be shown in the project ProWelfare I, agreements on OW are linked to these statutory rights in different ways:

- by expanding them (as can be shown with respect to parental leave and with respect to supplements to statutory sick leave benefits);
- by dealing with the consequences of legislation (as in some agreements that regulate the relationship between employees and companies before, during or after parental leave);
- by providing a blueprint for legislation (as shown by the history of sickness benefits in the 1950s and 1960s);
- by compensating for cuts in legislation (as shown by the history of sickness benefits in the 1990s and the regulation of occupational pensions and early retirement in recent years);
- or by regulating issues neglected by legislation (as in the field of CVET).

This variety of interactions cannot be reduced to a simple model, where welfare state retrenchment is compensated for by social partners (OW as a substitute for public welfare). This latter kind of development is part of the history of sick leave benefits, occupational pensions and early retirement, but it also has to be acknowledged that the (re)introduction of legislation on sick leave benefits followed political pressure from the trade unions. As Fehmel (2012: 157) notes: '[...] in the inter-war period, but first of all in the period of expansion of the democratic welfare state

from the end of WW II until the 1980s, trade unions' achievements in the field of qualitative collective regulations [*qualitative Tarifpolitik*] were reflected in corresponding welfare state regulations'. In the other policy fields, however, the state has played a minor role for most of the time (CVET), or the development or even establishment of a policy field took place in parallel to statutory policies and the activities of social partners (reconciliation of work and family). In order to account for these different developments, it may be worth considering not only general social trends (such as the growing labour market participation of women) and different stages of welfare state development, but also keeping in mind that the policies discussed above have rather different characteristics.

OW provided on the basis of agreements between the social partners or as a matter of goodwill or calculation of the employer may compensate for cuts in welfare programmes or even act as a kind of agenda-setter for social policy making. But it should be kept in mind 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. Earlier analyses – as carried out in the context of the ProWelfare I project – indicate that the provision of OW often differs by company size and sector. Also, given the current state of the system of industrial relations, 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 to this rule are often employees not belonging to the core of a company's employees, i.e. workers with fixed-term contracts or employees new to a company. Since some 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. Also employees of a temporary work agency may be disadvantaged, since the collective agreement for the core workers of a company does not apply to them. On the other hand, special regulation for disadvantaged groups exists (positive discrimination); however, past analyses suggest that this may not be widespread.

Also, it should be noted that fields of OW may not only differ with respect to the statutory policies that provide the background to and the general rules governing OW, but also with respect to the social partners' objectives, relations and interventions. Sickness benefits – the most important OW topic in the field of health care – were regulated in collective agreements and eventually legislation against the wishes of employers by means of industrial action. The employers' opposition was due to the perception of 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 qualified employees), thus there may be a win-win situation for dealing with this issue. 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 the companies' and employees' actual behaviour. Employers may provide additional benefits as they wish (without a formal agreement), they may try to ignore collective agreements, and employees may not use their rights for various reasons. This makes it hard to assess the impact of agreements. So the 'story' of OW in Germany as sketched out and analysed by prior research shows a variety of links between OW and statutory welfare. It also illustrates the dangers of OW as a replacement of public policy, especially if equal access to benefits is seen as desirable. But the German 'story' may be somewhat particular, in that Germany is (still) in a favourable economic position in comparison to other states.

3. A more in-depth description of occupational welfare in the field of pensions and unemployment

3.1 Occupational welfare in the pension field

As noted above, occupational pensions were assigned a new task in 2001⁽¹²⁾. Before, they were an instrument of human resource management in the first place (Kaufmann 2003: 283). As a consequence, the terms and conditions of protection for employees (inclusion of specific groups of employees, amount of payments by employers, 'technical' details) were decided for each single company alone within a broader public regulatory framework. After 2001, they became part of social policy, i.e. a substitute for the reduced benefits of the statutory pension insurance (cf. Berner 2008). As a consequence, the current system of occupational pensions is rather complex: there are five ways of organizing occupational pensions within a company or by resorting to institutions of pension provision (see below); occupational pensions may be financed by employers, employees, or both; and they may be regulated by collective agreements on the sector level, on the company level or by neither of them. In order to understand the new role of occupational pensions, it may be helpful to contrast somewhat stylized 'traditional' and 'new' occupational pensions: 'Traditional' occupational pension schemes were (mostly) financed by the employer and served his/her HR objectives or paternalist concerns. They were not a matter of social policy in a strict sense, albeit provided with a regulatory framework and also in many cases not a matter of collective bargaining. 'New' schemes 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 occupational pension scheme financed by the employee. New legislation – including tax breaks – and collective agreements were introduced with social policy objectives in mind (compensation for cuts in the statutory pension

12. Early retirement policies are located between pension policies and unemployment prevention and protection policies. They are discussed briefly in the next chapter.

insurance). If employees use these 'new' schemes without their employer contributing to this scheme, one can argue that these schemes resemble private pension schemes that are organized by the employer.

This general description of occupational pensions as a differentiated system was also reflected in the interviews ⁽¹³⁾. A representative of the metal workers' union IG Metall describes the new role further:

'The assessment that occupational pensions now have an original socio-political role, can partly be agreed with from the viewpoint of IG Metall (metal workers' union). It is a very heterogeneous landscape, where occupational pensions are sometimes paid "as an extra", but sometimes almost have a replacement function for public benefits. It is not really clear what their social policy function is: expansion of benefits or actual replacement. An expansion of public benefits can be found in establishments that are very well-organized with respect to collective agreements, which have thus basically older models of occupational pensions. These are, for example, our large establishments in the automotive industry. For employees who have occupational pensions there, these are rather "an extra" and not necessarily a partial replacement to protect their standard of living.'

- representative of IG Metall

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 public sector employees and institutions are taken into account, where employees are covered by mandatory systems: at the end of 2013, 59.5% of public and private sector employees subject to social insurance 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. Focussing on employee-financed occupational pension schemes alone (earnings conversion), less than a quarter of employees use this kind of voluntary old age provision (Blank 2014a). There are significant differences between economic sectors or single companies with respect to coverage of employees with occupational pension schemes and with respect to the use of earnings conversion (cf. Figure 3).

13. All quotes from interviews are translated by the author.

This heterogeneity is of concern to a representative of IG Metall:

'What is needed is a further development of occupational pensions – as a supplement, not as a substitute for public pensions. Also, in that case, higher coverage is needed, especially because of the heterogeneity of the landscape, to provide more justice. When we look at our branches, we see that occupational pension schemes can be found more often in large establishments than in small and medium establishments, that men benefit more than women, that they can be found in the West but are largely unknown in the East.'

'The reasons for different coverage in Eastern and Western Germany cannot be explained by historical reasons alone, but such reasons do play a role. There were no occupational pension schemes in the East in the past, there was no system on which to build. And since reunification there have only been a few phases during which social partners (*Tarifvertragsparteien*) were so strong that they could introduce this.'

- representative of IG Metall

While the view that differences exist is shared by interviewees, the opinion that differences should be diminished or even abolished is questioned by another representative of the social partners:

'Reducing differences with respect to occupational pensions is not important, in my honest opinion, because these differences typically – here I concentrate on the level of sector-level collective agreements [Tarifverträge] – developed not without a reason. Each benefit is always a compensation for something, even if it is the compensation, a response to a demand. Thus one has to act on the assumption that everything has been paid for somehow.'

- Peter Achten, representative of employers' organization, retail sector

Heterogeneity with respect to OW benefits is built on fundamental differences between sectors:

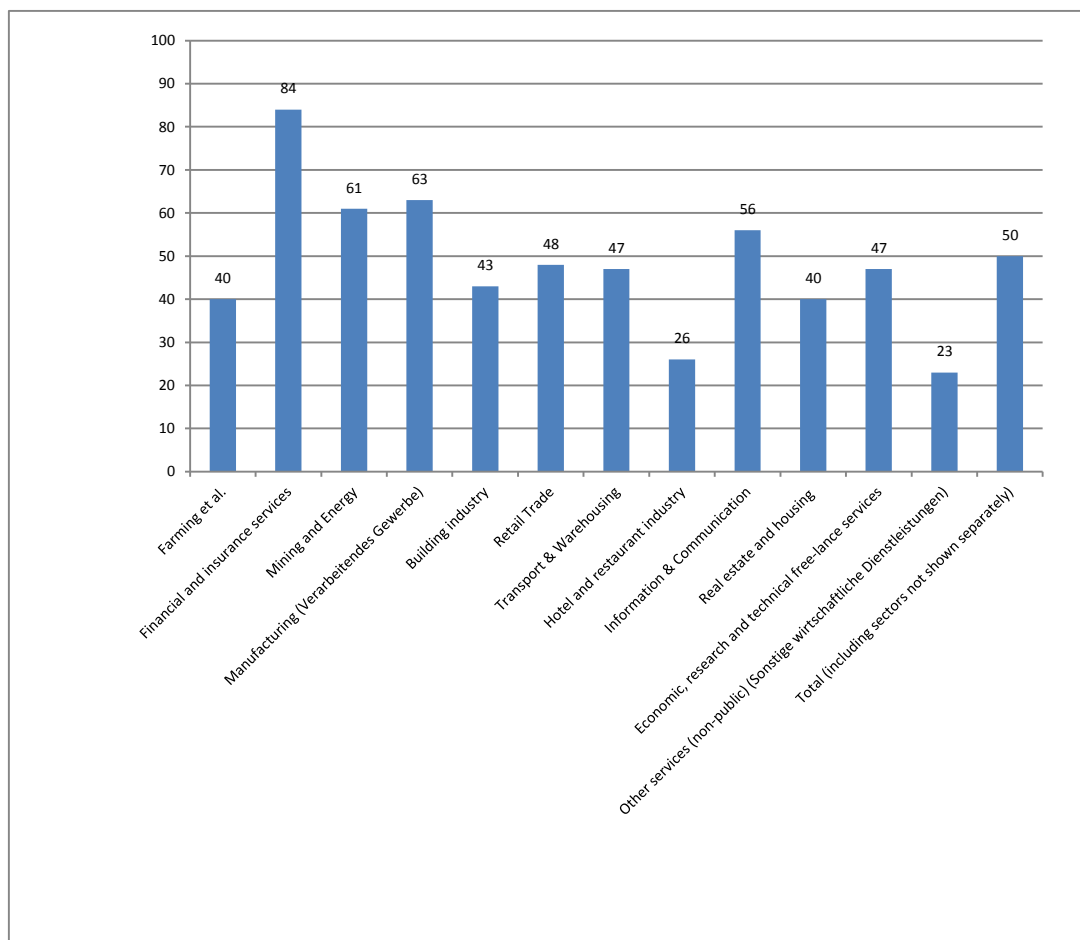
'Let us compare the retail sector and the insurance business: people leave school, get three years of vocational training and work in the profession they are trained for. And one group receives 2,400 Euro and the other group 3,400 Euro [monthly wages; FB]. Where does discrimination start and where does it end?'

