Labour market innovations and policy learning

National report - Germany

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Part One In-depth analysis of selected innovations (WP 4)

1. Introduction
The innovations discussed in this report belong to two innovation clusters as jointly defined in the preparation of WP4. With regard to ‘flexicurity’ and the adaptation of labour market regulation to economic and societal changes, we have studied the introduction of a statutory minimum wage (chapter 3) and the successive re-reregulation of temporary agency work (chapter 4). Within the innovation cluster named ‘older workers’, we will analyse long-standing attempts to reverse the erstwhile trend of retiring at ever earlier ages by, first, gradually phasing out several pathways into premature old age pensions and, second, raising the statutory retirement age (chapter 5). The second object of our analysis in this cluster is a federal labour market programme called ‘Perspective 50plus’ which rather successfully aimed at getting long-term unemployed older people back into work (chapter 6). Obviously, this latter innovation might also have been discussed within the ‘activation’ cluster.
Within the ‘flexicurity’ cluster, the two innovations we selected represent opposite policy options: The removal of restrictions for temporary agency work has contributed to the spread of atypical forms of employment, including growing wage dispersion in particular at the bottom end of the wage scale. Some of the measures taken have even had the effect of abetting low-paid jobs in temporary agency work by placing collective bargaining, even if conducted by bogus trade unions, above the then emerging European principle of equal pay for agency and permanent workers. The late and contested introduction of a statutory minimum wage may then be seen as a measure of ‘social repair’ and a reframing of the constitutional precedence for collective bargaining.
Within the ‘older workers’ cluster, the two innovations are complementary: Since restricting the access to old-age pensions does not automatically result in the extension of working lives but may also push people into unemployment or inactivity, it is important to promote employment of older workers.
### 2. Short description of the selected innovations

<table>
<thead>
<tr>
<th>Innovation</th>
<th>Goals</th>
<th>Target Groups</th>
<th>Scope</th>
<th>Type of policies</th>
<th>Type of strategies</th>
<th>Expected or estimated impact on resilience</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction of a general statutory minimum wage</td>
<td>The statutory minimum wage is aimed to protect workers against unreasonably low wages. Furthermore it should foster the diminishment of wage dumping in nat. and int. competition.</td>
<td>All employees</td>
<td>Structural innovation. Estimations regarding the number of intended beneficiaries varied between 5.2 million and 6.5 million in 2012 (Bosch and Weinkopf 2012). However, these numbers will be further reduced by exemptions from the minimum wage. Taking into account these exemptions, the number of beneficiaries is about 3.7 million.</td>
<td>Public</td>
<td>Encompassing security</td>
<td>Positive since workers are more protected from wage dumping in national competition.</td>
</tr>
<tr>
<td>The repeated de-regulation and re-regulation of temporary agency work</td>
<td>The main objective of the innovation was to generate additional employment—especially for those groups on the labour market who have difficulties to find regular employment. However, a second explicit goal was the equal treatment of core workers and temporary agency workers in the companies.</td>
<td>The rules apply to the whole working age population.</td>
<td>Especially after the last reform in 2003, temporary agency work has become a structural element to offer employment opportunities to people who have difficulties to find regular employment.</td>
<td>Public</td>
<td>Liberalisation; Dualisation</td>
<td>Negative since temporary agency workers usually are the first to leave during crises.</td>
</tr>
</tbody>
</table>
| The abolishment of early pensions                                           | The objectives of the innovation are:  
- phasing out nearly all pathways to early retirement  
- increase work incentives for older workers                                                                                              | Older employees aged between 60 and 64 (66) years.                                               | It is a nationwide structural innovation within the range of options for retirement. The political objective was to raise the employment participation of older people aged 55 to 64 years up to 50% and higher by increasing incentives for remaining in employment. | Public           | Regulation           | Positive. The employment rate of older people has risen significantly while unemployment remains low.                                                                                         |
<table>
<thead>
<tr>
<th>Raising statutory retirement age</th>
<th>The objectives of the innovation are:</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>- further extension of working life to cushion the outcomes of demographic ageing</td>
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<tr>
<td></td>
<td>- Increasing incentives for working longer as early retirement options are linked to standard retirement age.</td>
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<table>
<thead>
<tr>
<th>All employees</th>
<th>It is a nationwide structural innovation with the aim to extend working lives.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Public</th>
<th>Regulation</th>
<th>Positive. Due to the continuity regarding pension reforms, this innovation will further foster the employment participation of older people</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Perspective 50plus – a programme for older job seekers</th>
<th>The objectives of the programme are:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- helping older and mostly low-skilled jobseekers in to work</td>
</tr>
<tr>
<td></td>
<td>- testing a budgeting model based on agreed outcome targets and their monitoring</td>
</tr>
<tr>
<td></td>
<td>- developing a mode of governance for federal programmes in the field of minimum income benefits where two types of jobcentres with separate governance systems exist</td>
</tr>
<tr>
<td></td>
<td>- involve frontline staff from jobcentres and from external providers in competence-building on an equal footing</td>
</tr>
</tbody>
</table>

| Older jobseekers receiving minimum income benefits ('unemployment benefit II') | The programme is temporary but of rather long duration (10 years). The original budget is € 350 million per year. The annual participation has grown from around 70,000 in 2008 to currently more than 200,000, covering about one third of the potential target group. Perspective 50plus is a national programme but with local jobcentres free to decide whether they would participate or not. Coverage has grown from around 15% to currently more than 90% of existing jobcentres. |

<table>
<thead>
<tr>
<th>Governmental</th>
<th>Inclusion</th>
<th>Positive. Job take-up rate out of the programme was not reduced during crisis 2008ff. Programme has contributed to remarkable increases in employment rates of the older German population.</th>
</tr>
</thead>
</table>

3. The introduction of a general statutory minimum wage

3.1 Introduction

Until January 2015, Germany was among the minority of European countries without a general statutory minimum wage. Traditionally, Germany had relied on wage regulation through collective bargaining by the social partners whose capacity is anchored in the constitution and whose interactions and proceedings are framed in law. As long as collective bargaining coverage was high and mechanisms for *erga omnes*-extensions of bargaining results to minority outsiders still functioning, the absence of a legal minimum wage can be seen as an expression of the strength of a co-operative and co-ordinated social model. However, with the later weakening of collective bargaining coverage, rejection of minimum wage regulation became a neo-liberal project favouring unregulated and increasingly dispersed wages. Because of this ambiguity, trade unions had to go quite a long way to come out in favour of minimum wage setting by the state. Against the background of this legacy it may be understood why the new legislation frames minimum wage setting as a ‘strengthening of collective bargaining’ and in effect puts the top level umbrella organisations of the social partners in the position of determining future adjustments of the minimum wage.

3.2 Developments fostering the introduction of a statutory minimum wage

Although the introduction of a general statutory minimum wage in January 2015 is one of the most recent innovations in German labour market policy, the political debate concerning the introduction of minimum wages is more than ten years old. It started in 2002, initially driven by two trade unions ver.di (covering large parts of the German service sector) and NGG (covering hospitality), together covering a quite large range of low-pay-sectors like floristry, hairdressing, hospitality or security.

<table>
<thead>
<tr>
<th>Business Sector</th>
<th>East Germany</th>
<th>West Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agriculture (lowest wage group; unskilled workers)</td>
<td>7.60 €</td>
<td>8.50 €</td>
</tr>
<tr>
<td>Cleaning (lowest wage group; internal cleaning)</td>
<td>7.96 €</td>
<td>9.31 €</td>
</tr>
<tr>
<td>Floristry (lowest wage group)</td>
<td>5.27 € - 5.96 €</td>
<td>9.01 €</td>
</tr>
<tr>
<td>Hairdressing (lowest wage group)</td>
<td>7.50 €</td>
<td>8.32 €</td>
</tr>
<tr>
<td>Horticulture (lowest wage group)</td>
<td>7.70 €</td>
<td>11.26 €</td>
</tr>
<tr>
<td>Hospitality (lowest wage group; kitchen help)</td>
<td>7.70 €</td>
<td>8.97 €</td>
</tr>
<tr>
<td>Retail (lowest wage group; bakery/butcher shop)</td>
<td>8.04 €/5.53 €</td>
<td>8.04 €/6.97 €</td>
</tr>
</tbody>
</table>

Source: WSI-Tarifarchiv
The main reason for discussing the introduction of a statutory minimum wage was that the collective bargaining system was no longer able to prevent workers and employees from an ongoing downward wage flexibility resulting in a growing proportion of low wage earners as well as extremely low (standard) wages in some sectors of the German economy (see Figure 1 and Table 1).

Figure 1: Percentages of low-wage 1 earners in West Germany, East Germany and Germany as a whole

![Graph showing percentages of low-wage earners in West Germany, East Germany, and Germany as a whole over time.](image)

Source: Kalina and Weinkopf 2014

The growing proportion of low-wage earners is acknowledged to be related to the significant decline of bargaining coverage in both East and West Germany since the coverage level is the most essential precondition for the assertiveness of trade unions. Figure 2 indicates that the number of workers in companies that are bound by a regional collective agreement has steadily decreased since 1998 when data were first collected, without a substantial rise in the number of company agreements. The number of workers whose employment relationship is not covered by any collective agreement at all thus increased from 25% to 42% in Western Germany and from 40% to 55% in Eastern Germany, between 1998 and 2012 (top and bottom segments in Figure 2).  

At the same time, the proportion of workers in whose company a works council was elected has decreased, although legally it would have been possible for a works council to be elected.

---

1 Definition of low wages: Less than 60% of median hourly earnings for Germany as a whole; data source: German Socio-Economic Panel
2 These figures have recently been broadly corroborated by the Federal Statistical Office, which reported 41% of workers in companies without a collective agreement in Germany in 2010 (Federal Statistical Office 2013b).
in all the companies included here (with more than five employees). The proportion fell from 49% to 43% in western Germany and from 39% to 31% in eastern Germany (bottom three segments in Figure 2). The proportion of workers in companies without a works council and not covered by a collective agreement thus increased from 21% to 34% in western Germany and from 35% to 45% in eastern Germany (top segment in Figure 2). This is all the more problematic if one considers that Germany did not have a general statutory minimum wage until January 2015. Thus the rising share of low-paid work may be directly linked to the weakening of the collective bargaining system.

**Figure 2:** Collective agreements and existence of works councils in western and eastern Germany (as a percentage of workers covered in companies with five or more employees)

The paradigm shift from ‘active’ to ‘activating’ labour market policies in the course of the “Hartz-Reforms” has been a second driver of low wage work in Germany. Due to the strong influence by Giddens’ ‘Third Way’ thinking among the protagonists of activation in the Social Democratic and Green Party, the deliberations on the reform were strongly shaped by the belief that high levels of unemployment were attributable to rigidities of the labour market, to insufficient creation of unskilled service jobs because of wages at the lower end being too high, and to inactivity among the unemployed. Accordingly, a “making work pay”-strategy was considered as one of the most effective ways to increase effective labour market supply in particular for low-skilled workers (Kemmerling and Bruttel 2006). Furthermore push-factors following the “work first”-principle were established to increase the labour supply of unemployed people. In this regard, supplementary benefits for ‘working poor’ and the tightening of criteria for acceptable job offers are said to be the most important elements of the Hartz-reforms – at least with regard to their contribution to the rising proportion of low wage work in Germany.
(Kemmerling and Bruttel 2006). Again, the impact of the making-work-pay elements on the development of low wage work in Germany described above is particularly strong in the absence of a general statutory minimum wage. However, it must be noted that the main boost of low wages occurred before the reforms. While the alleged necessity of developing a ‘low-wage sector’ in Germany was still under heated debate, such a sector was actually already existent, and it started expanding without, at first, any institutional reforms that would have worked in favour of it. Considering hourly wages of all dependent employees (i.e. including part-time workers and very short part time, the so-called mini jobs), the turn came in 1998 and led from 15 per cent to about 21 per cent in 2006, with a slight decline since then (Kalina and Weinkopf 2014). Nonetheless there is evidence in the interviews conducted, that the Hartz-reforms have further fostered low-wage work in Germany. Moreover, it is worth noting that low-wage work is a rather widespread phenomenon, affecting unskilled as well as skilled workers, young, as well as old workers and women, as well as men. However, there is clear statistical evidence that migrants are more affected by low wages than other vulnerable groups focused on in the Inspires context. Thus migrants are likely to benefit much more from the introduction of a national minimum wage than other groups. In addition, there is some scientific evidence in Germany, that young people have an increased risk of receiving a low pay (Kalina and Weinkopf 2013, 2014). The same applies for temporary agency workers, who have particularly suffered from the “work first” elements of the reform (Interviews with experts from the German trade union congress as well as the Social Democratic Party in Germany).

3.3 The history of minimum wages by means of generally binding wage agreements in Germany

Although the introduction of a general statutory minimum wage is said to be one of the most striking social reforms in German history (Bosch and Weinkopf 2014), it is not the first and only regulatory instrument for ensuring minimum wage standards. Beyond the immediate coverage of collective agreements, there are four additional ways of wage regulation in Germany, of which only two will be described in detail in this section. The Collective Bargaining Act (Tarifvertragsgesetz) traditionally foresees a procedure for *erga omnes* rulings: Upon request by either of the collective bargaining parties and with the approval of the Tariff Committee comprised of equal numbers of union and employers’ umbrella organisation representatives, an existing collective agreement already binding employers who employ at least 50 per cent of the workforce concerned can be declared universally binding for the whole sector in question, if this is considered to be in the public interest. The use of the *erga omnes* clause has declined from 5.4 of the collective agreements in 1991 to 1.5 per cent in 2009 (Bispinck 2010), partly due to the resistance by employers’ umbrella organizations, often even against the declared intentions of the
sectoral employers’ associations directly concerned. In order to circumvent the obstruction of employers’ umbrella organizations, the legislator has introduced *erga omnes* mechanisms of various sorts into other laws, like the Posting of Workers Act, the Minimum Working Conditions Act and the Temporary Work Agency Act.\(^3\) Regarding the history of minimum wage legislation, the Posting of Workers Act is of special importance since it was used several times to stipulate a generally binding minimum wage in different service and construction related craft sectors of the German economy. As with the Collective Bargaining Act, the enforcement of minimum wage standards is based on a generally binding collective wage agreement. The difference between the former and the Posting of Workers Act is, that the collectively agreed minimum wage applies not only to all domestic employees in the respective sector, but also to foreign workers, posted from other member states of the European Union. The Posting of Workers Act was first applied in the German construction industry in 1996. At that time, the construction workers union was not able to cope with the constantly rising influx of posted workers from other, mostly southern European member states of the European Union. In consequence, standard wages had stagnated and, moreover, a considerable share of construction work occurred outside the regulatory framework (Lillie and Greer 2007).

In 2005, the coalition agreement of the then newly elected government (grand coalition between Christian (CDU) and Social Democrats (SPD)) provided for an extension of the Posting of Workers Act to more sectors of the German economy since until then the Posting of Workers Act was only applicable in the construction sector. However, an extension to all sectors of the economy was not intended due to the potential harm to bargaining autonomy. In the interviews conducted there is clear evidence that this position largely reflects the perspective of employers’ associations or rather their respective umbrella organisations (BDA, BDI) which strictly oppose any kind of mandatory measures to adopt collective agreements (Interview with experts from the Confederation of German Employers’ Associations (BDA)).