- representative of ver.di, retail sector

'Differences between establishments result from different factors. Bigger companies are able to afford a different HR policy, because they are more flexible due to the higher level of employment. The number of trade union members is a very big factor. In larger companies we are normally stronger, the works councils and the trade union representatives in the companies (*Vertrauenskörper*) are better organized. That means that we are significantly stronger and are able to accomplish more.'

- Carsten Schuld, representative of IG Metall

Figure 3: Percentage of employees subject to social insurance in the private sector with occupational pension schemes, December 2011 in selected branches; survey among employers, Germany; the selected branches represent 80% of all employees subject to social insurance in the private sector, including Telekom and Postbank (former part public postal services)



Source: TNS 2012a: 40.

Not surprisingly, the 2001 reform also caused a shift in financing occupational pensions. Schemes financed by employers and employees together or by employees alone are relatively more common today than prior to the reform. Thus, the traditional character of occupational pensions – the employer grants the employees a pension because of paternalist concerns or as a consequence of his human resource management objectives – has changed towards occupational pensions being a vehicle for individual saving activities⁽¹⁴⁾. This is viewed critically by one representative of the social partners:

14. For a review of recent studies and data on occupational pensions see Blank 2013.

'The problem with occupational pension schemes is, among others, that they are increasingly funded by employees, we have a funding problem'.

- representative of IG Metall

The Federal Statistical Office states that in 2012 companies paid 3,385 Euro p.a. for each employee with an occupational pension scheme (only companies with ten and more employees; Federal Statistical Office 2015: 382) ⁽¹⁵⁾. However, the amounts differ according to economic branches and companies of different sizes (the higher the number of employees of a company, the higher the amount spent on occupational pensions per employee). Also there are notable differences between Western and Eastern *Länder*. Also, the amounts paid are not directly connected to later benefits. The current period with low interest rates means that some companies need to invest more money times with higher interest rates to strengthen their reserves and to guarantee the promises given.

The contributions to occupational pension schemes paid by employees themselves (earnings conversion) is 1,081 Euro p.a. for every employee using earnings conversion according to the Federal Statistical Office (2015: 382; only companies with ten and more employees). Again, there are huge differences between branches and regions. The absolute amount saved by employees, however, goes down the more employees a companies has – this latter result, however, can be questioned on the basis of other sources (Destatis 2012: 25). The amount saved by employees as reported by Destatis (2015: 382) is roughly the same as that given by TNS Infratest (2012: 57; 109 Euro per month) and Destatis (2012: 1,350 Euro p.a.). The different 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 include not least men and women (men are more likely to use this kind of scheme and save higher amounts but a lower part of their income; cf. Blank 2014a for a summary of the results of recent surveys; for differences between employers' contributions based on collective agreements see below).

These differences are partly the result of different work contracts or working conditions.

15. According to the same source 54.2 per cent of all employees have an occupational pension scheme, and 58.7 per cent of employees of companies with such schemes.

'There is the question: What do I get from an occupational pension scheme if I work ten hours per week. The answer is certainly: if I work ten hours, if I provide only a quarter of my working capacity, then this will never lead, neither with respect to my income, nor with respect to social security, nor with respect to pensions, to an adequate level as is the case with full-time work. But this is still better than nothing at all.'

- Peter Achten representative of employers' organization, retail sector

'Everyone working part-time needs to be clear on the difficulties of obtaining a sufficient pension.'

- representative of ver.di, retail sector

'In the lower income groups many persons cannot afford private old-age provision or do not want to afford it. They need the monthly wage for their daily life (Lebensführung). For these persons possibilities need to be created in the environment of the establishment, so something is done for their private pension provision. In order to reach wide-spread implementation and acceptance, this should not burden the employers too much.'

- Carsten Schuld, representative of IG Metall

The 2001 reform led to an increase in the use of occupational pensions in the years after the reform. Not surprisingly, the assets of occupational pension schemes increased also. The aba (German Association for Occupational Pensions, *Arbeitsgemeinschaft für betriebliche Altersversorgung*) states that in 2013, the assets of occupational pension schemes amounted to 538.5 billion Euro (plus 206.5 billion Euro compared to 2000; aba 2015). This is about 19% of that year's GDP of 2,821 billion Euro. The OECD states that the assets of German occupational pension funds amounted to 6.1% of GDP in 2013 (237 billion Euro; OECD 2015). However, the OECD's statistics do not cover the whole field of German occupational pensions (only Pensionskassen and Pensionsfonds, i. e. two of five ways to organize occupational pensions).

It has to be noted that the German system of occupational pensions is quite complex with respect to the various ways of actually administering the schemes ⁽¹⁶⁾. It is still possible to keep the money within a company and to promise to pay future pensions from the company's future turnover (so-called *Direktzusage*, direct pension commitment). In addition, there are four ways to administer occupational pensions 'outside' the company, including the possibility that an employer simply concludes a contract with an insurance company to cover his employees ⁽¹⁷⁾. Apart from

16. See Ebbinghaus *et al.* (2011: 130-132) for further information.

17. These four ways are: Direktversicherung (direct insurances), Pensionskasse (superannuation funds), Unterstützungskasse (support funds) and Pensionsfonds (pension funds).

schemes run by the employer (with or without financial services providers being involved), some schemes are instituted on an industry-wide level and run or supervised by representatives of the social partners, such as the MetallRente of the metal and electrical industries or the SOKA Bau of the construction industry.

The use of occupational pensions as both a company-wide tool of HR management and an individual savings vehicle is supported by tax-breaks or exemption of the converted earnings from social insurance contributions (cf. BMAS 2016). The specific rules depend on the way of administering the scheme. For promises to provide occupational pensions made since 01 January 2005 the following rules apply: employers' contributions are exempt from taxes and social insurance contributions if the occupational pension scheme is realized through a *Direktusage* or a *Unterstützungskasse*; employees' contributions to these schemes are fully exempt from taxes and exempt from social insurance 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: employers' contributions are exempt from social insurance contributions up to a limit of 2,976 Euro p.a. and exempt from taxes up to a limit of 4,776 Euro p.a. To employees' contributions the same limits apply, if the limits are not reached by the employer's contributions alone (i.e., the limits apply to the combined contributions, but the employers' contributions are taken into account first). Both the tax exemption and the treatment with respect to social insurance contributions are subject to ongoing political debate (cf. with respect to the problem of the interplay of occupational pensions and social insurances Blank 2014a). Occupational pensions are taxed if the retiree is subject to income tax. In addition, pensions are subject to full social insurance contributions (and not half, as are pensions from the statutory pension insurance; i. e. pensioners pay both the employer's and the employee's share).

A rather specific feature is that the German system does not have 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.

In the wake of the 2001 reform, employer associations and trade unions agreed on various collective agreements that specify rules relating to earnings conversion. The regulations for single sectors or even companies are quite different (Huke 2011, Blank 2014a). 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 founded or reoriented existing institutions to administer occupation pensions ('Versorgungswerke'), sometimes in cooperation with the finance industry. It should be noted that many collective agreements include benefits from earlier agreements on capital-forming payments.

While the old employer-finances systems were, except for some cases, company-based systems, now sector-wide collective agreements often regulate earnings conversion and employers' subsidies (cf. Blank 2014a: 137) ⁽¹⁸⁾. These agreements may include rules on possibility and amount of earnings conversion as well as preconditions such as a period of employment with an employer; share of earnings to be converted; employers' subsidies, which are often conditional on the employee's own saving efforts; the institutions that administer the pension schemes, such as joint ventures of employers' associations and trade unions; and risks covered.

Also, additional rules may exist on the company level that specify the sector-level rules or create pension schemes independently of the collective rules. Finally, companies where the collective agreements do not apply may still have pension schemes ⁽¹⁹⁾.

The governance of occupational pensions 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 the management of the firm and in case of co-determination with equal representation of employees, 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 in 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) ⁽²⁰⁾.

18. There are, however, instances of older collective agreements that regulate, for a whole sector, pension schemes that are mainly employer-financed: in the public sector, collective agreements (TVöD, TV-L) determine that nearly everyone employed in the sector is covered by occupational pension schemes (Zusatzversorgung des öffentlichen Dienstes). These schemes are partly funded, partly organized as pay-as-you-go schemes.

In the construction business, some collective agreements have been made binding for all companies in the sector in Western Germany (Allgemeinverbindlicherklärung, i.e. the government declares an agreement binding for all companies even if companies are not members of the employers' associations of the sector), This includes the collective agreement on pension support (Rentenbeihilfe), administered by an institution run by the social partners (SOKA Bau). This pension scheme is meant to compensate for low pensions caused by the specific conditions of work in the construction sector (such as bad weather periods). A new pension scheme (already agreed on in collective agreements) will be binding for the whole of Germany (Tarifrente Bau). In contrast to the earlier scheme, the new scheme will be fully funded. There exist additional agreements on the conditions of earnings conversion. These are, however, not declared to be applied generally.

19. For an overview of details of company-level agreements see Laßmann/Röhrich 2010.

20. See Ebbinghaus *et al.* 2011: 139-140 for supervision and security mechanisms.

This current system of governance is criticized by a Trade union representative:

'From the point of view of IG Metall, the possibilities of co-determination with respect to matters of occupational pensions are strongly underdeveloped. In consideration of the fact that many of the occupational pension schemes work with strong funding by employees, the possibilities of co-determination are too small. Our demands point in the direction of co-determination regarding the choice of the way of organizing the scheme (Durchführungsweg) and the provider, and the installation of an occupational pensions committee (bAV-Ausschuss).'

- representative of IG Metall

Analyses of the distribution, conditions and usage of both 'traditional' schemes of occupational pensions and 'new' earnings conversion schemes show that the landscape of occupational welfare in the field of pensions is quite differentiated (cf. Blank 2015). Differences may be found between:

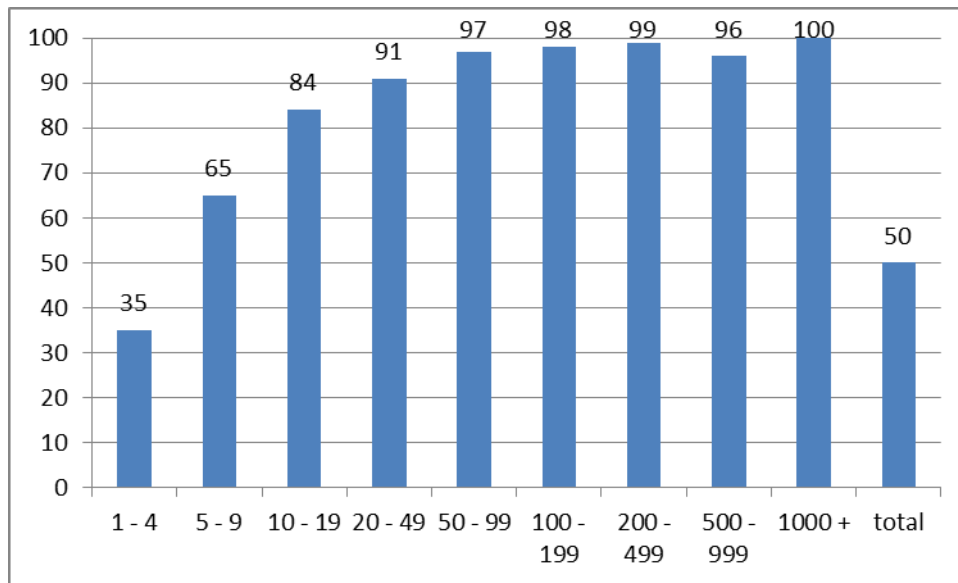
- economic sectors (cf. Figure 3); the public sector has the highest usage of occupational pensions due to collective agreements that apply to every employee in the sector. In the private economy, banking and financial services shows the highest usage. While coverage in the public sector is close to 100%, in the private sector it is 50%.
- companies of different size. Occupational pensions are more widespread in bigger companies and among employees in bigger companies (cf. Figures 4 and 5).
- companies bound/not bound by collective agreements. Companies bound by collective agreements are more likely to provide occupational pensions (cf. Figure 6).
- collective agreements. Earnings conversion is often regulated by collective agreements. The respective agreements, however, lay down different rules, e.g. with respect to subsidies of the employers (Huke 2011, Blank 2014a). For example, commercial cleaners receive employer's subsidies that equal the social insurance contributions saved by the employer. By contrast employees in the retail sector in North Rhine-Westphalia receive a subsidy of 300 Euro p. a. and additionally a subsidy of 10% of the money they convert.
- 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 (cf. Table 7).

These differences relate not only to coverage of employees, but also to the rules of collective agreements and their application due to different coverage of employees by collective agreements. It should also be kept in mind, that these differences may be interlinked:

'In small and medium-sized enterprises occupational pension schemes rarely exist. These are typically the areas where incomes are worse. I do not reach those who need it.'

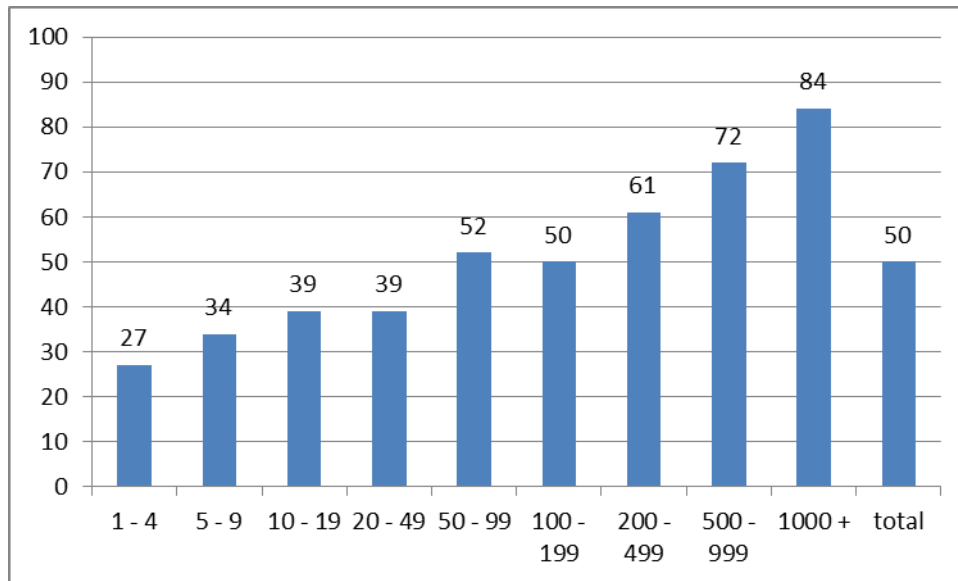
- representative IG Metall

Figure 4: Percentage of private-sector companies with occupational pensions schemes, December 2011 according to company size (number of employees); survey among employers; Germany



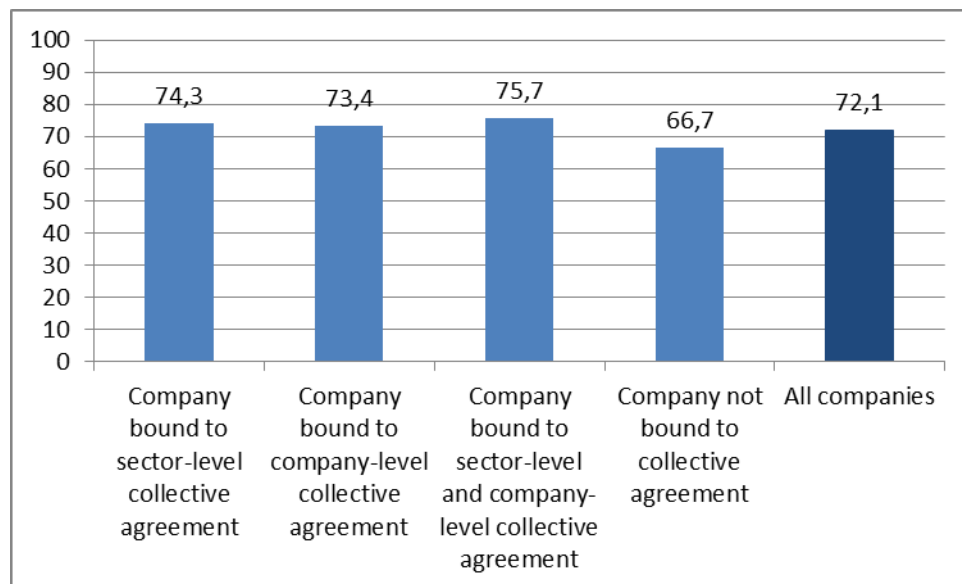
Source: TNS 2012a: 30.

Figure 5: Percentage of employees subject to social insurance in the private sector with occupational pension schemes, December 2011 according to company size; survey among employers; Germany;



Source: TNS 2012a: 33.

Figure 6: Percentage of companies with occupational pension schemes among companies with a works council; survey of works councils; Germany.



Source: Blank and Wiecek 2012: 8.