After the legal extension, the cleaning sector (in 2007) was the first new sector which was included in the Posting of Workers act since there was already a respective collective agreement that was already negotiated in 2004. However, until 2014 only seven “new”sectors (care (included in 2010), security industry (2010), laundries (2009), waste industries (2010), special mining (2009), cleaning (2007), continued vocational education services funded by the public employment service (2012), temping industry (2012), meat processing industry (2014)) applied successfully for inclusion in the Posting

\(^3\) It should be noted that one essential difference between generally binding collective agreements on the basis of the Collective Bargaining Act on the one hand, and thePosting of Workers Act on the other hand consists in the scope of the respective collective agreement. While the former covers the whole collectively agreed sectoral wage system, the latter solely provides the minimum for the lowest wage category.
of Workers Act. Among this considerable list of sectoral minimum wages, the minimum wage for the temping industry is of particular significance since it is perceived by responsible politicians of both the Christian Democratic Union (CDU) and the Social Democratic Party (SPD) as one rather essential preliminary step for the introduction of the general statutory minimum wage since it already affects all sectors of the German economy and thus already functions as a kind of general minimum wage – at least if one assumes that core workers in a specific sector will not be paid less than temporary agency workers (Interview with an expert (II) from the Christian Democratic Union; Interview with an expert from the Social Democratic Party (SPD)).

By contrast, the applications for admission by other business sectors like forestry, hospitality, letter services or retail could not be approved because the applying bargaining parties were unable to show credibly that their respective collective agreement covered more than 50 per cent of the sectoral workforce (hospitality, retail). Additionally, there was dissent in some sectors, which trade union (and employers’ association) would be in charge for negotiating a respective collective agreement (letter services; meat processing until 2014). Thirdly, the tariff Committee, responsible for the decision of the inclusion didn’t give consent in some cases. As there was a long-lasting (and still ongoing) academic and political debate about the employment effects of minimum wages in Germany, the government of Christian (CDU) and Liberal (FDP) Democrats elected in 2009 decided to have the employment effects of sectoral minimum wages in eight sectors evaluated. In none of the sectors under investigation, negative employment effects could be found (Bosch and Weinkopf 2012). There is clear evidence in the interviews conducted that this result paved the way for accepting the idea of introducing a general statutory minimum wage in the rank and file of the Christian Democratic Union (CDU) even though economic effects of sectoral minimum wages implemented through the Posting of Workers Act and a general minimum wage are not directly comparable (Interview with an expert from the Christian Democratic Union (CDU)).

In summary, even before the introduction of a general minimum wage in 2015 there were several ways to establish sectoral minimum wages (Bispinck 2010). However, bound by the tradition of free collective bargaining, their underlying rationale has been that first there must be some more or less representative collective agreement which is then extended, via various mechanisms, to become universally binding only within the respective sector. Technical variations between the four mechanisms concern thresholds of representativeness of the agreement to be extended and the level of consensus needed to justify government action. The result of these regulations is a variegated patchwork of sectoral minimum wages scattered around the statistical low-wage thresholds. The
procedures hitherto available did not provide a solution for situations where there is not any collective agreement to begin with, and they suffer stalemate when there is no consensus between the social partners concerned or wherever quarrels arise on either side about who is legitimately representing a given sector.

3.4 The introduction of a General Minimum Wage in Germany

In January 2015, a general minimum wage was introduced in Germany by the German government (grand coalition between CDU and SPD; elected in September 2013), at least partly motivated by the insight that the already existing ways to universalise collectively agreed minimum wages are not sufficient to provide solutions for all workers concerned (Interviews with experts from the Christian Democratic Union (CDU) and Social Democratic Party in Germany (SPD)). However, this paradigmatic change from the strategy of extending collective agreements to all employees in the respective sector to a strategy of complementing the results of collective bargaining by determining a minimum wage standard should not harm bargaining autonomy, but rather strengthen the legitimacy of the system of collective bargaining in Germany. That in turn means, that the General Minimum Wage setting mechanism should be designed to function as much as possible independently from state interference. This essential aspect was rather undisputed between the coalition partners. To achieve this, representatives of trade unions and employers’ associations were strongly involved in discussions preceding the legislative process although trade union influence was much stronger than the exertion of influence of employers’ associations or rather their respective umbrella organisations (Interviews with experts from the Confederation of German Employers’ Associations (BDA), the German Trade Union Confederation (DGB) and the Social Democratic Party in Germany (SPD)). The most evident sign of the involvement of the bargaining partners was the “Sectoral Dialogue Minimum Wage (Branchendialog Mindestlohn)” that took place in March/April 2014 and allowed representatives of sectoral trade unions and employer’s associations to discuss sectoral concerns directly with the Minister for Employment and Social Affairs.

The aim to strengthen the collective bargaining system by introducing a General Minimum Wage is also evident from the fact, that the General Minimum Wage was only one of three measures taken to reduce the proportion of low pay in the German economy. Additionally, the extension of the Posting of Workers Act to all sectors was decided. Secondly, it is no longer necessary to reach the 50%-threshold to declare a collective agreement generally binding. Rather, it is sufficient that the sectoral bargaining parties declare their common interest in a joint application and that the measure is considered to be in the public interest. The latter innovation applies both to the respective regulations on the basis of the Collective Bargaining Act and the Posting of Workers Act.
Despite the fact that the General Minimum Wage is only one of three parts of a larger reform package, the following section exclusively focuses on the introduction of the General Minimum Wage since this is a novelty in the history of German labour market policy.

3.5 Institutional setting

Initial rate, coverage and exemptions

The initial rate of the General Minimum Wage was set at 8.50 € per hour and applies for all employees aged 18 years and older in East and West Germany. Young people below 18 years (minors in Germany) are not entitled to the General Minimum Wage. Germany is thereby one of the few EU 15 countries that completely exempt minors from the national minimum wage since most of the EU 15 countries have a lower rate for young workers (Amlinger et al. 2014). Further exceptions exist for apprentices of all ages and people doing an internship of less than six months. The same applies to student interns, if the internship is part of their regular curriculum, and for long-term unemployed (unemployment has lasted for at least one year) for the first six months with a new employer. Furthermore, there are exemptions for some sectors. For a transitional period until the end of 2016, sectoral collective agreements may foresee lower wages if declared universally binding through the mechanisms of the Posting of Workers Act. This is meant to avoid shocks for sectors with a high proportion of workers earning less 8.50 €. The announcement of this exception led to an increase of sectoral minimum wage agreements on the basis of the Posting of Workers Act, some of which came into force shortly before the introduction of the General Minimum Wage. Even some sectors like hairdressing and the meat processing industry, in which it seemed hitherto impossible to reach an agreement were now able to make such deal. Secondly, the minimum wage for newspaper delivery staff is set at 75% of the standard minimum wage rate of 8.50 € (= 6.23 €) by law and scheduled to increase up to the standard level in two steps until January 2017.

Mechanism of adjustment of the General Minimum Wage

While the determination of the initial rate was taken by the German government, the biannual adjustment of the General minimum wage is incumbent to a Minimum Wage Commission. The minimum wage commission is made up of three representatives of trade unions and employers’ associations, respectively, with voting rights, plus two non-voting academics in advisory capacity plus one voting chairperson. The staffing of the chair position is carried out on a joint proposal of the bargaining partners.

In making recommendations, the commission has to consider among others wider economic and social implications, the likely (regional) effect on employment and the potential impact on competitiveness of business. A further important criteria is the
development of the overall collectively agreed wages in Germany. Specifically, this is a biannual average, calculated by the bargaining parties and cross-checked by the Federal Ministry of Labour and Social Affairs. The first adjustment of the General Minimum Wage is scheduled for January 2017.

3.6 The political process towards a General Minimum Wage

The successful implementation of the General Minimum Wage in Germany was preceded by an intense academic and political debate that was originally initiated in 2002 by two trade unions (ver.di and NGG), covering a large proportion of low wage sectors. As early as 2005, a joint working group comprising representatives from the German Trade Union Confederation (DGB), sectoral trade unions and the Social Democratic Party was set up which should work out a concrete political concept regarding the design and the implementation of a General Minimum Wage. A first political approach to introduce a General minimum wage was then attempted in 2007 by the former Minister of Labour and Social Affairs. However, the draft law was never introduced in German parliament (Deutscher Bundestag). Political opposition to the initiative emerged primarily from the ranks of the Christian Democratic Union (CDU). The refusal was primarily based on the ground that a General Minimum Wage could be harmful to autonomous bargaining in all sectors of the economy (Interviews with experts from the Christian Democratic Union (CDU) and the Social Democratic Party in Germany (SPD)). In addition, there were fears that a uniform Minimum Wage in East and West Germany could have extremely negative effects on employment in some service sectors in East Germany like hairdressing, hospitality or security (Interview with an expert from the Christian Democratic Union). However, at this time there was also a quite considerable disagreement between large sectoral trade unions about the usefulness or harmfulness of a General minimum wage. While ver.di, covering large parts of the German service sector was in clear favour of a General Minimum Wage, the metalworkers union (IG Metall) and the trade union of the mining, chemicals and energy industries (IG BCE) were opposed to the introduction of a General minimum wage. The opposition was primarily based on concerns, that the introduction of a General Minimum Wage could be harmful for bargaining autonomy. This dispute between the three largest German trade unions also explains why the German Trade Union Confederation (DGB) started to campaign only from 2006 for the introduction of a General Minimum Wage (Interview with experts from the German Trade Union Confederation (DGB) and the Social Democratic Party in Germany (SPD)).

As an alternative to the introduction of a General Minimum Wage, the coalition partners decided for an extension of the Posting of Workers Act to more sectors of the German economy since until then the Posting of Workers Act was only applicable in the construction sector.
In the following legislative period between 2009 and 2013, the introduction of a General Minimum Wage was not on the official political agenda of the then ruling coalition between Christian Democrats (CDU) and Liberal Democrats (FDP). Nevertheless, a group of Christian Democratic parliamentarians explicitly representing the workers’ interests within the group of the CDU had developed a concept of their own for introducing a General Minimum Wage (Interview with Karl-Josef Laumann on German Television on 22 August 2011). However, this draft concept was never put forward to adoption, neither within the coalition nor in German parliament. But the mere fact that a numerically significant group of parliamentarians had prepared a concept of their own illustrates that the Christian Democratic Union (CDU) did not unanimously reject the idea of a General Minimum Wage (Interview with experts from the Christian Democratic Union (CDU)). So it is not surprising that the aforementioned group of Christian Democratic parliamentarians actively support the idea of introducing a General Minimum Wage in the run-up of the elections in 2013 (Report in the “Frankfurter Allgemeine Zeitung”). Moreover, the phasing out of restrictions regarding the free movement of Eastern European workers in 2011 raised concerns about the labour market position of domestic temporary agency workers among politicians of the Christian Democratic Union (CDU), since the then applicable labour law allowed temporary employment agencies located in other EU countries, to provide their services in Germany with German employees while paying the collectively agreed wage rate of the country of origin – irrespective of the actual wage level. According to one of our interviewees even a wage rate of 2.50 € would have been possible (Interview with an expert from the Christian Democratic Union (CDU)). This emerging threat to the labour market position of temporary agency workers led to the introduction of a sectoral minimum wage for the temping sector, as presented more detailed in section 4.6 of this report.

The campaign of the Social Democratic Party (SPD) in the run-up to the election of 2013 clearly focused the introduction of a General Minimum Wage which then came to be an essential element of the agreement for forming the grand coalition at the end of 2013. In contrast to the introduction of the minimum wage in Great Britain for instance, there was no Low Pay or Minimum Wage Commission which made recommendations regarding the initial rate, possible exemptions or a differentiation of the minimum wage rate between East and West Germany. Rather, all these initial aspects were determined by the government itself following academic and political advice and political lobbying. The initial rate of the General Minimum Wage for instance completely met the requirement of the German Trade Union Confederation (DGB), as well as some sectoral trade unions like ver.di and NGG, which launched one of the largest political campaigns in the history of German trade unions to promote and enforce their concept of a General Minimum Wage.
In addition, the rate of 8.50 € largely corresponds to the sectoral minimum wage for temporary agency workers (8.48 €) and thus, at least formally, met an essential requirement of the Christian Democratic Union (CDU) as well as parts of the Social Democratic Party (SPD) to choose a moderate initial rate following the British example from the end of the 1990s (Interviews with experts from the Christian Democratic Union in Germany and the German Trade Union Confederation (DGB)).

The decision to exempt minors as well as interns from the National Minimum Wage again met a further requirement of the Christian Democratic Union (CDU). On the one hand, this requirement followed the recommendations of nearly all employers’ associations and the respective umbrella organisations (BDA, BDI, DIHK, ZDH) to exempt young workers from the General Minimum Wage. However, most of the sectoral employers’ associations, mostly affected by the introduction of a General Minimum Wage as well as the Confederation of German Employer’s associations (BDA) claimed for a higher age limit between 23 and 25 years (Deutscher Bundestag 2014; Interview with an expert from the Confederation of German Employers’ Associations (BDA)). In addition, there was respective academic advice, that full eligibility of young workers might be a disincentive with regard to starting vocational training, especially for the low-achieving ones (Bruckmeier et al. 2014); therefore, apprentices are also exempted from the General Minimum Wage (Interview with an expert from the Christian Democratic Union in Germany). Hence, the determination of the respective age limit of 18 years is a political compromise between the two coalition parties CDU and SPD since the latter one claimed a National Minimum Wage without any exemptions, while the former one wanted to determine a higher age threshold of 21 years, again following the British example (Interview with experts from the Social Democratic Party in Germany).

There is clear evidence in the interviews conducted that there was also some debate about differentiating the initial rate of the National Minimum Wage between East and West Germany. However, a regional differentiation of the initial minimum wage rate was not politically acceptable since the coalition agreement between CDU und SPD provides for a gradual reduction of still existing differences in labour and social law between East and West Germany. Hence, the decision for a uniform minimum wage rate was without any political alternative – despite academic recommendations to the contrary (Interviews with experts from the Christian Democratic Union and the Social Democratic Party in Germany).

4 It should be noted that there is no common academic position regarding the potential impact of the National Minimum Wage on young people in Germany.
3.7 Policy Learning

With regard to the conception and implementation of the General Minimum Wage in Germany, three different routes of policy learning can be identified: (1) policy failure, (2) pursuit of electoral goals and (3) the external route. Starting with the external route there is clear evidence in all interviews conducted as well as in official documents, that the conception of the General Minimum Wage was strongly influenced by the British experiences. Between 2005 and 2013, there were a lot of fact finding missions from parliamentarians of the Social Democratic Party (SPD), Christian Democratic Party (CDU) and trade union representatives to experts in Great Britain to inform themselves personally about actual impacts of the General Minimum Wage on general employment, youth employment, working time and the willingness of young people to pursue a vocational training instead of working on a minimum wage basis (Interviews with experts from the Christian Democratic Union, the German Trade Union Confederation (DGB) and the Social Democratic Party in Germany). Especially for the parliamentarians of the Christian Democratic Union (CDU), the good experiences in Great Britain regarding its impact on employment were one of the most essential arguments to agree to the introduction of a General Minimum Wage (Interview with an expert from the Christian Democratic Union). The strong influence of the British concept is further underlined by the fact that some features of the British Minimum Wage can also be found in the German scheme:

1. Minimum Wage Commission: Although there was no Low Pay or Minimum Wage Commission which made recommendations regarding the initial rate, the conception of the minimum wage commission described above was clearly inspired by the British example, even if the concrete composition of the members entitled to vote deviates in some respect from the British example. However, an earlier draft law of the German Bundesrat (chamber of states (Bundesländer)) regarding the introduction of a General Minimum Wage included a full copy of the British Low Pay Commission (Bundesrat 2013). There is evidence in the interviews conducted, that the main reason for dropping the voting right for the two academic members of the commission is that they should not be politicised since they become commissioners on proposal of the bargain partners (Interviews with experts from the German Trade Union Confederation and the Social Democratic Party in Germany).

2. Moderate initial rate: The decision to choose a comparably moderate initial rate of the General Minimum Wage is partly explained in the interviews by the positive experiences in Great Britain with this approach (Interviews with experts from the Christian Democratic Party and the Social Democratic Party in Germany). However, the still large differences in the income level between East and West Germany is a further, and probably more essential explanation for the choice of a rather moderate reason (from a West German perspective).

3. Self-enforcement of the National Minimum Wage: Following the British example the introduction of the General Minimum wage was accompanied by a large publicity
campaign to raise public awareness. The campaign was launched and financed by the Federal Ministry of Labour and Social Affairs.5

4. **Hotline:** Again following the British example, both the Federal Ministry for Labour and Social Affairs and the German Trade Union Confederation established a hotline to inform potential beneficiaries about their rights.

As already mentioned at the beginning of this section, the introduction of a General Minimum Wage was partly motivated by the insight that the already existing ways to universalise collectively agreed minimum wages were not sufficient to provide solutions for all workers concerned. Though employers’ organisations at national level maintained their stern rejection of minimum wage legislation, concerned employers in some of the sectors most severely affected by low wage competition finally joined the consensus between the trade unions, the Social Democratic Party, the Green Party, the Left Party, and the “labour wing” within the Christian Democratic party that a General Minimum Wage was indispensable. Thus policy failure also played a role for the eventual implementation of a General Minimum Wage in Germany. In this regard, there is clear evidence in an interview conducted with a representative of the Christian Democratic Union (CDU) that the party would not have agreed to the introduction of a General Minimum wage if it had been possible to realise collectively agreed sectoral minimum wages in the hospitality and retail sector since in this case the vast majority of low wage sectors would have been covered by a collectively agreed minimum wage. However, this second route of policy learning is in contrast to the third route, namely the pursuit of electoral goals. As already described in the preceding section, the campaign of the Social Democratic Party (SPD) in the run-up of the election in 2013, was clearly focused on the introduction of a General Minimum Wage. Hence, it seems unlikely that the grand coalition could have been realised without introducing a General National Minimum Wage. However, the centrality of a General Minimum Wage in the election campaign of the Social Democratic Party (SPD) in 2013 is also the result of considerable lobbying of various sectoral trade unions as well as the German Trade Union Confederation (DGB).

### 3.8 Conclusion

After years of fierce controversies, the late introduction of a statutory minimum wage went in quite unspectacular ways. This was possible because it is based on a consensus between the Social Democratic Party, the ‘Labour Wing’ of the Christian Democratic Party and the Trade Unions, while the parliamentary opposition is in favour of the project anyway and the Liberal Party, the chief opponent, lost parliamentary representation at federal level. By framing the new institutional arrangement as a ‘strengthening of collective bargaining’ and by giving the social partners – including the opposing

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5 However, at the official level, the customs authorities in Germany are responsible for the compliance and enforcement of the minimum wage regulation.
employers’ organisations – a prominent role in defining future adjustments of the minimum wage level, the appearance of path conformity is maintained. Immediate ramifications in the sense that workers would experience a sudden pay rise because of the new legislation will be quite limited. Rather, there have been adjustments of entry wages already in the forerun, there will be gradual adjustments in the introduction period until 2017, exemptions from the minimum wage will be used, and there will be illegal circumventions.

**Critical assessment of the EU’s role in policy learning**

While the introduction of a minimum wage in the UK did have traceable repercussions on the German debate about introducing a general statutory minimum wage, there was no direct influence of the European Union on this issue. However, the enlargement policy of the European Union and, more specifically, the phasing out of restrictions regarding the free movement of Eastern European workers in 2011 exerted powerful pressure to protect vulnerable groups on the German labour market, especially temporary agency workers, against being employed by Eastern European temporary employment agencies paying wages, collectively agreed in their respective home country. These developments had clearly accelerated the introduction of a sectoral minimum wage for the temping industry that was implemented in January 2012. This in turn is perceived by various respondents as essential preliminary step for the introduction of a general statutory minimum wage in Germany since a sectoral minimum wage for the temping industry already affects all sectors of the German economy and thus already functions as a kind of general minimum wage – at least if one assumes that core workers in a specific sector will not be paid less than temporary agency workers.
4. The repeated de-regulation and re-regulation of temporary agency work

4.1 Introduction

Though temporary agency work accounts for the smallest part of ‘non-standard’ jobs in Germany, it has always been the most contested and controversial. This can perhaps be explained by the importance of stable workplace relations and of statutory participation at workplace level in the German system of industrial and employment relations. Temporary agency workers are not fully part of the workforce community at the place where they work, they are not covered by the collective agreements applicable to workers directly employed by the enterprise that uses their services, and they do not participate in electing the works council at their place of work. Their individual rights as workers, though formally equal to those of others, are in practice severely weakened by the fact that workers of the same agency are scattered around numerous places of work. Therefore, agency work in Germany is depicted by many as ‘slave labour’. Because of this unique position on the German labour market, the regulation of agency work lends itself for studying ‘flexicurity’ regulations in Germany.

4.2 The institutional framing of agency work in Germany

Temping as a business sector and a particular type of non-standard employment emerged in Germany in a period when a ‘monopoly’ for job placement (except for occasional non-profit, free-of-charge assistance into work) was still reserved for the German Federal Employment Agency. In 1967, the agency “ADIA” succeeded in the Federal Constitutional Court by claiming that reading the public job placement monopoly as a prohibition of temping was in contradiction with the constitutional freedom of economic activity. Nevertheless, commercial job brokering remained unlawful until 1994. Therefore, in the initial temporary work agency legislation of 1972, temping was defined as ‘labour leasing’, something clearly distinct from job placement: The agency assumes full responsibility as the worker’s employer, and making the worker’s labour power available to another employer is defined as a service provided by the agency. Consequently, the user of the labour power assumed no responsibility towards the ‘leased’ worker beyond general human and constitutional rights and workplace-related health and safety regulations. Equal pay, applicability of collective agreements covering the users’ ‘own’ workers, human resource development, or collective representation at the workplace were all out of question.

Although, in the beginning, temping agencies could only hire on open-ended contracts, dismissal for economic reasons was easy for them whenever orders from customers fell

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6 The German word “Betrieb” (establishment, productive unit, place of work) – as distinguished from ‘enterprise’ or ‘company’ as the economic entity – cannot be fully translated into English with respect of its connotations of community or collective.
during recessions. Since the user of ‘leased’ labour power was not considered the worker’s employer, and since initially fixed-term contracts were prohibited with temporary work agencies, temping and fixed-term contracts were never conflated in one and the same category of ‘temporary work’ in the German discourse (as is often the case internationally). It follows from the potential conflict between job placement and labour leasing that the Federal Employment Agency was entrusted with controlling temping agencies and monitoring temporary agency work.

Since trade unions did not approve of temporary agency work, they refrained from regulating it in collective agreements, fearing they would thus make it ‘respectable’. Rather, works councils negotiated with management to keep numbers of temporary agency workers down. Gradually, however, they came to realize that for them and their constituencies, temping was not only a competitive threat of allegedly ‘cheap’ labour but also served as a buffer in times of business slumps, thus stabilizing employment of ‘core’ workforces. The experience of the crisis of 2008/2009 consolidated acceptance of temping on principle by works councils. Nowadays, a share of 10% temping among the workforce is now widely accepted as normal in manufacturing plants. This contributed to the change of trade union strategy described in 0.

In the absence of stable collective bargaining patterns within temping as a ‘sector’, given the lack of an unambiguous ‘equal pay’ principle tying wages of temporary agency workers to wages in the workplaces they serve, and finally in the absence of a universal legal minimum wage until the end of 2014, wages for temporary agency workers were for a long time under-regulated and contested.

4.3 The regulatory situation immediately before the reforms (2002)

Since its introduction in 1972, the Labour Leasing Act (*Arbeitnehmerüberlassungsgesetz*) was repeatedly amended. By spelling out the regulatory situation immediately before the ‘Hartz’ reforms, we also explicate the regulatory dimensions along which repeated reforms have usually operated.

1. Operating a temping agency requires permission by the Federal Employment Agency – temping agencies are subject to specific statistical reporting to the Federal Employment Agency, which provides a pretty good and up-to-date statistical picture of the sector (unchanged still today).

2. Temping is forbidden in the construction sector (meanwhile with an opening clause for collective agreements that would allow it).

3. In 2002, the duration of any assignment of a particular worker to a particular user was still limited to 12 months.

4. Fixed-term contracts, initially forbidden in temping, were meanwhile allowed but not their repetition with the same worker except in seamless succession; such contracts must not be

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7 There is also anecdotic evidence that some agencies would only hire on the condition that the worker submitted a signed and undated termination letter.
repeatedly synchronized with assignments except when the user (the agency's customer) hires the worker directly.

After dismissing a worker, the agency could recall him once within three months; for second and further recalls, periods longer than three months had to be observed.

4.4 De-regulation of agency work in the context of the Hartz reforms

In 1985, investigative journalist Günter Wallraff had established the image of temping as 'slave labour' (Wallraff 1985). In the mid-1990s, by contrast, the discourse on temping began to change not least due to subtle but intensive PR work by large players like Randstad. The Dutch example of agency work and 'labour pools' (Weinkopf 1996) as well as the non-profit Dutch agency START received considerable attention in Germany. A German START company was launched in Northrhine-Westfalia by the local government in consensus with the trade unions, and there were similar pilot activities in Rhineland-Palatine (Lechner et al. 2000). The idea that agency work could function as a bridge into permanent employment for disadvantaged jobseekers became widely accepted. It was also noted that temping in Germany, with 1.3% of the workforce in the early 2000s, was ‘underdeveloped’ in European comparison (e.g. 4% of the Dutch workforce), and it was hinted that loosening the brakes on temping would create additional jobs.

In the reform proposal drawn up by the Hartz commission, the idea of ‘placement-oriented temporary work’ took the form of ‘personnel service agencies’ (PSA) with the focus “to hire out temporary workers with a view to finding them a permanent job” (Hartz Commission 2002, S. 12). In subsequent legislation, PSA’s became a service contracted out by the public employment service (PES). Operational needs of the PSA’s to be created served to justify a general deregulation of agency work. As a result, existing restrictions on fixed-term contracts for agency workers, their synchronization with assignments, on re-hiring, and existing upper limits for the duration of assignments were removed by the first “Law for modern services on the labour market” (2003). Great expectations were expressed both in the Hartz commission’s report and in the explanatory memorandum for draft legislation that collective agreements would replace legal regulation of the temping business and regulate wages in PSA’s as well as in private agencies. In effect, PSA’s as a new instrument of active labour market policy were used as a vehicle for deregulating agency work.

Without any explicit reference to then already ongoing discussions at EU level about what finally became European Directive 2008/104/EC on temporary agency work, the legislation of 2003 anticipated the European ‘equal pay’ principle, however with an opening clause for collective agreements. This clause was meant to smoothen transition from existing pay differences to equal pay, thus protecting the industry against a sudden shock from the introduction of equal pay. In preparing this particular item of the legislation, and in contrast with the rest of the ‘Hartz’ legislation, the government was in close dialogue with the social partners who had a draft collective agreement on temporary
agency work in the pipeline. In these negotiations, the German Trade Union Confederation and the Federal Association of Temporary Work Agencies acted as partners of highest possible representativeness.

Soon after the new legislation had taken effect, this apparently coordinated strategy was thoroughly disrupted when a “Collective Bargaining Association of Christian Trade Unions for Temporary Agency Work and Personnel Service Agencies” started concluding collective agreements with regional and outsider employers’ associations in the temping sector. These agreements were 40% below the wage level foreseen in the draft of the representative organizations. As a consequence, the latter felt compelled to shelve their plans and to conclude at a considerably lower level. Thus the promise of equal pay became perverted into the perpetuation of unequal pay through collective agreements and with the active collaboration of the representative trade union confederation (for details see Benassi und Dorigatti 2014). Even so, the agreement marked the entry of German trade unions into nation-wide regulation of agency work through collective bargaining. According to our interviewee at the German TUC, the deregulation of agency work in 2003 made the trade unions aware of the necessity to regulate the sector on their own, ending their previous indifference.

In 2008, the European Directive 2008/104/EC on temporary agency work was finally adopted, compelling member states to implement it by the end of 2011. Most probably, this was not without indirect effect on rulings by German labour courts, finally confirmed by the Federal Labour Court in December 2010, that the aforementioned “Christian” trade union association was not in a position to conclude valid collective agreements – for reasons of lack of representativeness (only slightly more than 1,000 members) and formal deficits in its statutes. 2008 was also the year when the metal workers’ union, Germany’s largest union representing the sector with the highest incidence of agency work, launched its national campaign “equal pay for equal work”. This marks the shift of sectoral trade unions from exclusionary strategies (“keep agency workers out of your workplace”) towards more inclusionary strategies and the active organizing of agency workers - which of necessity implies the acceptance of agency work as such.

Meanwhile, the Personnel Service Agencies as an instrument of active labour market policy had broken down as a result of too hasty and too massive implementation by the PES. Growing employment rates and falling unemployment rates put into question the notion of ‘any work is better than no work’, and the public discourse on temporary agency work changed again. Some stylized facts about the social realities of temporary agency work may serve to illustrate the motive for this change.

4.5 Temporary agency work in Germany: some stylized facts

Subsequent to its far-reaching deregulation, temporary agency work roughly doubled between 2003 and 2008 in terms of workers employed in the sector, but still remaining
below 3% of the total workforce fully covered by social insurance. Resulting from the financial crisis, temping experienced a dip in 2009 as companies sent temporary workers home first, but 2011 saw even more temporary agency workers than 2008. Due to acceptance in the PES produced by the Hartz reforms, due to high turnover among temporary agency workers (average employment duration is three months), and due to ‘double listing’ of potential vacancies by agencies competing for the same assignments, temping jobs are now grotesquely over-represented among the job offers registered by the PES with 38% of registered vacancies overall.

The pay gap between temporary and regular workers is still considerable even for identical tasks, and physical working conditions are worse for them since the most unpleasant jobs are assigned to them. The direct “bridging effect” – hiring of temporary workers by the company using them – amounts to only 7% (Hohendanner & Walwei 2013). Temping is more of a trap than a springboard; as far as it helps to overcome unemployment, this is largely the unemployment it produces itself through job instability. Temporary agency work is dominated by assignments in manufacturing and thus affects primarily men.

Tempting has become a major mechanism of ethnic segregation on the German labour market: Whereas only 3% of gainfully employed German-born males are employed by a temporary work agency, the respective percentage among males with migrant backgrounds is 7%. Even controlling for levels of education and other demographic factors, discrimination of migrants remains apparent in significantly elevated risks of being employed by a temping agency for most groups of migrants (Vaughan-Whitehead 2015).