Table 7: Additional data on occupational pensions

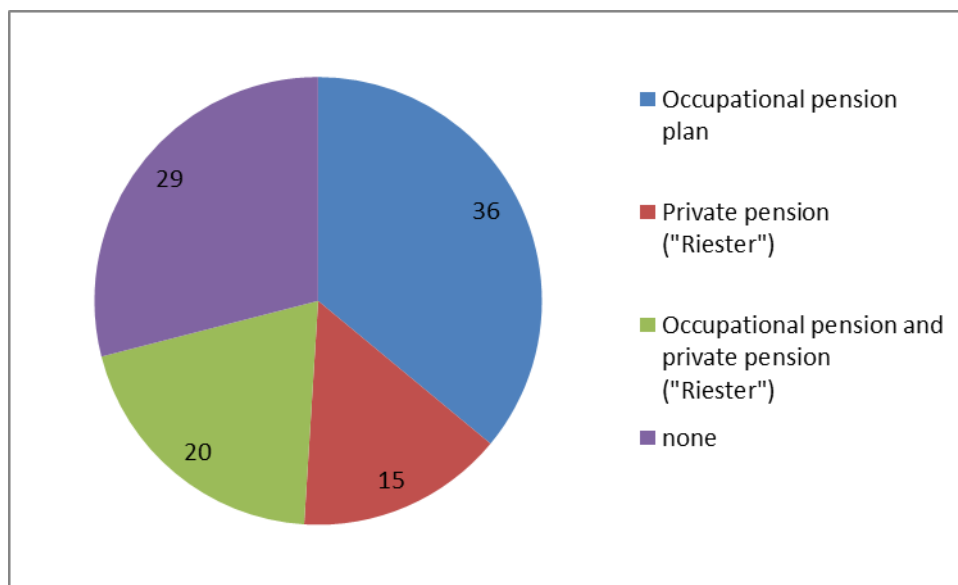
Companies with an occupational pension scheme			
West	East (incl. Berlin)	Total	
51	45	50	2011; Source: TNS Infratest 2012a: 20, only private sector
Employees covered by an occupational pension scheme			
West	East (incl. Berlin)	Total	
54	37	50	2011; Source: TNS Infratest 2012a: 22, only private sector
Men	Women	Total	
51	46	50	2011; Source: TNS Infratest 2012a: 25, only private sector
Men	Women	Total	
59.2	59.8	59.5	2011; Source: TNS Infratest 2012a: 13, private <i>and</i> public sector
Employees using earnings conversion			
industry and market-oriented services	not market-oriented services	Total	
23.4	9.3	19.8	2008; survey of employers; only companies with 10 or more employees; Statistisches Bundesamt 2011
Men	Women		
23.6	20.2	2.2	2010; survey of private sector employers; only companies with 10 or more employees; only employees 15-64 years old subject to pension insurance contributions, not apprentices; Statistisches Bundesamt 2012
Men	Women		
25	21	23.1	2010; only companies with a works council; only companies with 20 or more employees; Blank/Wiecek 2012: 24,

Source: compilation by the author.

The re-orientation of the system of occupational pensions towards social policy purposes was part of a wider pension reform that also included the introduction of public support (subsidies or tax breaks for the use of specific, certified private pension schemes (so-called 'Riester' pensions). The years after the reform of 2001 witnessed a growing use of these schemes, followed by a phase of relative stagnation (since 2011). The available data show that 'Riester'-schemes are not used by all

persons eligible for public subsidies (about 16 mio Riester contracts; about 40 mio persons eligible; one person can own more than one contract). In addition, the use of fostered pension schemes is more widespread among persons with higher incomes (cf. Blank 2011b). A survey among employees subject to social insurance reveals that some of them are protected by both occupational and private schemes, while others have no supplementary pension scheme at all (cf. Figure 7).

Figure 7: Use of occupational pension schemes and 'Riester' pension schemes; per cent; employees subject to social insurance 25-65 years old



Source: TNS Infratest 2012b: 37.

The current system of old-age pension provision has been subject to severe criticism in recent years. The criticism has centered not least on the 'Riester'-schemes which are seen as inefficient and ineffective by many observers. As a consequence, the question of which pillars should be responsible for future pension provision is now a major topic of debate. While some stress the advantages of a reformed, public social insurance system, other focus more on increasing the spread of occupational pensions. The current government presented a proposal on how to enable social partners to find new ways of promoting occupational pensions in late 2014. This proposal was, however, rejected by trade unions and employers' associations (albeit for different reasons). It is, at the time of writing, not clear in which direction this policy process will develop.

3.1.1 Occupational pensions in the automotive industry and in the retail sector

The rules of the two sectors under scrutiny in this project can be summarized as follows. It is noteworthy that these agreements are binding only for employers who are members of the respective employers' associations; hence they do not cover all employees in the sectors.

Agreement on Earnings Conversion and Agreement on Benefits for Old-Age Protection (Tarifvertrag zur Entgeltumwandlung and Tarifvertrag über altersvorsorgewirksame Leistungen), Metal and Electrical Industry (including automotive), Germany.

The benefits from the collective agreement on old-age protection replace earlier capital-forming payments: 319.08 Euro for full-time employees (apprentices 159.48 Euro). The employees may use this amount for different kinds of old-age savings. Among these is 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 the employer. The pension schemes have to include old-age pensions, widow's pensions and invalidity benefits, but it is possible to drop the two latter aspects.

The Federal statistical office notes that in the automotive industry and car parts sector (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 pensions schemes (*Anwartschaften*, above average). Total contributions paid per employee covered by a occupational pension scheme amounted to 5,185 Euro p.a. (²¹), and those employees who themselves contributed to an occupational pension scheme paid 1,168 Euro p.a. (both below average) (Destatis 2015: 383; all numbers refer to 2012).

A representative of IG Metall comments on the provision of OW generally:

With respect to protection there are big differences between branches. In companies in the metal and electrical industry and in the steel industry we were able, fortunately, to improve protection. The fact that Mercedes, Porsche and VW feature (collectively-agreed) rules for an establishment-level 'even-better-position' is something we are happy about for our colleagues there."

- Carsten Schuld, representative of IG Metall

21. See above for the difficulty interpreting employers' efforts in times of low interest rates.

Collective Agreement on Collective Old-Age Provision (Tarifvertrag über tarifliche Altersvorsorge), Retail sector North-Rhine Westphalia (the same rules apply to the sector in Brandenburg).

The employer has to make an annual payment to be used for the purpose of old-age pensions of 300.00 Euro for full-time employees (150.00 Euro for apprentices). Employees have to individually apply to receive this amount, the employer has to inform them about it. The pension schemes have to include old-age pensions, widow's pensions and invalidity benefits, but it is possible to drop the two latter aspects. If employees choose to additionally invest their own money (earnings conversion), the employer tops up their savings 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 pensions schemes (*Anwartschaften*, below average). Total contributions paid per employee covered by an occupational pension scheme amounted to 847 Euro p.a., those employees who themselves contributed to an occupational pension scheme paid 944 Euro p.a. (both below average) (Destatis 2015: 383; all numbers refer to 2012).

A trade union representative points to the special conditions in the retail sector:

'The retail sector is a precarious sector. Looking at the risk of old-age poverty, this sector shows that there is need for action. The retail sector is a women's sector, there is much part-time work – the majority of employees work part-time. The women employed often bear a big share of family-related work and often have interruptions (of their employment career; FB) due to times of child-rearing. This leads to problems with pensions and the risk of old-age poverty. After a long career in full-time employment (bei langer Vollzeitbeschäftigung), with a wage according to the collective agreement, it does not look good either: a person who has worked in the retail sector for 50 years, full-time and subject to a collective agreement, receives a net pension of below 1,000 Euro. That is, considering the virtually optimal preconditions, an alarming result.'

- representative of ver.di, retail sector

This representative also discusses the rules in collective agreements and the interplay of occupational and statutory benefits:

'We have a good collective agreement on occupational pensions in the retail sector, compared to other sectors, too. This agreement grants employees 300 Euro p. a. in addition to their wages. But we see the problem that with respect to occupational pensions there may be clashes with the system of basic security in old-age (Grundsicherung im Alter). Also, the collective agreement does not take effect immediately, but the benefits must be applied for. That was the wish of the employers. In addition, in the retail sector there are many providers and possibilities to invest, there is no preferred provider. This contributes to a feeling of insecurity. Hence the take-up is low. But this does not hold for all companies bound by a collective agreement. Where works councils are active and understand how important it is, take-up is above 80 percent. But in establishments, where nobody cares, it is 10 to 20 percent. Establishment-level regulations exist in few cases only. I cannot prove it empirically, but I am sure that in the retail sector nobody can afford to give up or invest part of their wages, even if there are tax breaks connected to it.'

- representative ver.di, retail sector

3.2 Occupational welfare in the unemployment protection field

As noted above, there are some instances of social partner involvement in unemployment protection. In addition to the involvement of social partners in the self-management of statutory unemployment insurance, there are some programmes that may qualify as occupational welfare, especially instruments to prevent unemployment: They are regulated by either collective or company-level-agreements. In some cases they are directly linked to statutory programmes. Regulations to protect employment 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 reduction of working hours [*Arbeitszeit(verkürzungs)politik*], public policies concentrate on financial compensation in case of actual unemployment' (Bispinck 2012: 205). The link between unemployment prevention and regulation of working hours is made by a representative of IG Metall, too:

'And, ultimately, protection of employment (Beschäftigungssicherung) is an aspect of the debate on working hours, too.'

- Carsten Schuld, representative of IG Metall

The protection of employment can be reached by different means, directly or indirectly.

- Short-time work schemes aim at a temporary reduction of working hours. Short-time work cannot be introduced on the basis of a decision by the employer alone. Rather, there have to be agreements with works councils or individual employees. Statutory rules and collective agreements include regulations that compensate for employees' losses of income related to short-time work.
- In case of structural changes to companies there may be attempts to find ways to prevent losses of jobs or accompany job losses by redundancy payments (*Interessenausgleiche* and *Sozialpläne*). It is, however, difficult to qualify these mechanisms as occupational welfare since they do not aim at the provision of benefits during employment (or in case of unemployment) but on the prevention of job losses. These are not benefits that follow from employment but regulations that focus on the (upholding of the) employment contract or compensate for dismissal. It should be noted, however, that the *Interessenausgleiche*, agreements that seek to reconcile employers' and employees' interests, are to be paid for by employees (often by lowered wages).
- *Bündnisse für Arbeit*, employment pacts are another instrument to bolster economic crises. These pacts are built on the promise not to cut jobs and concessions with respect to working hours and/or wage reductions. They may be based on clauses in collective agreements that allow for deviations. As with *Interessenausgleiche* and *Sozialpläne* it is hard to qualify this instrument as occupational welfare, since the benefits are the jobs themselves.
- Working hours and time accounts may be used as a means to prevent unemployment also: instead of working short-time or getting laid-off, employees may use the time saved. However, these schemes were initially not intended to act as a means to protect employment but rather as a tool to achieve more internal flexibility or as an instrument of reconciliation policies. Flexible working hours are based on numerous collective agreements (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 the usual weekly working time). These reductions may apply to a whole company, parts of it or specific groups of employees. Flexibility is 'paid' for by rules on 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). Other mechanisms include time accounts that may be used to increase flexibility and hence as a means to protect employees in some cases.
- Finally, early retirement schemes may serve as an instrument of labour market policies, to prevent lay-offs and unemployment among older employees. In Germany, these schemes were used from the 1970s to reduce labour supply (Fehmel 2012: 160). Public 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 regulation and instruments as the main regulation, i.e. they have replaced statutory rules (cf. Fröhler 2015). On the basis of an empirical analysis using the 2010 WSI survey of works councils, Fröhler (2015: 104) now speaks of a 'strongly diversified establishment-level landscape of transition [from work to retirement] and a considerable band-width of different transition options and conditions of usage.' The topic of early retirement is mentioned by a trade union representative, too:

'We have changed and significantly expanded the possibilities of when to use early retirement. As a consequence, employees are able to decide with respect to their personal plans for their lives (Lebensplanung), when they take which type of pension and early retirement. This may give employers more flexibility concerning their HR management. It can help for example to enable younger persons to enter into working life and is thus an effect that is not unwanted.'

- Carsten Schuld, representative of IG Metall

Another trade union representative points to the general problem of identifying OW measures in the field of unemployment prevention and protection and distinguishing them from the regulation of wages, working hours and working conditions:

'The term occupational welfare [tarifliche und betriebliche Sozialleistungen] is difficult to apply to the field of labour market policy. If anything, it can probably be used for short-time work. But this is difficult, too, if we realize that short-time work is substantially financed with money from the insured persons [through unemployment insurance; FB], namely with reserves from the Federal Labour Agency, through measures exempting employers from social insurance contributions. The prolongation of short-time work benefits is a measure that is accompanied by collective agreements and implemented in establishments, but is paid for by the community of insured persons [Versichertengemeinschaft]. In that sense it is essentially a public social benefit.

We have collective agreements that protect employment [Beschäftigungssicherungstarifverträge]. But these do not aim at providing employees, in case of unemployment, with some kind of collectively agreed unemployment benefits. Rather they aim at prevention, i.e. they include regulations that make it possible for persons not to be dismissed but to stay in employment during times of crisis.'

- representative of IG Metall

Another aspect of collective agreements on protection of employees is pointed out by another IG Metall representative:

'Company-level collective agreements dedicated to preventing reduction of employment, which contain a financial contribution from employees through the waiving of wages [Entgeltverzicht] often burden lower income groups less. For us this is not always easy to communicate, for we also want to decently represent the interests of higher income groups among our members. This is a balancing act. For social institutions built on collective agreements, such regulations are less common.'

- Carsten Schuld, representative of IG Metall

The general problem of how to identify OW in the field of unemployment protection left aside, 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: 24-28), protection of employment became the top priority in the metal and electrical industries during the crisis of 2009, which hit export-oriented industry especially hard. He distinguishes between different phases, in which instruments at public, collective and company level were used to make sure that declines in orders and production were not followed by decreases in employment. While, during a first phase, time accounts, company holidays, and reduction of temp agency work took place and collective bargaining led to wage increases (with a possibility to delay these increases in single companies), later on the use of short-time work increased. IG Metall (the metal workers union) supported a move of the government to facilitate the use of short-time work (max duration of short-time increased to 24 months and exemption of employers from social insurance contributions). During the second phase the automotive industry was affected strongly (decrease of production). A third of employees in the metal and electrical industry were affected. As a reaction, in addition to the use of time accounts and short-time work, the collective agreement 'Tarifvertrag Beschäftigungssicherung' was concluded. Finally, a new collective agreement was concluded ('Zukunft in Arbeit – Zukunft in Bildung') as a reaction to the ongoing crisis. It served the interests of employers who wanted to keep a skilled workforce, but also included a wage increase. This agreement was directly linked to statutory rules (regulation of wages during short-time work or working time reduction). However, only a few cases applied the new regulations. This specific agreement was valid till June 30th, 2012. The specific developments in the field of short-time work will be treated in the following section.

3.2.1 Short-time work schemes

Short-time work schemes played an important role in reducing the negative labour market effects of the economic crisis of 2008/2009. Companies used this instrument – among others – as part of a strategy of labour hoarding and a means of internal flexibility (cf. Möller 2010: 335), even though internal and external flexibility (i.e. lay-offs) were realized in some cases side-by-side with short-time work (Bogedan *et al.* 2009: 5). During the crisis, the statutory rules on short-time work benefits were expanded and programmes established to enable employees access to CVET schemes during short-time work periods (financed by the European social fund, among others) (Bogedan 2010: 314).

The introduction of short-time work (i.e. reduction of working hours and wages) as a means 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 public benefit (*Kurzarbeitergeld*) that compensates for part of the income reduction. While the general regulation on the introduction of short-time work may not be labelled as occupational welfare in a strict sense (these are statutory welfare programmes providing public benefits), additional collective regulations are so if they top up statutory benefits. In a comparative analysis of the regulation of short-time-work 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 rights of works councils, the priority of other rules on working times, the time-frames 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 Tarifarchiv 2010). Sectoral level collective agreements may refer to the role of works councils. Not least, state benefits may be supplemented 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) ⁽²²⁾.

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

22. A specific set of rules applies in the construction sector. For decades, public benefits compensated construction workers in bad weather periods. After the government decided in 1995 to abolish these benefits, social partners agreed to provide benefits themselves. This however, was not as effective as the former public scheme. New collective agreements on flexible working hours were made in 1997 and combined with public benefits (that were subject to reform in 2006).

addition to the capacities to deal with the bureaucratic effort connected to the application 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). It has to be noted that companies from the industrial sector were hit by the crisis harder than service-sector companies and resorted more often to means of unemployment protection than the latter (Bogedan *et al.* 2009: 8-9); this holds true for the automotive industries and retail also.

During the economic crisis of 2009 and its aftermath, collective agreements aimed at linking public social policy and collective bargaining policies. These agreements adapted short-time work for a limited time to the problems of severe economic troubles (such as the agreement 'Zukunft in Arbeit' for the metal and electrical industries in North-Rhine Westphalia, concluded February 2010) (cf. Glassner 2010: 483). The link between the social partners' activities and social policies was fostered by governmental action that made the use of short-term work cheaper for employers (by reducing social insurance contributions). As well as the specific collective agreements, these governmental regulations were terminated after the crisis; the major impulse for regulation was the external shock of the crisis.

3.2.2 OW in the field of unemployment protection in the automotive industry and in the retail sector

Companies from the industrial sector were hit by the crisis harder than service-sector companies. The former resorted more often to means of unemployment protection than the latter (Bogedan *et al.* 2009: 8-9). This holds true for the automotive industries and retail also. While during the crisis 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: 9 point especially to industry-oriented branches of the service sector). As a consequence, 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 employees subject to social insurance), while in the retail sector 1,897 companies used short-time work schemes with 7,658 employees, in December 2010 (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).

The link between short-time work, its regulation through collective agreements and the economic crisis is made by a representative of IG Metall, who also points to policies dealing with problems in a stable economic situation.

'The years of the financial crisis 2008-2010 were particularly hard years for the metal and electrical industries in North Rhine-Westphalia. In this period we did everything with our collective bargaining policies to prevent job losses. During recent years we had most of all to look for solutions at establishment level, to prevent job losses in single companies. The Pforzheim agreement provides the preconditions to do so, but this is not a task for sector-level collective bargaining policies.'

- Carsten Schuld, representative of IG Metall

The Pforzheim agreement of 2004 mentioned in the quote allows for temporary deviations from the collective agreements in companies where such a deviation is needed to protect or create jobs. The agreement is now part of the collective agreement on the protection of employment. The situation in the retail sector is rather different from the developments in the metal and electrical industries:

'In retail, short-term work is not a topic. It occurred (only) in particular cases'

- Peter Achten, representative of employers' organization, retail sector

This view is shared by a trade union representative from the retail sector, who also provides an explanation of why, from his point of view, this is the case:

'Short-time work benefits are used rarely in the retail sector. This is because the flexibility which is often demanded by employers presumably already exists. We have working hours that are significantly lower than the opening hours [of shops; FB]. The negative increase in flexibility has reached an unbelievable degree. It comes with many precarious versions of employment. We have part-time work, more than 50 percent, we have hourly wage earners who have a contract of a few hours per month and work when called. We have all the part-time contracts one can imagine, from 10 percent up to 90 percent of the working time fixed in a collective agreement. Employers offer work contracts below 100 percent, below full-time, because this way they can bypass certain regulations, concerning, e. g. overtime. We have all variants of temporary work and contracts for services, sham contracts for services, too [Leiharbeit, Werkverträge, Scheinwerkverträge]. We have marginal employment [Minijobs], also with persons having more than one contract. Thus it is easier for employers to regulate the volume of work. They create precarious conditions to meet their claims to flexibility. And as a consequence, some questions of labour market policy do not apply to this sector.'