4.6 Subsequent institutional changes and reforms

The crisis of 2008/2009

Contrary to perceptions by some outside observers, capacity adjustments via working hours and their support by partial compensation of workers from the unemployment insurance fund in the form of short-time working allowances was not an invention made during the financial crisis but has been a long-established instrument of German labour market policies. The quick response to the crisis, enacted through a revival of ‘classical’ German corporatist co-ordination, merely entailed a temporary expansion of the scheme’s generosity (eligibility of firms, duration of support, costs remaining with the employer). Part of this new generosity was the first-time inclusion of temporary work agencies losing contracts due to the crisis in short-time working allowance schemes. This move was largely symbolic since most temping agencies did not care to retain workers and bear the extra cost remaining with them even when making use of short-time working allowances. However, this symbolic move, enacted in consensus with the social partners,
is emblematic for the shifting of trade unions from ‘exclusionary’ towards more ‘inclusionary’ policies towards agency work.

**Inclusionary collective bargaining in the user sectors**

From about 2008, trade unions followed a two-pronged strategy for regulating agency work: At national level, they would negotiate with employers’ associations of the temping sector; at the level of manufacturing sectors, they would regulate the use of temporary agency work in collective agreements binding the firms using this type of work. It should be acknowledged that the latter amounts to a ‘little revolution’ since it implies restricting a firm’s dealings with other firms (in this case: temping agencies) by collective agreements, thus transcending their traditional scope.

In September 2010, the metal workers’ union established the equal pay principle for the steel sector. In other words, rather than negotiating with the scattered scene of temping agencies, steel employers were made to oblige the agencies they worked with to observe certain pay rules with their workers as long as these were assigned to jobs in the steel industry. In the same logic, pay bonuses gradually increasing with the duration of the individual assignment of an agency worker were negotiated for the metal and electrical industries, thus not eliminating but narrowing the pay gap. According to the same agreement, the firm using the agency worker must ‘consider’ hiring him after 18 months of assignment and must accept him as an employee after 24 months. The practical effects of these regulations are modest since assignments rarely last that long (see 4.5); possibly the deterring effect against very long assignments is intended as an invigoration of the principle that agency work should be ‘temporary’. Nevertheless, the framing of the regulation as a guarantee for the agency worker rather than a restriction epitomizes the new ‘inclusionary’ strategy.

**Introduction of a minimum wage for the temping sector**

The new ‘inclusionary’ trend continued with a legal provision making possible a sectoral minimum wage for the temping industry in April 2011. Since its implementation mechanism is similar to the general *erga omnes* procedure for collective agreements (though with some procedural and representative requirements easier to fulfil), it was not before January 2012 that the minimum wage for the temping industry (with slightly different levels for East and West Germany) took effect. Its economic effect was marginal since, due to developments described above, most temping agencies were paying these or even higher wages anyway. However, all this must be seen against the background of then ongoing debates and political controversies about the introduction of a universal legal minimum wage: The conservative-liberal government then in power maintained that as far as legal minimum wage regulations were necessary at all they should be differentiated by sector. Several sectoral minimum wages were introduced in order to fend off demands for a universal minimum wage; however, in the end, sectoral minimum wages and their
evaluations (see for example Boockmann et al. 2012) paved the way for general minimum wage legislation envisaged in the coalition treaty of the Grand Coalition that came into power at the end of 2013 – and taking legal effect as of 2015.

Reforms still pending (July 2015)

European Directive 2008/104/EC defines a ‘temporary agency worker’ as an employee of a temporary work agency “with a view to being assigned to a user undertaking to work temporarily under its supervision and direction” (Article 3, 1. c)). After maximum durations of assignments had been removed from German legislation in 2003 (see 4.4), the German legislator had to implement this clause before the end of 2011. This was done by merely paying lip-service to the Directive, amending the Labour Leasing Act to say that “The leasing of workers is temporary”, without re-introducing a limit. In two decisions in 2013, the Federal Labour Court ruled that this clause is not merely declaratory but actually prohibits long-lasting assignments. Rather than setting a temporal limit themselves, the judges passed back to the legislator. Consequently, in the coalition treaty of 2013, the Grand Coalition stated its intention to again introduce an upper limit which is to be 18 months but open to expansion by collective agreements. Since then there have been consultations between the government, the four trade unions organizing the sectors where agency work is most prominently used, and the employers’ organizations of temping agencies; however, the government has so far failed to deliver draft legislation, whereas the oppositional Left Party is demanding to limit assignments to three months. In the recent parliamentary debate initiated by the Left Party's motion (May 21, 2015), speakers of the Christian Democrats gave the impression that they want to procrastinate the issue, whereas the Social Democrats (junior partners of the coalition) are insisting on an 18 months ceiling.

4.7 Conclusion

Stakeholder involvement

De-regulation and re-regulation of temporary agency work in Germany is a never-ending story that cannot be summed up as just one single innovation. However, the year of 2003 (‘Hartz’ reforms) marks the most far-reaching deregulatory shift. Its initiator was the Federal Government then made up of a coalition between the Social Democrats and the Green Party. This massive change was achieved by wrapping the issue into the much larger package of active labour market reforms and by reframing it as an issue of securing labour market access for disadvantaged jobseekers. At this point, traditional mechanisms of corporatist consultation had been temporarily suspended by the use of government commissions in which high-ranking members of social partner organizations and other stakeholders served as individuals, not as representatives of their organizations and their policies (Eichhorst & Winterrmann 2005). Consequently, there was no genuine involvement of the stakeholders immediately concerned. Still today, even though trade
unions have developed more inclusionary strategies towards agency workers, there is no representation of agency workers in particular, which can be explained in part by the extreme fluctuation within the group. And even though migrant organizations have gained more political voice since the advent of a national ‘integration’ strategy from 2006 on, such organizations have hitherto not taken a stand of their own about agency work on the grounds that workers with migrant backgrounds are over-proportionally affected. So in this sense, vulnerable groups were in no way involved in the reform process.

**International policy learning**

In the run-up to the reforms, *policy learning from European neighbours* – and prominently the Netherlands - did play an important role. In the early 1990s, the Netherlands had as many agency workers as Germany – within a total workforce only one fifth as large as Germany’s. In 1977, Dutch unions, employers’ organizations and the state had founded START as a non-profit temporary work agency with the aim of helping unemployed jobseekers into work. Agency work in the Netherlands was largely unregulated with regard to the durations of assignments, labour contracts and their synchronization (Weinkopf 1996). So the message derived from the Dutch example was threefold: Deregulating agency work can create additional jobs, serve as a bridge into employment for unemployed people, and can be accepted by trade unions.

The EU level, in the form of Directive 2008/104/EC on temporary agency work, seems to have played an important role though in rather indirect ways. First, the principle of equal treatment, in the German discourse largely truncated to equal pay, has cast its shadow on the German arena long before the Directive was actually passed. Nevertheless, Germany is still far from equal treatment of temporary agency workers. - Second, the unsurprising European definition of temporary agency work as consisting of temporary assignments is triggering some re-regulation of temporary agency work in Germany which is not yet decided and will either take the form of legislation or, in default of that, of future court rulings.

**The role of the social partners**

The role of trade unions and of collective bargaining in the process is ambiguous, reflecting the tension between the constitutional principle and tradition of free collective bargaining and increasing government intervention into employment conditions and wages. The government is called into action by the inability of the social partners to effectively extend traditional regulatory mechanisms to new territories (East Germany), new service industries, new forms of work, and new categories of workers. Following the traditional principle of giving precedence to collective bargaining has meant, in the case of temporary agency work, to undercut the principle of equal pay. However, it has also implied getting the social partners involved in a field they had previously neglected.
Meanwhile, regulation of temporary agency work by collective agreements in some manufacturing sectors is ahead of legislation.

Finally, in the view of labour market resilience, the assessment of the innovations described is mixed. The deregulation of agency work in 2003 has spurred an expansion which has probably contributed to overall employment growth. In other words, without this enhanced opportunity of supplying labour with considerably fewer strings attached, employers in manufacturing might have been more reluctant to respond to economic expansion by creating jobs. It has been estimated that the expansion of temping consisted of about 50% additional jobs and 50% substitution (Jahn und Weber 2013).

On the other hand, the expansion of temporary agency work has contributed to the dualisation of the German labour market. Not only are temporary agency workers disadvantaged in terms of pay, working conditions, job stability, training opportunities and upward mobility; due to short periods of employment they may also fail to fulfil the qualifying period needed to earn eligibility for unemployment benefits so that they become part of the “non-permanently working poor” who have to rely on means-tested minimum income benefits. This segregation follows very much the lines between German-born and foreign born workers. Temporary agency work is one example how Germany is far from an equitable balance between security and flexibility but distributes the two very unevenly among its workforce.
5. Raising the effective retirement age: Abolishment of Early Pensions and Raising statutory retirement age

5.1 Introduction

Like many other countries, Germany had adapted to the structural shift from manufacturing to services during the 1980s by opening pathways to early retirement, thus inactivating workers no longer needed in mining and manufacturing and too old to be retrained. Over time, early retirement became a general expectation independent of economic restructuring on which German employees – at least in larger companies and in public administration – built their life plans. Germany developed what was described by many as an ‘early exit culture’.

However, as early as 1989, Germany legislated the gradual reversal from early retirement policies, thus being among the first European countries that actively reacted to the challenge of demographic ageing by changing its pension scheme (Hinrichs 2003; Schmähl 1993). After phasing out the majority of provisions for early retirement, the German legislator went on to gradually raise the statutory retirement age, a process that is just in the beginning.

Unlike in some other countries (cf. the Danish efterløn), early retirement in Germany was and is not based on special schemes with financial resources of their own but an integral part of the mainstream system of old-age pensions. It simply meant that people meeting certain conditions could enter their old-age pension earlier. Therefore, in the perspective of pension entry age, the ratio between pension fund contributors and beneficiaries, and thus the viability of pension fund financing, phasing out early retirement and raising statutory pension age are two chapters of the same story which will therefore be told together here.

5.2 A brief history of pension reforms in Germany

These changes were legislated in 1989 and formally entered into force in 1992, but the first generation of pensioners for whom they were immediately relevant in terms of retirement age were those turning 60 in 1997 that is the 1937 cohort. This preparation period of eight years demonstrates the long-term nature of the strategy.

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8 With the pension reform act of 1992, Germany preceded policy changes in e.g. Sweden, Austria, Italy, and Finland which all had been carried out in the 1990s and “are likewise aiming at the schemes’ financial viability in the short and long run” (Hinrichs 1998: 5).

9 It should be noted that there are other strains modern welfare states are facing, e.g. lower growth rates as a consequence of progressing post-industrialism, structural changes in the labour market as the standard employment relationship steadily declines as well as more diversity in private households resulting in a rising number of single households (Hinrichs 2003).
### Table 2: A brief history of pension reforms in Germany

<table>
<thead>
<tr>
<th>Reform</th>
<th>Implementation date</th>
<th>Main measures</th>
<th>Likely effect</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stage 1:</strong> Phasing out of early retirement options</td>
<td>1992; relevant from 1997 onwards (originally 2001 onwards).&lt;sup&gt;10&lt;/sup&gt;</td>
<td>Gradual increase of the respective retirement age for particular groups on the labour market (unemployed people/people in part-time employment prior to retirement, women, long-term insured (35 years), disabled) from 60 (63) to 65. Since then each early pension had two age threshold.</td>
<td>Gradual closing of most pathways to early retirement. Increased individual costs of early retirement. Increased work incentives for older workers.</td>
</tr>
<tr>
<td><strong>Stage 3:</strong> Raising statutory retirement age and further phasing out of early retirement</td>
<td>2007; relevant from 2012 onwards</td>
<td>Gradual raising the age threshold for standard retirement age up to 67 from 2012 to 2029. Gradual raising of the upper age threshold of the early retirement schemes for long-term insured and severely disabled workers up to 67 (65) from 2014 (2015) to 2029. Abolition of the early retirement scheme for women at the end of 2011</td>
<td>Closing of further pathways to early retirement or rather an early withdrawal from the labour market. Increase work incentives for older workers.</td>
</tr>
<tr>
<td><strong>Stage 4:</strong> Reform backlash</td>
<td>2007/2013; relevant from 2012 onwards</td>
<td>Introduction of a new early retirement scheme for workers with particularly long contribution records of at least 45 years. Respective persons are allowed to retire at the age of 65, without any actuarial adjustments (2007) Temporary modification of the old-age pension for particular long-term contributors to the statutory pension for limited cohorts. Respective persons are allowed to retire at the age of 63, without any actuarial adjustments (2013)</td>
<td></td>
</tr>
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</table>

Source: Own illustration

The most important objective of the reform was to enhance the financial viability of the public pension scheme in general, and to limit the prospective increase of the contribution

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<sup>10</sup> The process of phasing-out the options for early retirement was originally scheduled to start in 2001. However, contrary to the original time schedule the process of phasing-out was brought forward four years, and started in 1997.
rate since respective projection had shown that “the contribution rate necessary to balance the social insurance budget would increase by 100 per cent by about the year 2030, mainly because of demographic ageing” (Schmähl 1993: 41).

Besides significant changes regarding the level of future pensions, options for early retirement were scheduled to be gradually phased out by first introducing actuarial deductions and later raising the minimum age of eligibility. Assuming that people would actually work longer and within a given life expectancy, people would pay contributions for a longer period but draw benefits for a shorter period, thus contributing to balancing the pension budget.

Besides standard retirement at the age of 65 years, there were four options for early retirement, all having different conditions for access and all being adapted to life careers of the particular groups of persons concerned. Hence, eligibility for benefits and the respective retirement age in Germany were (and partly still are) dependent on which type of pension applied to the respective worker. Retirement from the age of 60 with full benefits was possible for women, unemployed people, and older severely disabled workers. Since pensions in the German system depend on lifetime contributions (which reflect lifetime earnings), there already was a financial disincentive against retiring early, which, however, was obviously too weak to discourage people from using existing options of exit from work. In addition, workers with a long contribution history of at least 35 years were able to retire at 63, again without any actuarial deductions. Due to this comparably wide range of options for early retirement, it is not surprising that the employment rate of older people (aged between 55 and 64 years) was significantly below the respective figures for other age groups. For instance, the employment rate of older male employees aged 63 and older decreased from 67% in 1970, to 27% in 1980 and to 21% in 1989 (Schmähl 1993).

Against this background, one key objective of the 1992 Pension Reform (Stage 1 in Table 2) was to gradually phase out most early pension schemes. This was done by introducing, with slightly different schedules for each type of pension concerned, two gradually moving age thresholds. First, age thresholds for drawing an early pension without actuarial deductions were raised until they were equal to the statutory retirement age. In the end, all early retirees were penalized with permanent reductions of their pension by 0.3% for each month between their actual retirement age and the statutory retirement age. This corresponded to a permanent pension reduction of 18% in case of retirement at

11 In this respect the most striking measure was the changing of the pension adjustment procedure. With the coming into force of Pension Reform Act 1992, the pension adjustment rate was no longer linked to the development of the development of average gross earnings, but to changes in the average net earnings. This means a reduction in the average gross pension level in case of an increased direct taxation of earned income or increased social security contributions.
the age of 60. Next, age thresholds for drawing the respective early pension at all were raised until they were equal to statutory retirement age, thus effectively abolishing the early option. There were exceptions for long-term contributors (35 years) who had to accept the actuarial deductions but whose age threshold for taking this type of pension remained unchanged. The age threshold for entering the pension for severely disabled people remained unchanged.