- representative of ver.di, retail sector

This has consequences for collective bargaining, in the view of the trade union:

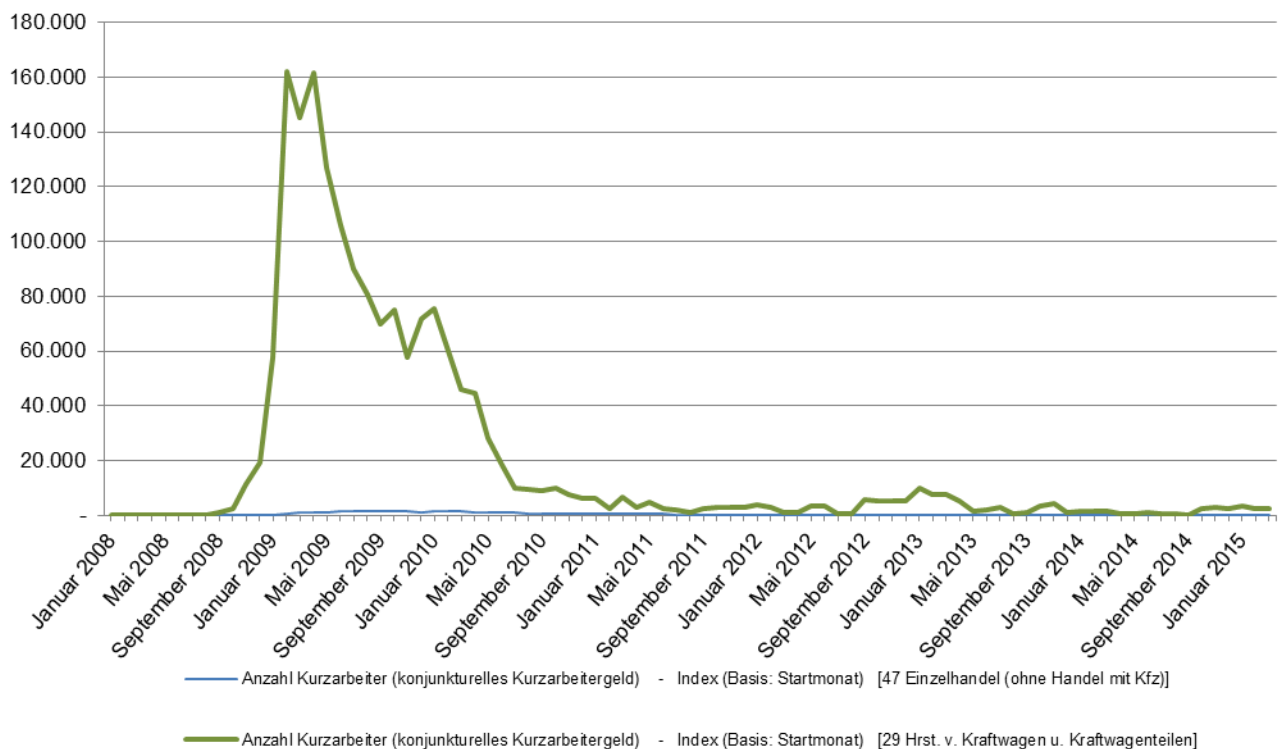
'In collective bargaining policies, first of all we have to regulate work again.'

- representative of ver.di, retail sector

The differing use of short-time work in the metal and electrical industry and the retail sector can be illustrated by statistics from the Federal Labour Agency (Fig 8):

Figure 8: Persons working short-time (short-time benefits/konjunkturelles Kurzarbeitergeld), Production of automobiles and parts for automobiles (green line) and retail (without automobiles) (blue line)

January 2008 – March 2015, Data: September 2015



Source: Statistik der Bundesagentur für Arbeit (2015).

The collective agreements in the two sectors reflect the needs and possibilities for dealing with the subject. The regulations described below are the currently valid agreements. They contain the specific responses of the metal and electrical industry to the crisis.

Manteltarifvertrag (framework collective agreement) of the metal and electrical industry Northern Württemberg/Northern Baden.

This agreement states that options for applying existing time accounts have to be used before the collective agreement on protection of employment and short-time work is applied.

Collective agreement on protection of employment and short-time work for the metal and electrical industry Baden-Württemberg.

This agreement regulates subsidies to wages during short-time work: employers must compensate employees so that net incomes remain at 97-86.5% 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 95.5-80.5%; these lower subsidies are connected to job guarantees, the company level agreement has to be binding for at least 12 months.

Also, short-time work may be prolonged beyond the statutory rules if lay-offs can be prevented this way. In such a situation, the rules in the collective agreements regulate the calculation of wages, but there are no more subsidies on the basis of a collective agreement.

A representative of IG Metall comments on the agreement applicable during the crisis;

'The collective agreement "Future in Work" [Zukunft in Arbeit] includes public benefits such as short-time work benefits in order to facilitate the introduction of short-time work by establishment-level actors. Following short-time work it was possible to reduce working-time together with reductions of wages.'

- Carsten Schuld, representative of the IG Metall

The regulations found in the retail sector mirror the overall significance of short-time work in this sector; they are included in the framework collective agreement:

Manteltarifvertrag (framework collective agreement) retail North-Rhine Westphalia This agreement 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 (²³).

23. This regulation is somewhat weaker, regarding the role of the works council ('consultation'), than the legislation on this issue, so legislation overrules this collective agreement (Bispinck/WSI-Tarifarchiv 2010b: V).

4. Analytical insights

4.1 *Social (fiscal) and occupational welfare*

The policy areas under scrutiny in this report show links and interactions between different levels of welfare provision. Generally speaking, occupational pensions were assigned a new role in 2001. This is due to an open retrenchment of state pension insurance – occupational welfare is now a social policy tool which helps to compensate for cuts in the public system. The new landscape of occupational pensions still shows many features of the older tradition of occupational pensions, which followed a rationale of human resource management. So while before 2001 occupational welfare was a supplement to public social policy, it became a substitute (cf. Fehmel 2012: 156). With respect to unemployment benefits – or rather instruments to prevent unemployment – statutory, sector-level and company-level regulations exist side by side, the latter adding to the general public regulations. Occupational welfare in this field is in the first place a supplement to public policies, especially if short-time work subsidies are the topic of debate. There are, however, instances where social partners may agree on rules not directed at the provision of benefits, but on the arrangement of working hours or wages in a way that contributes to the prevention of job losses. In this case, collective agreements may go beyond statutory rules (for example, prolongation of a period of short-time work). However, it seems to be difficult to classify these regulations as occupational welfare. This is because these regulations focus first and foremost on the essential parts of the employment contract (working hours, wage; upholding of the employment contract); they are not designed to provide additional benefits.

Social, fiscal and occupational welfare are interrelated – or even integrated – in both policy areas. Already before 2001, occupational pensions were regulated by statutory rules that were meant to guarantee that employers (are able to) keep the promises made to employees during the latter's work career. Also, tax law and rules on social insurance contributions are intended to encourage the use of occupational pensions (up to a certain limit) by both employers and employees. The social partners are involved in three ways: at company level, the employers have considerable leeway to provide benefits to 'their' employees. Also at company-level, works councils may be involved to some degree in designing and managing an occupational pension scheme. Finally, sector-level collective agreements may regulate occupational pensions in various ways, namely providing the framework for earnings conversion. It should be noted that by introducing an individual right to earnings conversion, occupational pensions now also display elements of private pensions (Bernier 2008). Finally, there is one instance (construction industry) where a collective agreement is declared binding by the state for all companies in this sector, at the request of the social partners.

The noted slow-down of the spread of occupational pensions seems to point to saturation in the given circumstances. For the time being, there is scientific and political debate as to which tools to employ to further increase the use of occupational pension schemes (such as making the system less complex, unburdening employers from risks, convincing employees, making the provision of occupational pensions mandatory, making employers' subsidies mandatory etc). The crisis of 2009/2010 does not seem to have affected occupational pensions directly; rather, the low-interest phase poses problems to companies at the moment. The current debate includes arguments that link occupational welfare provision and state fiscal policies. This includes both questions concerning accounting during the current low-interest phase as well as the adequate level of tax-breaks.

With respect to how to increase the spread of occupational pensions, opinions of the social partner representatives differ considerably. This is also true for the relationship between occupational and public pensions:

'I see the raising of awareness as the lever to achieve higher coverage of occupational pensions [Akte der Bewusstseinsbildung]. We do not need obligations, since then it is ultimately only a tax [Abgabe]. We have to ask the question: How can we organize something like this efficiently?'

'The framework conditions for occupational pensions are basically right. There is a need for additions and changes, and this is where the legislator could help us. But the basic problem is: how can I move from a short-term, ad-hoc way of thinking to a medium-term oriented mindset, also in collective bargaining rounds?'

- Peter Achten, representative of employers' organization, retail sector

'Occupational pensions are the second-best solution compared to statutory pension insurance. Compared to the third, private pension provision, it is clearly the better variant, because it offers institutional structures, stands in the tradition of partial funding by employers and provides more security. Against this background I am clearly in favour of an expansion of occupational pensions. But for this the necessary legal framework is needed, guaranteeing a broad impact [Flächenwirkung]. What politicians envisage, to strengthen the social partners [Tarifparteien] with respect to expansion, is not a solution to the aspect of the coverage of sector-level collective agreements. And this is something the social partners cannot do relying only on their own strength. Something that we call a legal employer's obligation [gesetzliches Arbeitgeberobligatorium] would be needed, obliging the employer to offer an occupational pension scheme and partly fund it. There would have to be some protection of contributions in the worst case scenario. The answer to the question of how to evaluate occupational pensions depends substantially on their design.'

'I would estimate that fiscal incentives and the possibility of reducing non-wage labour costs for employers exist but are not too strong. Looking at the employees, the situation varies. It depends heavily on income.'

Since these schemes are funded by tax-breaks and exemptions from social-insurance contributions, there is the problem for low-wage earners that, for them, it is currently partially not fiscally attractive at all. You would have to think more about subsidies for low-wage-earners.'