After enacting the 1992 Pension Reform, the assessment prevailed among political actors of most political parties in the German Bundestag “that no substantial legislative change had to be considered much before the year 2010” (Hinrichs 2003: 7). However, the 1992 reform became only the starting point of a series of structural reforms that initially led to further modifications of the early retirement schemes (Stage 2; Table 2), and in the further course to an increase of the standard retirement age (Stage 3; Table 2) (Boersch-Supan and Juerges 2011; Hinrichs 2003). Building on the mechanisms established by the 1992 reform, legislation of 1996 and 1999 accelerated the moving of the two age thresholds explained above, so that early pension schemes were effectively phased out by the end of 2011 except for those for long-term contributors and for severely disabled workers.

In addition to this considerable series of modifications regarding the existing early retirement schemes, increasing the standard retirement age became a further objective in the long German reform process. Following the recommendations of a reform commission (the so called Ruerup-commission), the “Commission for Sustainability in Financing the German Social Insurance Systems”, standard retirement age was raised from 65 to 67 years in the 2007 Pension Reform. In line with the increase of the standard retirement age, the upper age-limit of the early retirement scheme for workers with a long contribution history of at least 35 years was also raised from 65 to 67 years. However, the employees concerned were still able to retire at the age of 63, but now had to accept permanent pension reductions of up to 14.4% (Bäcker et al. 2009). In line with the increase of the standard retirement age, the upper age limit of the retirement scheme for severely disabled people was shifted from 63 to 65 years, while the lower age limit analogously increased from 60 to 62 years.

The increase of the standard retirement age, however, was accompanied by the introduction of a new early retirement scheme for workers with particularly long contribution records of at least 45 years. People fulfilling this precondition are allowed to

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12 Established in 2002, the commission was in charge of developing reform options and proposals for the pension system, as well as for health care and long-term care insurance. Due to the particular focus of this section, the following description concentrates on reforms having an influence on the pension system.
retire at the age of 65 without any actuarial adjustments in case that they have fulfilled the minimum contribution period of 45 years. Subsequent to the last Federal election in 2013, this new retirement scheme had again been temporarily modified, meaning that the modification only applies to certain age cohorts. People born before January 1953 are able to retire at the age of 63 without any actuarial reductions if they have fulfilled the already established contribution period of at least 45 years. For people born between 1953 and 1963 this age-threshold will be increased in bimonthly steps. Those born in 1964 and later then are able to retire not until the age of 65 without actuarial deductions. With both the general introduction and the modification of the old age pension for particularly long-term contributors, the 2013 elected grand coalition is discontinuing the accustomed practice of former German governments regarding pension reforms since the scheme does not aim to extent working lives but to facilitate early withdrawal from the labour market. Accordingly, it remains to be seen if Germany is entering a period of “reform backlash” (Stage 4; Table 2) as it was already feared by Boersch-Supan and Juerges (2011: 9) in 2011. However, the unexpected high rates of workers making use of this newly created option (Bundesagentur für Arbeit – Statistik 2015) clearly show that an early withdrawal from the labour market is still in accordance with the actual preferences of German older employees.

5.3 The political process of raising effective retirement age

The predominant view propounded in the respective scientific literature is that the 1992 Pension Reform Act was based on a broad political consensus which embraces most of the political parties represented in the German Bundestag at that time as well as the respective representatives of trade unions and employer organisations (Hegelich 2006; Hinrichs 2003; Schmähl 1993). But although this view is shared in this paper, it should not be forgotten that the consensus was preceded by controversial debates about what had to be done to cushion the prospective outcomes of demographic ageing in times of low growth rates and changing labour markets (Hegelich 2006; Hinrichs 2003). This applied in particular to the measures taken to raise effective retirement age. On the one hand, the Confederation of German Employer’s associations (BDA) as well as parts of the Christian Democratic Union (particularly representatives of the association of small- and medium-sized businesses within the Christian Democratic Union), both already expressing their preference for a prolongation of working lives in the early 1980s, called for more far reaching measures like higher actuarial adjustments in case of early

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13 In concrete terms, the 1992 Pension Reform was supported by the Christian Democratic Union/Christian Social Union (CDU/CSU), the Free Democratic Party (FDP) and the Social Democratic Party (SPD). Only the Green Party opposed the adoption of the Pension Reform Act. However, the rejection of the reform package was mainly on grounds that the Green Party was in favour of a complete change of the existing pension system, e.g. by introducing an unconditional basic income for all that would remove not only the existing pay-as-you-go pension scheme, but all income substitution benefits (Hegelich 2006).
retirement and shorter transition periods regarding the phasing-out of the existing early retirement schemes. The main reason for this was to maintain (or rather improve) international competitiveness of the German economy by keeping labour costs at a reasonable level. In this respect, the future development of the compulsory contributions to the statutory pension scheme was of particular importance since the major part of social contributions is allocated to the statutory pension insurance (Hegelich 2006).

On the other hand, various trade unions, the German trade union confederation (DGB) and the Social Democratic Party, the largest opposition party at that time, opposed the idea of phasing-out most of the existing early retirement schemes. The opposition was mainly driven by concerns regarding the potential impact of the reform measures on the unemployment figures which already were relatively high at this point in time. Thereby, the focus was not only on older people facing a higher risk of becoming unemployed, but also on the prospective labour market and career perspectives of younger workers and apprentices, in case that older workers are encouraged to stay longer in working life (Hegelich 2006). However, the opposition was not fundamental since all political and societal actors concerned agreed in the necessity of a substantial pension reform as “the projected figures on population ageing and the ensuing consequences” led to “a commonly shared ‘crisis diagnosis’” (Hinrichs 2003: 17).

In the course of the legislative process, the concerns of trade unions and Social Democrats were taken into consideration in two respects: Firstly, relatively long transition periods for the phasing-out of the existing early retirement schemes were introduced. This means that the measures taken to raise effective retirement age hurt no one immediately since they were originally scheduled to taking effect only in 2001. Secondly, the early retirement scheme for severely disabled people remained unchanged so that severely disabled people were still able to retire at the age of 60 without getting sanctioned by actuarial adjustments (see section 5.2; Table 2).

Besides the modest opposition from outside the ruling coalition, there was also an important political struggle within the Christian Democratic Union (CDU), the initiator of the 1992 Pension Reform, about what should be done in the upcoming pension reform. The conflict mostly arose between a group of Christian Democratic parliamentarians explicitly representing the workers’ interests (CDA) on the one hand and parliamentarians primarily representing employers’ interests on the other hand and eventually ended with a political defeat of the latter group since the CDA supported a reform package for which there already was a large cross-party and societal consensus. Hence, the consensual approach was also advantageous to smooth struggles between opposing groups within the political parties.
In summary, the adoption of the 1992 Pension Reform Act can indeed be perceived as largely consensual since both the ruling coalition of Christian Democratic Union/Christian Social Union and Liberal Democratic Party as well as the Social Democratic Party voted for the implementation of the reform. In addition, various trade unions and the Confederation of German Employer’s associations (BDA) made joint proposals during the reform debate which significantly influenced the final draft of the Pension Reform Act and thus “paved the way for the broad political consensus” (Schmähl 1993: 42). It is worth noting, that the ability for consensus regarding the remodelling of the existing pay-as-you-go pension scheme was abetted by the fact that German pension policy at that time was incumbent on a small network of experts that consisted of representatives from trade unions, employers’ associations, the German Pension insurance, the Ministry of Labour and Social Affairs as well as the political parties (Hinrichs 2003). Representatives of the first four groups for instance, work together in the self-administration body of the German Pension Insurance (Ebbinghaus 2011; Schmähl 1993). This network “was able to take a long time horizon the more the politics of pension policy was de-politicized and deparlimentarized” (Hinrichs 2003: 19). In this respect, a further important political player regarding pension policy in Germany, is the German Pension Insurance (or rather its predecessor the Verband Deutscher Rentenversicherungsträger (VDR)) which took or rather still takes parts in the various debates on pension reforms over the last 30 years – mainly by the commission of opinions and studies regarding concepts and plans for reforms and by participating in parliamentary hearings. In the run-op of the 1992 Pension reform the German Pension Insurance took the middle ground between the opposing positions by approving actuarial adjustments in case of early retirement while simultaneously raising concerns about negative impacts on unemployment due to the prolongation of working lives (Hegelich 2006).

As already mentioned in the previous section, the assessment prevailed among political actors of most political parties that the measures taken in the 1992 Pension Reform Act were sufficient to stabilise the pension system at least until 2010 (Hinrichs 2003: 7). However, when the reform came into force in 1992, the economic boom induced by German reunification had largely died down and employment in East Germany was in steady decline. The decline in employment in turn was accompanied with rising unemployment figures as well as a considerable influx into the early retirement schemes for unemployed people and women (Jansen and Schmitz 2012). These developments resulted in increased contribution rates to the social insurance schemes, a substantial rise in social spending in general and the federal subsidy to the pension system in particular.14

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14 The federal subsidy to the pension system (Bundeszuschuss) is a tax-funded instrument that is aimed 1) to limit the increase in the contribution rates and 2) to compensate the pension fund for expenses of societal concern imposed by the legislator like the bonus for childraising.
The latter had gained importance in the course of the 1992 Pension Reform by linking it to future developments in pension expenditures. Hence, rising pension expenditures would have automatically led to rising fiscal expenditures and as a consequence a rising burden on the federal budget. The increasing pressure on the federal budget was again a considerable problem for meeting the Maastricht criteria of 1992. Furthermore, the increased contribution rates intensified the calls of employer’s associations and parts of the Christian Democratic Union/Liberal Democratic Party for measures to lower the burden of social security contributions on the labour factor. The increasing pressure led to the adoption of the 1996 Wachstums- and Beschäftigungsgesetz (WBG) that enhanced the effects of the 1992 Pension Reform by accelerating the phasing-out of early retirement options (Hegelich 2006; Hering 2004). In contrast to the previous pension reform this further reform measure was far from being consensual. On the contrary, the Social Democratic Party and the trade unions heavily opposed these further changes of the phasing-out process. Hence, “the passing of this law in parliament and the subsequent preparations for another structural pension reform [...] by the Christian-Liberal government marked the end of the traditional ‘pension consensus’ between the two large parties and the social partners” (Hinrichs 2003: 13).

However, although pension policy became more politicised after the entry into force of the WBG, there was no dissent in principle regarding the necessary steps to be taken to successfully stabilise the German pension system. This became particularly evident after the federal election in 1998, when the newly elected government coalition of Social Democratic Party and Green Party strictly continued the reform path of the previous government. One important reason for this continuity was the persistent pressure to reduce costs in order to meet the EU deficit criteria. In this respect, the then designated minister of finance enforced significant budgetary restrictions. All ministries had to cut down their budget by 7% (Hegelich 2006). For the Federal Ministry of Labour and Social Affairs a reduction of 7% was equivalent to about 8 billion Euro of which one third should be realised by cutbacks in the pension system. Besides the introduction of incentives for voluntary pension provision in 2001, which were meant to compensate for a further declining replacement ratio of the statutory pension one further measure was to raise the upper threshold of the early retirement scheme for severely disabled from 60 to 63 years in the 1999 Pension Reform.

Furthermore, there were important changes concerning the way of decision-making in German pension policy. Firstly, the social partners became less important in the decision-making process regarding the further development of pension policy. All in all, the red-green coalition led to a more active government and to a party system acting more autonomously from social partners (Trampusch 2003). Secondly, the loss of importance
of the social partners was accompanied with significant changes regarding the development process of reform measures since recommendations for reforming the pension system were no longer evolved from an informal network of experts but by means of official (governmental) commissions. In this context, the increasing politicisation of pension policy became particularly evident in the fact that both the governmental coalition (SPD/Green Party) and the Christian Democratic Union (CDU), the strongest opposition party, established an own commission of experts in order to develop measures to stabilise contribution rates while simultaneously ensuring an appropriate benefit level in the future. However, given that there was still was consensus regarding the diagnosis of the problems and challenges the German pension system was facing, and due to the fact, that there was still only a small and well networked number of pension experts able to work out appropriate reform options, the proposals from both commissions did not differ essentially from each other. With regard to raising the effective retirement age both commissions proposed an increase of the standard retirement age from 65 to 67 years. In addition, and contrary to the previous recommendation, the Herzog-commission proposed the introduction of a new early pension for workers with particularly long contribution records. In concrete terms, workers with a contribution record of at least 45 years should be allowed to retire at the age of 63, without any actuarial adjustments.

Due to the strong politicisation and the competitive character of the commission work, only the proposals made by the Rürup-commission were taken into account by the coalition government of SPD and Green Party. However, while most of the commission proposals regarding changes of the pension adjustment procedure were quickly passed by the German parliament in 2004, raising the standard retirement age was deemed politically too dangerous at that point in time, since especially the left-wing party "Die Linke" and the trade unions "opposed this adaptation of retirement age to life expectancy, [again; AJ] using the argument that it would lead to higher unemployment and take jobs away from the young" (Boersch-Supan and Juerges 2011: 9). While the coalition government forwent an increase of the standard retirement age, it passed major changes in the unemployment insurance system, following the recommendations of the Hartz-commission. In this context, the lower age-threshold of the early retirement scheme for unemployed people was raised from 60 to 63 years in the course of the Pension Reform 2004.

Raising standard retirement age became then part of the coalition agreement between the Christian Democratic Union and the Social Democrats in 2005 following both the proposals of the commissions and the recommendations of a number of experts and legal representatives of the German Pension Insurance (Bäcker et al. 2009; Ehrentraut and
In line with the proposal of the Rürup-commission the process of raising statutory retirement age was originally scheduled to start in 2012 and to be finished in 2035. The then designated secretary of labour, Franz Müntefering (SPD), however, announced unilaterally an accelerated increase of the standard retirement age starting in 2012 and ending in 2029 using the momentum of the grand coalition. However, raising the standard retirement age was heavily opposed by the “Left Party”, the left wing of the Social Democrats and the trade unions fearing a significant rise in unemployment figures, especially among older people not being able to work up to the age of 67 (Engelen-Kefer 2003).

Following an intense political and societal debate about rewarding long contribution records to the statutory pension scheme in the run-up of the election in 2005 a new early retirement scheme was established allowing workers to retire at the age of 65 without any actuarial deductions in case that they have fulfilled a contribution record of at least 45 years. This measure was widely in accordance with the respective recommendation of the Herzog-commission, although the commission proposed an age of 63 years for retiring without any actuarial adjustments. The Social Democrats not only agreed to this somewhat backward-looking policy step by reason of the mutual taking and giving in coalition agreements, but also due to the fact that the large majority of trade unions as well as the left-wing of the Social Democratic party were in clear favour of introducing reform measures which are intended to make the retirement transition more flexible.

The social-democratic support for the creation of retirement options for certain groups of workers became again obvious in the run-up of the last election in 2013 as the Friedrich Ebert Foundation, which is strongly related to the Social Democratic Party, launched several scientific projects to ascertain different options for retirement below standard retirement age, e.g. by introducing an old-age pension in case of hazardous or arduous work (Bäcker et al. 2011a; Bäcker et al. 2011b; Brussig et al. 2011). However, none of the ascertained options was finally adopted in the campaign. Rather, the early retirement scheme for workers with particularly long contribution records had been temporarily modified – against considerable opposition of employers’ associations and parliamentarians of the Christian Democratic Union primarily representing business interests. Workers of certain age cohorts fulfilling the precondition of at least 45 contribution years to the statutory pension fund are able to retire already at the age of 63 – without any actuarial deductions. Thus, the old age pension for workers with a particularly long contribution record corresponds at least temporarily to the respective proposal of the Herzog-commission described above. In various newspaper commentaries, this further backward-looking political measure was interpreted as a step towards reconciliation between Social Democrats and trade unions (Kallweit and Kohlmeier 2014; see also newspaper commentaries in “Der Tagesspiegel”, “Die Welt”, “Frankfurter Allgemeine Zeitung”, “Frankfurter Rundschau” and “Westdeutsche
This view is also supported by a statement of the Young Christian Democrats (Junge Union), also considering the 2013 Pension Reform as a means for reconciliation between Social Democrats and trade unions (Statement of the Young Christian Democrats on 26 February 2014). Conversely, it is a considerable success for the trade unions in general and the German trade union confederation (DGB) in particular since it is the core clientele of the trade unions who benefited most from this reform measure: male employees working in the processing industries (Kallweit and Kohlmeier 2014; see also statements of the chairpersons of the German trade union confederation (DGB) and ver.di in the “Westdeutsche Allgemeine Zeitung” on 10 January 2014).

In conclusion, it can be seen that the remarkable features of German policies with regard to people’s employment-to-retirement transition are their long time frame and their continuity. Hence, changes occurred incrementally: although the institutional failure of the pension system could be foreseen already in the early 1990s, measures were system-inmanent and only gradually and incrementally questioned the system itself. By introducing legislation that hurts no one immediately and starts taking effect only several years ahead, popular opposition is avoided, which also helps to stay on target despite changes in political majorities (Ebbinghaus 2011). This explains the apparent contradiction that the change of policy was prepared even before the old policy reached its peak in terms of usage. Accordingly, it is legitimate to speak of a consistent development of the German Pension System since the late 1980s. However, it remains to be seen whether these changes will end the continuous development of the statutory pension scheme and start a new phase of reform reversals.

5.4 Policy Learning

With regard to the series of pension reforms since the late 1980s, which were aimed, among other things, to raise the effective retirement age, two different routes of policy learning can be identified: (1) policy failure/electoral defeat, (2) expert networks, expert commissions, reports of federal agencies (the internal route) and (3) the role of the EU. Starting with the internal route there is clear evidence in both official documents and scientific publications that the first population projections of the Federal Office of Statistics clearly initiated the German reform by providing strong indications for demographic ageing. In addition, most of the reform measures carried out in the 1992 and 1999 Pension Reforms were strongly influenced by the preliminary work of a small network of pension experts consisting of representatives from trade unions, employers’ associations, the German Pension insurance, the Ministry of Labour and Social Affairs and the political parties. This network “was able to take a long time horizon the more the politics of pension policy was de-politicized and deparlimentarized” (Hinrichs 2003: 19). Due to the increasing politicisation of pension policy in the early 2000s, this informal expert network was replaced by expert commissions again among other things.
responsible for both, the creation of new as well as the further development of already established measures to raise the effective retirement age. The strong influence of expert commissions on German pension policy is underlined by the fact that a lot of measures proposed by the respective commissions were actually put into practice:

1. **Raising standard retirement age:** The raising of the standard retirement age from 65 to 67 years was proposed by two expert commissions, the Rürup-commission and the Herzog-commission, which operated independently of one another in the years 2002 and 2003. Discrepancies between the proposals of both commissions and the actual implementation of the reform measure were only with regard to the period foreseen for raising the standard retirement age (2012-2035). Although the coalition agreement was completely in line with the commissions’ proposed period of 24 years, the then secretary of labour unilaterally shortened the respective period by six years (2012-2029).

2. **Raising the lower age threshold for the early pension for unemployed:** In the course of the Pension Reform 2004, the lower age-threshold of the early retirement scheme for unemployed people was raised from 60 to 63 years, following a recommendations of a third important expert commission, the Hartz-commission, which was also responsible for a rather considerable series of labour market reforms, e.g. the introduction of the unemployment benefit II.

3. **Introduction of a new early retirement scheme for workers with a particularly long contribution history:** This proposal by the Herzog-commission was implemented in the course of the 2007 Pension Reform and was aimed to cushion the increase of the standard retirement age, also implemented in the 2007 Pension Reform.

Furthermore, there is some evidence from scientific reports, newspaper commentaries and political statements that the temporary modification of the old age pension for workers with a particularly long contribution history was partly motivated by the insight of the Social Democratic Party that the continuation of a labour market and pension policy, that is contrary to the interests of the trade unions had to come to an end since the Social Democrats had to accept significant losses in the 2009 election. There is widely agreement that these losses were mainly a slap on the wrist for implementing the Hartz-reforms and raising the standard retirement age which both were strongly opposed by the trade unions. Thus it is not directly policy failure that initiated learning processes among the social democrats but rather electoral defeat that is the insight that a continuation of such a policy would minimise the possibilities to gain parliamentary majority in forthcoming elections (Hegelich et al. 2011; SPD 2009).

**Critical assessment of the EU's role in policy learning**

To be able to do a critical assessment of the EU’s role in policy learning, it is appropriate to differentiate between “why” a reform is necessary and important on the one hand and “what” has to be done in the respective reform. With regard to the “what”, the EU played no role at all as the evolution and preparation of reform measures concerning pensions evolved either from an informal network of experts (in the course of the Pension Reforms of 1992 and 1999) or by means of official (governmental) commissions of experts (in the
course of the 2004 and 2007 Pension Reforms) following the accustomed development path. Furthermore, as the dates of the reforms show, the first considerable pension reform through which the abolishment of early pensions had already been largely completed had been carried out in 1989 and thereby well before the start of the European debate about active ageing and a necessary prolongation of working life. Thus the EU plays no role in the initial stage of the long German reform process. However, this situation changed with the increasing necessity to meet the Maastricht criteria of 1992 as one essential precondition for adopting the EURO. In this respect, the EU plays a considerable role in policy learning with regard to the “why” of further pension reforms and by doing so, fostered the implementation of further reform measures which were originally planned at a later stage.
6. ‘Perspective 50plus’ – a national programme for older jobseekers

6.1 Introduction

As shown in the previous chapter, pension reforms aimed at raising the effective retirement age met widespread scepticism and opposition in Germany. The standard argument was (and in part still is) that working longer is impossible for most workers and that therefore raising age thresholds in the pension system will either push people into unemployment or, as far as premature pensions are still available albeit with actuarial deduction, will amount to nothing more than cutting peoples’ pensions. Against this background, the government had to demonstrate that working longer is possible and that unemployment is not necessarily the end of a person’s career, not even for older workers.

6.2 Brief programme description

The nation-wide labour market programme ‘Perspective 50plus’ (P50+) was launched by the Federal Ministry of Employment and Social Affairs in mid-2005, six months after fundamental structural changes of the benefit system for unemployed people and of the Public Employment Service (PES) had taken effect (see Knuth 2009 for details). Phasing out in 2015, P50+ was a programme of unusual long duration. Under this programme, jobcentres could apply for additional funding in order to provide intensified employment support to jobseekers aged 50plus. Grants to the jobcentres were attached to agreed job outcome targets; however, missing the target in one year would only lead to lower targets and lower grants in the next year, not to reclams. Though the programme was not restricted to long-term unemployed, participants were very distant from the labour market, with their last employment covered by social insurance dating back, on average, more than three years. The programme addressed primarily recipients of means-tested minimum income benefits; recipients of contribution-based unemployment benefits could be included if exhaustion of their maximum eligibility period was near.

Funding of more than 300 million euro annually came from the federal budget. However, this was not really ‘additional’ money but had been set aside from the general budget for active labour market policies. There was no European money involved, which is obviously one prerequisite for the programme’s flexibility.

No legislation was needed to launch the programme; this was simply done by issuing a call for applications by the Federal Ministry for Employment and Social Affairs.

6.3 The context: problems to which the programme responded

Adaptation to structural change of the economy and to the massive job loss that occurred in the wake of the German unification had been facilitated from the early 1980s to the late 1990s through a combination of extended unemployment benefit durations and
exemptions from job search requirements for older workers, coupled with immunity of employers’ redundancy compensations from means-testing for benefits. By making entry into a premature pension from 60 conditional on long-term benefit recipiency, older workers and their employers had been literally incentivized to utilize unemployment benefits for building pathways into early retirement (Knuth und Kalina 2002; Wübbeke 2011). The persistence of these policies over considerable periods of time resulted in a deeply entrenched early retirement culture (Jansen 2013). These policies were successful in maintaining social peace but placed considerable burdens on the social insurance funds. Furthermore, demographics showed that the population of working age was to start shrinking around 2010, possibly resulting in labour or skills shortages. Therefore, the reversal of these policies was prepared as early as 1989, with changes in pensions and benefits gradually taking effect from 1996 on (see chapter 5). The ‘Hartz’ reforms enacted from 2003 to 2005 finalized this paradigm shift by reducing older workers’ maximum eligibility for unemployment benefits and introducing a new minimum income benefit regime with stricter means testing, allowing no exemptions for payments by previous employers. While these policies gradually introduced disincentives against retirement before the statutory retirement age, raising the statutory retirement age itself was more or less in the debate already in 2005, when P50+ was launched. The respective legislation was passed in 2008, gradually elevating the statutory retirement age from 65 to 67 between 2012 and 2029 (see chapter 5).

In 2001, the European Council had adopted the ‘Stockholm target’ of a 50 per cent employment rate of the age group 55 to 64 to be achieved by 2010. In 2003, the figures available when the programme P50+ was planned, Germany, with employment rates of 31.6% for women and 48.2% for men, still seemed hopelessly distant from that target. It became clear that closing pathways to early retirement and raising the statutory employment age – this is what had been done – does not automatically increase older workers’ employment rates but may simply drive up their unemployment rates.

In this context, a bundle of government initiatives was launched in order to demonstrate that working longer is possible, in order to raise employers’ awareness of the challenges of demographic ageing and to prove that even the elderly long-term unemployed can find jobs. ‘Perspective 50plus’ was the most conspicuous part of these initiatives. Since the culture of early retirement had also had its effect on attitudes among the jobcenter staff, the programme also had the function to overcome the age pessimism prevalent among frontline officers.

6.4 Innovative elements of ‘Perspective 50plus’

For the PES, P50+ marked the paradigm shift from the inactivation to the activation of older workers. It also implied that the newly established jobcenters should, six months after their creation, start actually moving people from unemployment into work. This had
to be accomplished across jobcentres with two different types of governance, without direct government control over the fully municipalized jobcentres (cf. Knuth und Larsen 2010).

In order to achieve this, the following design elements were crucial:

- The programme as a whole was managed by a private non-profit service provider. However, final and formal decisions remained reserved to the ministry.
- For the jobcentres, participation in the programme was voluntary. The programme started with only 93 out of then 438 jobcentres but developed so much momentum that in the end more than 90% of the now 404 jobcentres got involved.
- For unemployed older workers, participation in the programme was made voluntary by most of the participating jobcentres.
- Jobcentres were encouraged to liaise with social partners, local initiatives and media in order to make the employment of older workers a publicly recognized issue. The local networks thus developed were called ‘employment pacts for older workers’.
- Unlike mainstream active labour market policies in Germany, the kinds of services participants were to receive were not prescribed in the form of legally defined ‘instruments’. Rather, jobcentres were free to decide what to do or what to have done by external providers commissioned by them, to experiment, to combine various treatments and to change approaches flexibly in accordance with individual needs of clients.
- Jobcentres were also free to decide on how to divide the funding between contracting-out and hiring additional internal staff. In any case, the general result of additional funding was having lower caseloads at the frontline.
- The kind of support actually given to participants was more individualized, more medium-term, and more ‘investive’ than in mainstream services (more training, more coaching, more health support, more support for becoming self-employed).

While the numbers of unemployed people in the respective age and benefit category remained fairly stable, the numbers of participants in the programme more than doubled, finally covering more than one-third of the theoretical target group. Job take-ups within the programme grew even faster, showing hardly any reaction to the economic slump of 2009 and finally reaching a gross success rate of more than one-third. Spending in the programme grew accordingly, but the ratio of spending per successful outcome declined slightly, indicating improvements in cost efficiency.

### 6.5 Evaluation results

Evaluation consisted of extensive qualitative research conducted from 2005 to 2010 and quantitative impact analysis based on participants’ data of 2010 (Knuth et al. 2013; Knuth 2014a). The evaluation showed that the programme was more effective and more cost-efficient than standard services jobseekers with comparable characteristics would receive from the jobcentres. While job outcomes were positive, many successful

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15 Since German federal government departments are not prepared to directly manage such large programmes themselves, they usually use subordinate federal authorities for that purpose. It is only when programme management includes professional advice and dialogue that private providers are considered.
participants were not able to completely quit the benefit because they still would not earn a living wage. This can be explained by low wages at the bottom end of the German labour market. Furthermore, due to weak health, part-time work was the only alternative to no work at all for considerable proportions of the participants. Continued benefit receipt must be understood against the background that counting earnings against benefits (with some disregard as a work incentive) and continuing payment of parts of the benefit as a complement to low earnings is the German equivalent of earned income tax credits. Overall development of employment rates of older workers in Germany was remarkably positive, by far exceeding the Stockholm targets in 2010. This can be explained primarily in terms of overall employment growth since 2006 plus a shrinking of the population of working age since 1999 (Knuth 2014b). However, given the positive net impact of the programme established by the evaluation it is reasonable to assume that the programme contributed to the overall positive development.

6.6 International policy learning and stakeholder involvement

Though government documents related to the programme never made explicit reference to the 2001 Stockholm targets regarding employment rates of older workers, it seems reasonable to assume that Germany’s apparent inability (seen from 2005) to achieve these targets by 2010 had some impact on German policy makers when conceiving P50+. However, there was no policy learning or policy transfer from other European member states. There was no systematic stock-taking of, for example, the British New Deal 50+ (2000 to 2009) or of the Finnish National Programme on Ageing Workers. There was no involvement of stakeholders in programme development, either. Whereas legislative changes are often prepared by parliamentary committee hearings to which the umbrellas of church-affiliated and civil society welfare organizations may be invited (see WP 5, 5.2, page 60), special government programmes of limited duration are usually developed internally, without formal consultation. It may also be questioned which stakeholders could possibly have been involved. There are no organizations of older workers or of older jobseekers, and advocacy organizations of unemployed or older citizens are primarily concerned about adequate benefits – they are not fighting for working longer or returning to work from unemployment.

6.7 Policy learning for subsequent national programmes

In 2015, Germany is starting a relatively small (maximum 33,000 participants) national ESF programme for placing long-term unemployed 35 years plus in regular jobs. This is a rather belated implementation of a respective clause in the 2013 coalition agreement; it is relatively free of electoral campaign considerations since the next federal elections are only due in 2017.
The new programme carries on some features of Perspective 50+ but disregards others. Key features carried on include:

- One experience of P50+ was that jobs suited for people distant from the labour market do not just pop up in employers’ vacancy registrations but have to be scouted for and solicited from employers. Therefore, the new programme foresees additional staff for jobcentres acting as job scouts.

- Another experience was that jobseekers distant from the labour market needed continuous support over longer periods of time. In many jobcentres, this resulted in setting up coaching services provided either individually or in groups. Whereas in P50+, coaching was done during job search, in the ESF programme jobs are supposed to be found for participants, and coaching will be done during the initial phase on the job in order to prevent dropping out.