- representative of IG Metall

The different interactions between state and collective bargaining as well as the various topics of collective bargaining and its limitations are discussed by another trade union representative:

'Occupational pensions have not been at the centre of IG Metall's efforts in collective bargaining in recent years. IG Metall focused on the dispute about 'Rente mit 67' (i.e. the decision to rise the pensionable age to 67 years). On this topic, we always stated that this was the worst decision in the field of social policy in recent decades. We did not succeed in reversing the introduction of the 'Rente mit 67', but making it possible to leave work without pension deductions after 45 contribution years is a first, important success for IG Metall. In 2015 we concentrated on adding, to this deduction-free exit into retirement, collective agreements on a flexible transition into retirement.'

'In our collective bargaining, qualitative issues always play an important role. We do not only want material improvements for our members, but we deal with many other topics such as the exit from work, training and working time. The needs of employees and members are at the centre. That is why we gladly take on this task. But we cannot regulate everything at collective bargaining-level. The state has to face up to its responsibility. The social security systems organized by the state have to provide sufficient protection for people, including old-age protection. The collective bargaining partners can create additional instruments to guarantee a standard of living in old-age. For this, they can also use a share of the wage-increases that result from an increase in productivity. This is difficult with respect to unemployment. There I see problems. How should we oblige an establishment to care for those who are no longer bound by a work contract? This is conceivable theoretically, but if jobs have to be cut because the company is in financial troubles then there is a lack of money to care for those who the company had to dismiss. Here the state is required.'

- Carsten Schuld, representative of IG Metall

Her also points to the advantages of collective agreements compared to state solutions:

'Solutions reached by collective bargaining (tarifvertragliche Lösungen) may help the people concerned, they may put less burdens on companies, and they are in addition more flexible than the state. Together with the establishment-level actors, the works councils, we can create systems that allow for exceptions. This is a possibility the state does not possess.'

- Carsten Schuld, representative of IG Metall

State rules may also create an impediment to the use of OW. This is true not least for sectors with many low-income earners who fear that OW benefits lead to reductions of state benefits:

'An extension of collective agreements [on occupational pensions; FB] could make sense and members might possibly be interested if this would pay off and would not be deducted from the basic income security [Grundsicherung]. Under the given circumstances it does not pay for us to direct energy to occupational pensions.'

- representative of ver.di, retail sector

This trade union representative also questions the use of improvements to the legal framework of OW given the economic situation in the retail sector:

'In the retail sector the "labour costs" factor is always important. Competition is tough and takes place on the back of employees. At the moment, we have competition between cheap companies and companies bound by collective agreements; this pulls the whole sector downwards. Companies bound by collective agreement are more likely to bow to this pressure. It is getting more and more difficult to protect the level of benefits [tariflichen Leistungen] in collective bargaining. That is why I am sceptical as to whether we would be well-advised to look for collective agreements on social protection. I do not know if, against this background, better technical general conditions for establishment-level or sector-level occupational welfare are necessary.'

- representative of ver.di, retail sector

In the case of unemployment protection, short-time work and its regulation also involve intense interaction between the actors and levels of regulation. Short-time work cannot be introduced by the employer without the consent of a works council (or, if a works council does not exist without consent of the employees affected). If the company fits certain criteria, the reduced wages of employees are topped up by public benefits (*Kurzarbeitergeld*). This in turn may be supplemented by benefits resulting from collective agreements. The general rules on the introduction of short-time work may be fleshed out in collective agreements. During the economic crisis, statutory rules on short-time work were temporarily expanded and the use of short-time work made 'cheaper' for employers by reducing social insurance contributions, especially, short-time work was used for the training of employees. Hence the costs of the crisis were distributed between state, employers and employees (Bach and Spitznagel 2009) and the use of this toll made more attractive by government incentives. Bogedan (2012: 127) notes that in the past, short-time work was used especially in phases when the state provided a generous framework, since regulation of short-time work benefits means that employers continue to bear considerable costs. Also, during the crisis social partners in the metal and electrical industry made specific agreements.

4.2 Occupational welfare and industrial relations

Social partners are engaged in the fields of pension provision and unemployment for different reasons. In the area of occupational pensions, the traditional approach of employers was to provide benefits to 'their' employees (and nobody else), to attract and keep a skilled and loyal workforce; in some cases to keep money in the company and invest it there; and to follow paternalist impulses. In the current system of pension provision, employees have an interest (or rather: they are supposed to have an interest) in using occupational pensions as a substitute for the reduced benefits of the statutory pension insurance; consequently, the share of occupational pensions financed by employees has increased. After 2001, collective agreements to regulate occupational pensions through earnings conversion rose and new institutions for pension provision were founded (the use of which is not mandatory for employers). Subsidies from employers to occupational pensions are part of many new collective agreements. It should be noted, however, that these subsidies are often older benefits (often converted capital-forming payments). Social partners have often focused on regulation of new kinds of occupational pensions, adaptation of older benefits and ways to administer the new benefits, but not always on the actual provision of a higher level of subsidies. In cases where benefits (employer subsidies) were raised, one should keep in mind that these increases were probably paid for by lower increases in wages (cf. Bispinck 2012). 'Similar to the way social benefits organized on the sector-level or establishment-level are not to supplement, but to partly replace statutory benefits, qualitative demands in collective bargaining rounds are as a rule not to be understood as supplementing quantitative demands but as partially replacing them. This is in any case the common understanding on the employers' side – and given the current power relations in the system of collective bargaining, it is mostly not difficult for them to force this interpretation upon workers. [...] The (big) trade unions are lacking power and the employers are lacking the will to reach real expansions of the distributive volume [in collective bargaining rounds] to satisfy *additional* social security needs. I call the emerging bargaining problem for trade unions and/or works councils the volume dilemma: a relatively fixed distributive volume has now to suffice to satisfy wishes for wage increases and needs for protection of employees' (Fehmel 2012: 167-168).

Fehmel (2012, 2013) also points to problems for unions resulting from their involvement in the organization and provision of OW; these arise from the difficulty to cater for the different needs of some of their members, which may affect solidarity among employees. For example, some members may prefer higher direct increases of wages, others may focus more on OW benefits.

The trade unions' general problem of how to satisfy both demands for higher wages and to deal with topics of OW is illustrated by a representative of IG Metall:

'If the economy is buzzing, the union members want to see that IG Metall makes sure that they get their share. Rises in wages are easier to communicate than improvements in OW benefits [tarifliche Sozialleistungen]. Here, elaborate regulations are often necessary, that are hard to understand. Surely employees with a good income have more money for private welfare provision, too. But in my opinion, the collective bargaining partners, in agreement with politicians and our members, are much better at creating a balanced system of private, statutory and occupational welfare provision. We have the organizational and legal competency to create institutions such as the MetallRente or social security funds [Sozialkassen]. We can at least influence the state's general conditions and discuss them with politicians. At the same time, flexibility and sovereignty in shaping their personal old-age provision are important to employees. But it is better and more reliable if the offers are made by social partners, rather than, for example, by private insurance schemes. Also occupational pensions will be an important argument of employers to attract and keep employees in the company.'

'Employers grant – wisely from their point of view – all employees the benefits we manage to secure. This means that these benefits are not directly seen as an achievement by the trade union. This in turn leads to union members not being that willing to fight for these topics. I can mobilize more people for a 0.2% increase of wages than for a more valuable increase in occupational pensions.'

- Carsten Schuld, representative of IG Metall

The problem of which problems to tackle in collective bargaining rounds is also stressed by a trade union representative from the retail sector:

'We, as a trade union, are protecting wage standards. We have a different priority than occupational welfare [tarifliche Sozialleistungen]. We have to protect people's income. Even discussions about working time took a back seat in recent years. We have not dealt with the issue of occupational pensions for some time, also because of the reasons mentioned, since some of this money is swallowed up and we had other goals'

- representative of ver.di, retail sector

Short-time work provides an example of how the costs of an economic crisis can be shared not only between state and social partners (see above), but also between employers and employees. While employees are interested in keeping their jobs, companies may use short-time work as a strategy of labour-hoarding. 'For companies, 'keeping' employees is more interesting, the more adapted their necessary qualifications are to the company's needs. Since companies have to bear part of the non-wage-labour costs for the time not worked, short-time work only pays off if the costs [*Remanenzkosten*] of short-time work are lower than losses in human capital and costs of hiring new employees after lay-offs' (Bogedan 2012: 129). She notes more generally on

instruments to enhance internal flexibility: 'The instruments of international flexibility are most often embedded in an exchange between employers and employees: the employees make concessions with respect to working hours and income, while employers agree to guarantees of jobs or location of companies in return. The employees gain for the agreed duration security of jobs and income, the employer reduces his labour costs and employment of labour. This trade-off is often fixed in company level *Bündnissen für Arbeit* (pacts for jobs)' (Bogedan 2012: 139) ⁽²⁴⁾.

The rationale of employers is described by a trade union representative:

'Employers wanted to keep employees whom they – depending on the duration of the crisis – would need shortly after again, because they are familiar with the job, because they are able to do the job. To employers, short-time work was financially attractive due to the many tax breaks and special regulations. The cost-benefits-ratio suited them. This was certainly connected to the situation of the whole society, to the objective of limiting certain social distortions resulting from mass unemployment. But the first point of access were self-interested cost-benefit-calculations that were attractive because of the special regulations. These were combined with internal flexibility measures which could be used, i.e working time accounts etc.'

- representative of IG Metall

The involvement of trade unions in the management of the crisis had consequences for them:

'During crisis management, in the context of short-time work, the role of trade unions grew stronger. In the interplay of short-time work, trade unions, establishments and the Federal Employment Agency, union importance and reputation increased. This increase in reputation was reciprocal. This was how it was between social partners for a certain time. Then they broadly agreed with respect to special regulations. This was called crisis corporatism.'

'The trade unions' activities during the crisis improved their image and reputation. Some say that this contributed to us not experiencing exorbitant losses of members during the crisis, which could have happened, and after the crisis above-average increases of members.'

- representative of IG Metall

24. In an analysis of a sample of employers and employees, Scholz (2012) does not find selective behaviour of employers with respect to the inclusion of employees in short-time work schemes (for example according to an employee's seniority or human capital).

This consequence is also reflected in the research literature: 'As a consequence of their [the trade unions'; FB] increase in importance for social security they can become more attractive for new members. They could also bind their OW benefits following from collective agreements more closely to membership status than before. In some trade unions – namely in those that have to cope with difficult problems of membership and strong competing unions – this is openly debated. Differing from the usual collective bargaining of wages, social benefits provided on the basis of collective agreements are discussed as a selective incentive, as an exclusive good restricted to members' (Fehmel 2013: 408). The effect of collective bargaining on trade union membership is important to another trade union representative:

'Gaining members is actually always the goal. Only if our collective bargaining (policy) is so good that we can gain members today, will we be able to deal with things very well again tomorrow.'

- Carsten Schuld, representative of IG Metall

Also, the regulation of OW has consequences for future bargaining rounds:

'Existing occupational benefits or occupational welfare institutions are appreciated. This has consequences for the employers. A cut in OW benefits leads to incomparably more indignation and loss of trust than the demand for longer working hours, even though the change to working hours does not only concern money, but the personal shaping of one's life. But the people take this seriously and identify with an employer who provides something like that incomparably more than with one who does not. The ties are closer and – so I suppose – the motivation. In establishments with co-determination that works there are rather more social benefits or OW institutions.'

- Carsten Schuld, representative of IG Metall

But the general approach of social partners to OW is described by this representative not as a conflictual one:

'With respect to occupational welfare based on collective agreements, we always have a bilateral approach or – together with political actors – a trilateral one. Trade unions and employers make joint demands to politicians. If there is unanimous agreement that an institution is necessary, we discuss passionately but in a debate geared towards finding a solution and sticking closely to the factual issues.'

- Carsten Schuld, representative of IG Metall

A representative of the employers in the retail sector, however, points to conflicts in collective bargaining rounds, especially concerning the need for deviations from collective agreements:

'If a restructuring of companies is necessary, unfortunately the reflex is often to start by turning away from the collective agreement. This is regrettable, and so collective agreements should be made to fit accurately the realities of life. I can imagine including opening clauses for specific topics, but as a person involved in collective bargaining [Tarifverhandler] I don't believe that this can be achieved at the level of sector-level collective agreements, even though I would like to have it so. But it is achieved at company level.'

- Peter Achten, representative of employers' organization, retail sector

He points to general problems with collective bargaining in the retail sector:

'We need a fundamentally different system, we need a different level of acceptance of our collective agreements, not only to prevent companies leaving collective agreements [Tarifflucht], but to be able to actively make acquisitions, to win over companies to join the collective agreements [... sondern aktiv Akquise in die Tarifverträge auch betreiben zu können]. With us in the retail sector, coverage of collective agreements has slipped far below 50% of employees. Once we were at 80, 90%. And we had generally binding collective agreements, and we stood behind them. As, increasingly, we did not manage to agree on reforms, the topic slipped out of our grasp.'

- Peter Achten, representative of employers' association, retail sector

As a consequence and to simplify somewhat, both fields are built on trade-offs, where either *or* both sides see an advantage in striking deals (even though for different reasons) or one side chooses between two ways to use a specific budget (wages vs occupational welfare). This may also include the neglect of OW issues if other topics – especially bargaining for wages – are seen as more important. It remains to be seen if OW can be (even potentially) a subject for industrial struggle or if it can only be dealt with between partners. It seems likely that unemployment cannot be prevented by industrial action, even though costs of and compensation for lay-offs may be a topic. Whether occupational pensions can be a recurring major topic of dispute (and not only a side aspect) is an open question. However, last year's as well as the current bargaining rounds in the German public sector, which include employers' demands to cut occupational pensions, prove that dealing with this issue is not a matter of technical details alone. This strengthens the observation made by Fehmel (2012: 157) that statutory social policies may facilitate collective bargaining by keeping conflict fields apart and reducing the extent of distributive conflicts.

4.3 The governance of occupational welfare

In line with what was described, under heading 4.1, as a multi-faceted situation with regard to important actors and regulation, the mode of governance of the field is hard to define.

In occupational pensions the state regulates the field through a legal framework that includes individual rights for employees. The whole system of occupational pensions – and especially the ‘privatized’ part of earnings conversion – competes with commercial private pension products. Within the field of occupational pensions, collective agreements provide a second legal framework (which is applicable only to companies bound by collective agreements). The actual provision of benefits may be realized by companies, financial sector institutions (such as insurance companies) or institutions founded and jointly managed by social partners (with or without the help of the financial services industry). As a result, commercial financial service providers have ‘discovered’ the market for occupational pensions. While collective agreements may name a provider of occupational pensions as a first choice, it is up to employers to decide where and how to run an occupational pension scheme. Hence one has to conclude that social partners play an important role in the governance of occupational pensions (and are supposed to do so by legislation); however, in companies without a works council, that are not bound by a collective agreement, provision of occupational welfare is a matter of employees individually using their right to earnings conversion and decisions by the employer.

Social partner governance may also include framing company-level policies:

'As an association [Verband] we decided – as did ver.di – to conduct a kind of certification of preferred providers of pension products to make it easier for companies to decide which to take. To enable them to say "this is the provider [Versorgungswerk] for the retail sector". For us the partner for cooperation is, as in the crafts sector, Signal Iduna, a big insurance company focused on small and medium-sized businesses. If we show ways of organizing occupational pensions and possibilities of benefits, than this helps the in HR practice.

- Peter Achten, representative of employers' association, retail sector

The rules on short-time work put works councils in an important position. Also, collective agreements may affect both the situation of employees and the employers' decision-making. As with occupational pensions, these assessments are only valid if there is a works council and companies are bound by collective agreements.

5. Conclusions

This overview of the fields of unemployment protection and occupational pensions leads to some insights:

In Germany, the provision of occupational welfare relies on the activities (independently or jointly) of single employers, single employees, works councils, social partners at sectoral level and the state (and sometimes commercial service providers). An overall assessment of the role of these parties depends not only on the policy area, but also on the state of industrial relations in a given company or economic sector at a given point of time. This is at least partly a consequence of employers' decisions to leave the system of collective agreements and also a consequence of a lack of works councils in many companies (for various reasons).

While the field of occupational pensions seems to fit a narrative that links the development of occupational welfare to welfare state retrenchment, other fields are not so close to this 'story'. Unemployment protection in the guise of short-time work is made possible only through a combined effort by the state and social partners. Following Bogedan's observation, state involvement (i. e. financial support) seems to be a powerful indicator to predict if companies use this instrument. Thus the state's and collective partners' reactions are triggered by an external shock, while in the field of pension provision the reform of state benefits is the impulse for collective bargaining.

As an analytical result, it is open to debate under which circumstances 'unemployment protection' can be classified as occupational welfare. Unemployment protection is either decoupled from the employment contract (unemployment benefits) or aims at the maintenance of an employment contract. In the latter case, it seems to be difficult to speak of 'occupational welfare' because it is not something that follows from employment, but centres on the regulation of employment itself. In other words: the concept of occupational welfare may reach its limits when it comes to the foundation of employment itself. The link between statutory benefits and collective agreements in the case of short-time work benefits seems to be a one-off example.

Finally, from a social policy point of view, the heterogeneity of OW provision and the constraints of collective bargaining – including the trade unions' needs to meet competing claims of their membership – lead to the question of how (and if) the provision of OW should be further developed through public incentives or framework regulations. The regulation and use of short-time work measures provides 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. In the case of occupational pensions, it remains to be seen if further development is possible without substantial state intervention. In both fields, ad-hoc reactions by the social partners to changed circumstances, as well as medium- to long-term reactions to a changed policy framework, are constrained by a system of industrial relations that cannot guarantee the inclusion of each and every employee.

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List of collective agreements analysed

- Collective Agreement on Collective Old-Age Provision (Tarifvertrag über tarifliche Altersvorsorge), Retail sector North-Rhine Westphalia (the same rules apply to the sector in Brandenburg)
- Agreement on Earnings Conversion and Agreement on Benefits for Old-Age Protection (Tarifvertrag zur Entgeltumwandlung and Tarifvertrag über altersvorsorgewirksame Leistungen), Metal and Electrical Industry (including automotive), Germany
- Manteltarifvertrag (framework collective agreement) of the metal and electrical industry Northern Württemberg/Northern Baden
- Collective agreement on protection of employment and short-time work for the metal and electrical industry Baden-Württemberg
- Manteltarifvertrag (framework collective agreement) retail North-Rhine Westphalia

List of interviews

- Carsten Schuld, representative of IG Metall (metalworkers' union) North Rhine Westphalia, (Bezirksleitung IG Metall, Bezirksjurist, Nordrhein-Westfalen)
- Representative of IG Metall (metalworkers' union) who wished to remain anonymous.
- Representative of service union ver.di, retail sector, who wished to remain anonymous.
- Dr. Peter Achten, representative of employers' organization, retail sector North Rhine Westphalia (Hauptgeschäftsführer Handelsverband Nordrhein-Westfalen e.V.)
- Two more Interviews were conducted but quotes were not authorized prior to completion of this report.