Features identified as crucial for success in P50+ but not carried on into the ESF programme include:

- Instead of using a private service provider and its flexibility, the new programme will be managed by a government authority, expectedly in a purely administrative way, without providing counseling and platforms for exchanging experience.

- Whereas P50+ was very flexible with regard to content, the ESF programme is totally prescriptive: job scouting, coaching and wage subsidies are its standard elements; there can be some training where needed. Becoming self-employed is not an option.

- Health support, experienced to be so important in P50+, is totally absent in the ESF programme.
7. Assessment of the impact of different factors and parameters on the performance of innovations

This chapter briefly describes different factors and parameters which had/have positively or negatively impacted the performance of the respective innovation or rather the political process towards its successful implementation.

7.1 Introduction of a general statutory minimum wage

The general statutory minimum wage went into effect in January 2015. Thus, it is not possible yet to assess its performance with regard to earnings, employment effects and further labour market outcomes. Rather, some factors are discussed in the following section that had considerably impacted the performance of the political process towards the introduction of a general statutory minimum wage.

A first factor is the strong political will or rather the long-term insistence of German trade unions on the implementation of a general statutory minimum wage. The respective political campaign already started in 2002 and developed into one of the largest political campaigns in the history of German trade unions. It was supported by regular publications of independent research institutes (e.g. the Institute for Work Skills and Training; the German Institute for Economic Research, or the Institute for Employment Research) indicating a continuously rising proportion of low pay in particular sectors of the German economy. The success of the campaign is demonstrated not only by the final implementation of a general statutory minimum wage, but also by the fact that the institutional setting clearly show the hand of German trade unions. For example, the General Minimum Wage was only one of three measures taken to reduce the proportion of low pay in the German economy. Additionally, the extension of the Posting of Workers Act to all sectors was decided. Furthermore, it is no longer necessary to reach the 50% threshold to declare a collective agreement generally binding. These further reforms address essential trade union demands and there is clear evidence in the interviews conducted that these additional measures are of higher importance for the German trade unions than the implementation of the general statutory minimum wage as such (Interviews with experts from the German trade union congress).

A second important factor can be described as learning from experiences or rather building a strongly evidence-based policy. In this respect, the fact that the introduction of a general statutory minimum wage in Great Britain had no negative effects for both overall employment and the labour market position of vulnerable groups was one of the most essential arguments for a considerable number of parliamentarians to agree to the introduction of a General Minimum Wage - especially for the parliamentarians of the Christian Democratic Union (CDU) (Interview with experts from the Christian Democratic Union and the Social Democratic Party). In addition to international experiences, the
employment effects of the sectoral minimum wages in Germany were evaluated. In none of the sectors under investigation, negative employment effects could be found. Again there is clear evidence in the interviews conducted that this result paved the way for accepting the idea of introducing a general statutory minimum wage in the rank and file of the Christian Democratic Union (CDU) even though economic effects of sectoral minimum wages implemented through the Posting of Workers Act and a general minimum wage are not directly comparable (Interview with an expert from the Christian Democratic Union (CDU)).

A third factor fostering the implementation of a general statutory minimum wage was the apparent failure of existing instruments of regulation like the sectoral minimum wages or the possibility to declare collective agreements generally binding employers’ organisations at national level maintained their stern rejection of minimum wage legislation, concerned employers in some of the sectors most severely affected by low wage competition finally joined the consensus between the trade unions, the Social Democratic Party, the Green Party, the Left Party, and the “labour wing” within the Christian Democratic party that a General Minimum Wage was indispensable.

Finally, the favourable development of the German economy and growing employment may be seen as a fourth factor. Since the early 1990s, when the German monetary and economic union had destroyed a large proportion of jobs in East Germany, with accelerated restructuring also in West Germany from 1993 on, the notion had become to prevail that ‘any job is better than no job’ and that any measure that might increase labour costs should be avoided. This mood has gradually changed during the current business cycle which has lasted since 2006, with only small impact of the 2008 financial crisis. It is now politically possible to accept the risk that some ‘bad jobs’ might be destroyed while better jobs are being created.

### 7.2 The repeated de-regulation and re-regulation of temporary agency work

The ambivalent perception of temporary agency work in Germany can be seen as the most essential factor for the repeated de-regulation and re-regulation since 2002. The political and societal views on temporary agency work still range from extremely negative perceptions which equate temporary agency work with ‘slave labour’, to more positive connotations perceptions, viewing temporary agency work as important bridge into permanent employment for disadvantaged jobseekers and as an effective means to create additional jobs. There is ambivalence even among trade unions and works councils who tacitly acknowledge the value of temporary agency work as a buffer helping to stabilize core workers’ jobs, while at the same time trying to curb the use of agency work as a
reservoir of ‘cheap labour’. These ambiguities explain why there is no straightforward strategy but rather a kind of zig-zagging in the regulation of temporary agency work. It is then also difficult to assess the factors for ‘successful’ implementation since the criteria for success are unclear.

What can be noted, however, is a paradigm shift in trade union strategy from an obstructive or exclusionary perspective (fighting against agency work and thus, implicitly, against agency workers) to a ‘bridging’ or inclusionary perspective: Attempting to include agency workers in collective bargaining strategies. This shift in perspective is promising also for other categories of non-standard forms of employment and may thus be seen as a progress.

7.3 Raising the effective retirement age: Abolishment of Early Pensions and raising statutory retirement age

The most important factor that had influenced the performance of the various pension reforms between 1992 and 2007 is the continuity of reform policies. The continuity in this policy area is particularly due to the fact that there was a broad political and societal consensus on both the broad problems the statutory retirement scheme was facing due to demographic ageing and the respective measures that had to be taken to cushion the prospective outcomes. Even when pension policy became more politicised in the late 1990s, there was no dissent in principle regarding the necessary steps to be taken to successfully stabilise the German pension system. Especially in the first pension reforms in the course of the 1990s, this consensus politics had been further fostered by the fact that German pension policy at that time was incumbent on a small network of experts that consisted of representatives from trade unions, employers’ associations, the German Pension insurance, the Ministry of Labour and Social Affairs as well as the political parties.

A second factor for the positive labour market outcomes of the long process of pension reforms in Germany is incrementalism. Although demographic ageing was conceived of a major challenge regarding the viability and sustainability of the statutory retirement scheme, there was largely agreement that radical and sudden changes of the existing scheme must be avoided. Hence, the change of the existing scheme was carried out incrementally (Anderson 2015). The process started with the phasing-out of early pensions in 1992, was continued with the acceleration of the phasing-out process in 1996, 1999 and 2004, and finally ended with the raising of standard statutory retirement age in 2007.

Thirdly, the long-time frame of German pension policy is a further important factor. By introducing legislation that hurts no one immediately and starts taking effect only several years ahead, popular opposition is avoided, which also helps to stay on target despite
changes in political majorities. This explains the apparent contradiction that the change of policy was prepared even before the old policy reached its peak in terms of usage.

7.4 The national special labour market programme ‘Perspective 50plus’

The discussion of the success factors of this programme must differ from that regarding the other three innovations since this programme affected no one negatively and since its’ launching and implementation did not require legislation, parliamentary compromise or consultation with social partners. The success factors of this programme have been identified in comparison to the standard instrument and procedures in jobcentres.

First, participation in the programme was voluntary for jobcentres. Therefore, implementation of the programme by local jobcentres was not a matter of fulfilling legal obligations or reacting to bureaucratic ordinance, but a matter of reacting to a positive incentive.

Second, the use of funding from this programme was much more flexible than in standard procedures, both in the sense of spending the money internally (additional own staff of the jobcentres) or externally (external providers) and with regard to the choice of services and support made available to clients. The assignment of clients to different kinds of support, be it successively or simultaneously, was also more flexible than in standard procedures. Jobcentres were able to experiment with types of support that are not available in the legally regulated set of instruments.

Third, the programme was not administered by a government agency but by a non-profit private service provider who invested expertise in counselling the jobcentres and in creating platforms for exchange.

Forth, the overall steering of the programme followed a soft, network-based approach stimulating professional competition, as opposed to the normal bureaucratic, controlling-based approach driven by key figures and by shaming the underperformers.

Fifth, the programme enjoyed tailwind from general employment growth and decreasing unemployment.

8. Conclusions

For the purposes of this workpackage, we have studied in depth five innovations of labour market and employment policies, three belonging to the ‘older workers’ cluster and two to the ‘flexicurity’ cluster. In terms of policy areas concerned, two innovations belong to the core of traditional welfare state provision (pensions), one is part of ‘active’ or ‘activating’ labour market policies (the Federal Special Programme ‘Perspective 50plus’), one is about regulating non-standard forms of employment, and one is about wage regulation and wage setting (the introduction of a statutory minimum wage).

These five innovations are very different in scope. The minimum wage represents the most fundamental paradigm shift in that it required the actors involved in wage-setting to re-define their roles. However, the solution that emerged mitigates the institutional
rupture by framing the issue as a “strengthening of collective bargaining”. Furthermore, the number of workers immediately affected is quite limited, most of those affected will experience positive changes, and the massive job destruction predicted by employers’ organisation and mainstream economists as a result of the minimum wage is very unlikely to occur. Therefore, after the excitement has subsided, the minimum wage will be kind of a brace at the lower end of the labour market and not a concern of the majority of workers. At any rate, by curbing ever increasing wage dispersion at the lower end, the minimum wage will contribute to – at least the perceived – resilience of the German labour market. The raising of the effective retirement age, by contrast, will eventually affect all employees. Therefore, even though the turnaround from supporting early retirement to forcing people to work longer was accomplished within the existing pension system, without institutional path-breaking, by merely recalibrating its steering elements, the change in the pension system is much more far-reaching than the introduction of a minimum wage regulation. Furthermore, this measure is restricting – and going to restrict further – people’s aspirations to enjoy older age as a carefree third stage of life in which they can fulfil dreams postponed. On the one hand, the phase between exit from work and the beginning of crippling age-related health restrictions will again become shorter; on the other hand, budgets to be spent in ‘golden retirement’ will become smaller. Consequently, this reform was not particularly welcome to anyone in their perspectives as employees concerned, even though in a perspective as informed citizens and voters or even as involved experts many people would accept the necessity of working longer (at least for other people...) on the grounds of the viability of pension funding or of labour market resilience in the face of demographic ageing and predictable skills shortages.

In contrast, the programme ‘Perspective 50plus’, impressive as its success may be, was of concern only for a minority of older long-term unemployed, the management of the public employment service and some labour market policy experts. The majority of German citizens have never heard of this programme which is now coming to an end after ten years. The programme was an important experimental ground for policy learning in the field of activation and job placement, but it was in no way a major political issue. In terms of the number of people immediately concerned, the regulation of temporary agency work appears similarly marginal as the activation and job placement for older jobseekers. However, within the set of ‘flexible’ employment options available to employers, temporary agency work is outstanding because it transforms what would be a labour contract into a service contract between the user of (wo)manpower and the agency. Therefore, the regulation of temporary agency work is a seismic indicator for the calibration of the balance between ‘standard’ and ‘flexible’ forms of employment in general. Furthermore, it epitomizes a strategic dilemma for trade unions and works councils: Should they collaborate with employers in building flexibility buffers, thus stabilizing the employment of ‘core’ workers – whose numbers, however, are
diminishing? Should they fight to restrict or obstruct the use of non-standard forms of employment – which may be tantamount to excluding some categories of workers from employment altogether? Or will they manage to negotiate ‘inclusionary’ mechanisms by which temporary agency workers will become part of their constituency?

These totally different scopes and ranges of implications of the four innovations discussed must be borne in mind when comparing actor and stakeholder involvement as well as assessing the impact of the respective innovations on the labour market positions of vulnerable groups. In this context, it has also to be considered that two of the five innovations were being introduced only recently (the introduction of a general statutory minimum wage), or had only recently started to come into force (raising standard retirement age). Hence, it is difficult to state with any great accuracy how much, and in what ways, both innovations already have affected the labour market positions of vulnerable groups due to a comprehensible lack of respective empirical data.

However, taken the measures to raise effective retirement age as a whole (phasing out of early pensions and raising the statutory retirement age) it can clearly be concluded that the overall reform package had positively influenced labour market participation of older people. The employment rate of those aged between 55 to 64 years increased from 37.4% in 2000 to 61.5% in 2012. During the same period, the respective unemployment rate decreased by almost 7 percentage points (from 12.7% in 2000 to 5.9% in 2012). Among other aspects like a shrinking population of working age due to demographic ageing or a reduction of average annual working time, indicating that more people are sharing a shrinking ‘pie’ of work (see Jansen and Knuth 2014 for a more detailed discussion), the continuity of pension reforms and the broad societal and political consensus regarding a prolongation of working lives clearly contributed to this development since it ensures planning reliability and conveys both companies and older people a sure hand when taking action. In addition, the long process of raising effective retirement age was partly flanked by the labour market programme “Perspective 50plus” that directly addressed scepticism in Germany that working longer is impossible for most workers and that therefore raising age thresholds in the pension system will push people into unemployment by helping older and mostly low-skilled jobseekers into work. Evaluation results regarding the success of the programme consistently show that the programme has clearly contributed to the remarkable increases in employment rates of the older German population (see section 4.5).

In contrast, the repeated de-regulation and re-regulation of temporary agency work had no positive effects on the labour market position of temporary agency workers. Temporary workers are still the first to leave during crises. Furthermore, the pay gap
between temporary and regular workers is still considerable even for identical tasks, and physical working conditions are worse for them since the most unpleasant jobs are assigned to them. The direct “bridging effect” – hiring of temporary workers by the company using them – amounts to only 7% (Hohendanner & Walwei 2013). Temping is more of a trap than a springboard; as far as it helps to overcome unemployment, this is largely the unemployment it produces itself through job instability. Regarding the labour market position of specific vulnerable groups there is considerable scientific evidence that temping has become a major mechanism of ethnic segregation on the German labour market: Whereas only 3% of gainfully employed German-born males are employed by a temporary work agency, the respective percentage among males with migrant backgrounds is 7%. Even controlling for levels of education and other demographic factors, discrimination of migrants remains apparent in significantly elevated risks of being employed by a temping agency for most groups of migrants (Vaughan-Whitehead 2015).

One reason for the still poor labour market position can be seen in the discontinuity of the respective political process in general and the ambiguous role of trade unions within this process in particular (see in detail section 4.7). In this respect, it remains to be hoped that the continuity in the political process towards the introduction of a general statutory minimum wage will contribute in the medium to a more resilient labour market position of vulnerable groups and employees (see chapter 2).
Part Two: German policy learning infrastructure with regard to labour market and employment issues (WP 5)

1. Introduction
With the in-depth comparison between the countries involved in the INSPIRES project still ahead, it seems difficult to assess the German policy learning infrastructure. On the one hand, German policy learning as such appears slow, inconsistent, and occasionally regressing behind what was already developed before. Furthermore, institutional fragmentation and conflicting interests sometimes lead to unintended results in terms of institutional re-arrangement, as was the case with restructuring the public employment service in the course of the Hartz reforms (cf. Knuth 2009). On the other hand, taking stock of the policy learning infrastructure reveals quite a rich and variegated landscape. Possibly, the two contradicting findings are in some way connected: As a federal state, with semi-independent social insurance bodies and with strong corporatist traditions, the political process in Germany is restricted by many checks and balances and quite often even faces deadlock. At the same time, however, within this multiplicity of institutional actors there is an abundance of resources for producing evidence and coming up with concepts. Consequently, the lack of straightforwardness of reform processes may also be seen as a democratic virtue: There is no intellectual monopoly of any one consulting think-tank, and there is no shortcut from concepts to political implementation.

2. Government

2.1 Periodical government reports
There is a large and gradually growing number of legally mandatory government reports on a wide range of issues relevant to employment and the labour market. Most of these reports are due once in each parliamentary term, i.e. every four years. Topics covered by such periodical reports are

- distribution of income and wealth (Armuts- und Reichtumsbericht)
- inclusion of disabled people (Teilhabebericht)
- gender equality report (Gleichstellungsbericht)
- senior citizens report (Altenbericht)
- temporary agency work (Bericht der Bundesregierung über Erfahrungen bei der Anwendung des Arbeitnehmerüberlassungsgesetzes – see section 4).
- employment of older workers report (Bericht der Bundesregierung zur Anhebung der Regelaltersgrenze auf 67 Jahre – see section 5).

There are also annual reports:

- vocational education report (Berufsbildungsbericht)
- migration report (report of the Federal Commissioner for migration, refugees and integration – annually)
- annual report of the expert committee of foundations for integration and migration
• pension insurance report (section 5).

All these reports are nowadays available online.

The new legislation that has introduced a national minimum wage (section 3) has mandated biannual reports to be prepared by the Minimum Wage Commission. The 16 states of Germany have smaller numbers of similar reports of their own. Obviously, such reporting is highly standardized and ritualized and does not give rise to policy learning per se. However, these government reports are

• a source of funding for research (at least in its rudimentary form of data mining) since usually large parts of these reports are commissioned to researchers;
• a source of reference for citizens and researchers where they can find thematically concentrated information that would otherwise be scattered over various institutions or not publicly available at all (as is the case for all information that has to extracted from administrative or survey data sets for the specific purpose of the report);
• an occasion for the parliamentary opposition and for social advocacy organizations to comment, to criticize, to highlight problems or to raise issues not dealt with in the reports;
• an occasion for the media to echo such controversies.

It is in these ways that some findings of such reports can attract political attention and thus contribute to policy learning. Insofar as civil servants in government departments are involved in the drafting and editing of the reports, this can also be an occasion for them to reflect the policy field for which they are responsible in a wider temporal and societal perspective.

2.2 One-time evaluations

German active labour market policies are highly legalistic in the sense that programmes or ‘instruments’ are prescribed in law. The introduction of new instruments or major modifications of instruments are often accompanied by a legal obligation to have the effects evaluated. Also temporary programmes like the federal programmes using the European Social Fund are increasingly accompanied by evaluations of their implementation and impact, going far beyond the evaluation requirements of the ESF itself. In this way, ESF-programmes can be used as experimental grounds for future policies to be written in law. Finally, occasionally there are evaluations of a whole policy field, like, recently, of family policies.

Legally mandatory evaluation reports are always available online (through the parliamentary document server), whereas other evaluations are sometimes held back. In some cases, contrary to the intentions of the government department responsible, holding a report back can increase public interest and lead to broader reception of controversial results.

There is one apparently insoluble problem with evaluations of programmes of limited duration: If long-term employment effects are to be observed, results will only become
available after the programme in question has been replaced by the next programme, which will stifle interest in the evaluation of the old programme. In this way, the different pace of policy renewal and the production of scientific evidence is an obstacle to policy learning.

2.3 Reform commissions

In a relatively short period from 2000 to 2003, the German government (first and second term of the Social Democratic / Green coalition led by chancellor Schröder) made extensive use of one-time commissions appointed in order to draft agendas for reform of

- the immigration regime (Süsssmuth Commission, 2000)
- labour market policies (Hartz Commission, 2002)
- pension reform (Rürup Commission 2002)\(^{16}\).

Not only are the commission reports sources of information and ideas; in some cases the commissions also ordered expert opinions or even research reports so that the commission materials are of value for policy learning. The use of government commissions for preparing ‘unpleasant’ reforms can be observed in other countries as well; thus the spread of the method itself might be seen as a sign of policy learning from abroad (Eichhorst und Wintermann 2005).

2.4 Continuing government grants for foundations of the political parties

According to the German constitution, the political parties are to contribute to the formation of the political will of the people. From this follows a long-standing practice of government grants for ‘foundations’ (legally mostly associations) maintained by the political parties represented in the Federal Parliament. When this was challenged, the Federal Constitutional Court has explicitly approved this practice on the grounds that political education is a task of public interest. These government grants are quite substantive (around 500 million Euros annually) and are split up between the foundations according to their share of votes in recent federal elections. – See 6.1 for what the foundations do with this money.

3. Social Insurance Funds

Social insurance in Germany is organized in separate bodies (or, in the case of health and of work accidents, in categories of a larger number of bodies) bodies according to the fundamental risks of life: health, unemployment, old age, and health risks at work. Only the latest branch, elderly care, has no administration of its own but is administered by the health insurance funds.

\(^{16}\) The Herzog Commission (2003) was not a government commission but convened by the Christian Democratic Party then in opposition. However, the proposals it came up with were remarkably similar to those developed by the Rürup Commission.
All these bodies are not part of the government administration but independent bodies of public law with self-management by representatives of the social partners. This structure in itself gives more occasion to debate and deliberation compared to a government department or agency.

The social insurance funds are also important sources of data since they process employers’ social insurance notifications. Since the introduction of electronic data processing and storing in the 1970s, enormous bodies of social insurance data have piled up which meanwhile cover entire employment, unemployment, sickness, benefit etc. histories of the persons now around retirement age. In order to make these data available for research, these bodies have organized their own research data centres, established smaller or larger research capacities of their own or make use of their data in collaboration with external researchers. They all put out publications of scientific quality. The Federal Pensions Fund has even set up a research funding facility where researchers can apply for grants.

Outstanding in terms of research capacity is the Institute for Employment Research of the Federal Employment Agency. Technically part of the social insurance body that administers the unemployment insurance fund, its activities are based on a statutory mandate laid down in legislation. By establishing a Scientific Advisory Council and with most of its leading researchers simultaneously holding appointments as professors in neighbouring universities, the institute has developed and defends a status of academic semi-independence from the public employment service administration. In addition to running several survey panels of employers and workers and its vast research output, the institute also plays a crucial role as a service unit which prepares administrative data for scientific use and makes them available to the research community.

4. Chambers of Labour
In two of the 16 German federal states – unfortunately the two smallest ones, Bremen and the Saarland – there are chambers of labour to which employees pay mandatory contributions. These organisations must be consulted in legislative matters of the respective state if relevant for employment and social issues. They put out publications and organise conferences. How powerful such a structure could be for policy learning can be seen in Austria where chambers of labour exist federal as well as state level.

5. Parliament
Due to party discipline and the ritualization of the parliamentary process, parliament itself is not a very effective platform for policy learning. However, there are two parliamentary procedures that possess some policy learning relevance.
5.1 Parliamentary questions

The parliamentary factions can formally submit questions to the government. Insofar as these may refer to statistical evidence, the government will respond by mobilizing relevant agencies like the Federal Statistical Bureau, the Federal Employment Agency or the Federal Agency for Migration and Refugees. Depending on the diligence of the enquirers, this sometimes leads to the emergence of statistical information that was not publicly available or at least not publicly known before. This kind of questioning is a way for the parliamentary factions in opposition to the government to make themselves heard, to raise new issues or to insist on issues they want to put on the agenda. The press often takes this up, and even though press reporting is quite often distorted and out of context, it may alert experts to look for the government documents and to incorporate that evidence into their body of knowledge.

5.2 Parliamentary committees’ expert hearings

Like other parliamentary committees, the committee for Work, Employment and Social Affairs may hold expert hearings on the occasion of new legislation. It is extremely rare that draft legislation is changed as a result of such hearings. Nevertheless, being invited to such hearing is an occasion for experts (including those from NGO’s, social partners or social insurance funds) to synthesize and structure their knowledge with a focus on the political issues at stake, which can sometimes lead to new insights and ideas. These hearings are also an occasion for face-to-face contact between members of parliament and researchers, which can lead to other forms of exchange. In this way, hearings as platforms of interaction between politics, researchers, social partners, social insurance funds, and the civil society can be seen as part of the policy learning infrastructure.

6. Civil Society

6.1 Foundations of political parties

Using, among other sources, government grants as explained above (2.4) under a very broad definition of ‘political education’, the party foundations may commission expertise or even research, put out publications and organise conferences with experts. They will of course select issues that they see relevant and appropriate with regard to the politics of the party they are supporting, and they will commission experts and researchers who they think will produce something that is useful for their political camp. However, most of these foundations act relatively independently of the politics of the day, raising issues with relevance for future policies. In this context it is entirely possible for experts to come out with results quite critical for the respective political party’s politics of the day. Political as well as academic culture has so far prevented the output of these foundations to turn into pure propaganda. In fact, if such a foundation were to intentionally distort the facts
in its publications, it would run the risk of having its status challenged in the constitutional court.

6.2 Policy relevant research associated with the social partners

Both social partner umbrella organizations have research branches which at the same time are part of the German academic community. This serves as an important mechanism of policy learning which tends to guide the social partners to agree on facts even though they may disagree on their assessment and on policy.

6.3 The Hans Böckler Foundation of the German Trade Union Confederation

The trade unions' foundation is acting in a similar way as the party foundations though the government money they receive is restricted to student scholarships. The Hans Böckler Foundation has its own quite powerful source of revenue (42 million Euros in 2014) which originates from the German system of co-determination at enterprise level. Workers' representatives sitting on companies' supervisory boards receive the same fees as representatives of shareholders; however, insofar as they are elected as candidates on trade union lists, they are 'obliged' (not legally, but morally and politically) to donate the larger part of their fees to the Hans Böckler Foundation. Using these funds, the foundation maintains its own inhouse experts plus two research units, and it awards research grants in the magnitude of 8 million Euros in 2014. In addition, the foundation published journals and leaflets, including an academic journal. All these activities are focused on issues of work, employment, social policy, workers' rights, workplace participation and co-determination. In this way, the Hans Böckler Foundation is an important part of the German policy learning infrastructure.

6.4 The “Institut der Deutschen Wirtschaft”

The institute's name would literally translate as 'institute of the German business community' (which, in German, is synonymous to 'institute of the German economy'); however, the institute itself operates under the English name 'Cologne Institute for Economic Research'. The institute is funded by German employers' associations but also participates in the public research market. It is the counter piece of the research activities of the Hans Böckler foundation.

6.5 Private think tanks

There are several private think tanks maintained by company foundations. Only the two most influential in the field of work, employment and social policy will be mentioned. The Bertelsmann Foundation was founded by the late Reinhard Mohn, a media entrepreneur operating globally (RTL, Penguin Random House, etc.). The foundation
employs its own experts and commissions research. It has acted as a platform in preparation of the Hartz reforms; in fact, it may be said that the blueprint of the reforms was developed by a circle convened by the Bertelsmann Foundation even before the Hartz Commission was appointed (Hassel und Schiller 2010). Whereas the orientation of the foundation was strictly neo-liberal in the times when the founder personally supervised all its activities, it has become more attentive to the downsides of the reforms, to social inequality and threats to social cohesion after the founder died in 2009. The “Forschungsinstitut zur Zukunft der Arbeit” (iza), literally translating as ‘institute for research on the future of work/employment’ but operating under the English name ‘Institute for the Study of Labor’ is maintained by the German Post Foundation, the foundation of the privatized German Post (globally operating as DHL). It has positioned itself as an international hub of labour economics, with some focus on econometric programme evaluations.

6.6 Charities and social advocacy organizations

Resulting from German ‘welfare corporatism’, church-affiliated as well as secular charity organisations maintain umbrellas at federal level. They all employ social policy advisors who synthesize experience of member organisations on the ground and act as lobbyists vis-à-vis the government. They participate in round tables with the relevant government departments and agencies, and they may be invited as experts in parliamentary committee hearings (see 5.2). Whereas these welfare umbrellas have only local and regional organisations as their members, there are also social advocacy organisations with individual membership. All these organisations collect, synthesize and publish evidence on labour market and social issues in order to support their claims, they present their case at public conferences, and they may also commission expertise. By condensing experience from the social services frontline and by disseminating evidence from other sources to their constituencies as well as the general public, these organisations are important fertilizers of policy learning.

6.7 Professional associations

Professional associations which bring together academics, administrators and practitioners on the ground have a long tradition in Germany, beginning with the famous ‘Verein für Socialpolitik’ founded in 1873 and influenced by Gustav Schmoller and Max Weber. This association still exists but nowadays has become a purely academic organisation of economists. However, boundary-spanning professional organisations still exist like the Sozialrechtsverband (judges, professors, lawyers and administrative practitioners in social law), the Gesellschaft für Sozialen Fortschritt (social policy), the German Association for Public and Private Welfare and the German Association for Social
Scientific Labour Market Research. Some of these organisations put out journals, in the case of the Gesellschaft für Sozialen Fortschritt even a peer-reviewed academic journal.

7. **Research infrastructure**
In addition to research facilities within the social insurance bodies, most notably the Institute for Employment Research of the Federal Employment Agency (see 3 above), issues of employment, the functioning of the labour market and social policy are dealt with by university chairs (labour economics, sociology, social policy, labour law, social law, social work), dedicated research centres within some universities (Institute for Work, Skills and Training / University of Duisburg-Essen, ZeS in the University of Bremen), public research centres outside universities and private research institutes, both non-profit or for-profit (see also 3 and 6.2 above).
This research landscape is comprehensive and varied. However, in an era of increasingly competitive research packaged in single-purpose and single-issue projects, the synthesis of research findings may be seen as a problem. The spreading practice of carving up research results into as many as possible peer reviewed journal articles, nowadays a prerequisite of building an academic career, is also a hindrance against research playing its proper role for policy learning. More than ever before the communication between researchers has become separated from public and political discourse. Research can only be made available for politicians and practitioners by additional dissemination activities of the researchers for which the latter largely lack funding that would not jeopardize their independence.

8. **International policy learning**
There seems to be no facility specifically dedicated to international policy learning. Most of the actors, institutions and organisations mentioned above occasionally take into account international experience, but there is no permanent observatory or monitoring. In times when Germany pitied itself as the ‘Sick Man of Europe’ there was still more interest in allegedly good practice from abroad than nowadays when other countries look to Germany as an ‘employment miracle’. However, foreign examples were often used in de-contextualised, distorted and opportunistic ways as arguments for reform options proponents had already adopted, regardless of experience from abroad.
Procedures at European level like the Open Method of Coordination or later the European Semester hardly ever explicitly enter the German public discourse; they do not reach far beyond the civil servants in federal ministries entrusted with feeding these procedures. National debates actually triggered by European Directives to be implemented are often conducted like the issue were purely national. By contrast, European budgetary criteria exert powerful pressure for certain reforms without directly suggesting its content.
There is some exception to this general picture with regard to the introduction of minimum wage regulation, where the relatively recent re-introduction of a minimum
wage in the UK did have traceable repercussions on the German debate. The Stockholm targets for older people's employment rates were occasionally referred to when discussion employment policies but predominantly with a pessimistic undertone: impossible to achieve. In reality, however, Germany exceeded these targets.

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**Reports and interviews in newspapers and on television**

“Einseitig festgelegte Löhne sind nicht in Ordnung” - Interview with Karl-Josef Laumann on German television on 22 August 2011. [http://www.tagesschau.de/wirtschaft/mindestlohn246.html](http://www.tagesschau.de/wirtschaft/mindestlohn246.html)


