

Deferred compensation in the German local sector after ECJ ruling C-271/08

Paris, 22 October 2010

Content

- 1. The supplementary scheme of the public sector in
Germany**
2. A closer look at deferred compensation
3. Infringement procedure C-271/08

Basic facts & figures



- **Mandatory supplementary scheme** based on **collective agreement**
- **Aim:** providing same old-age benefits for public employees as for civil servants
- **Largest supplementary pension scheme in Germany**
 - 5 million participants, 2 million beneficiaries
 - 48,000 employers
- **Competent institutions**
 - VBL for federal and regional sector: 1.8 million participants
 - AKA schemes for local and church sector: 3.2 million participants

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The 2001 reform

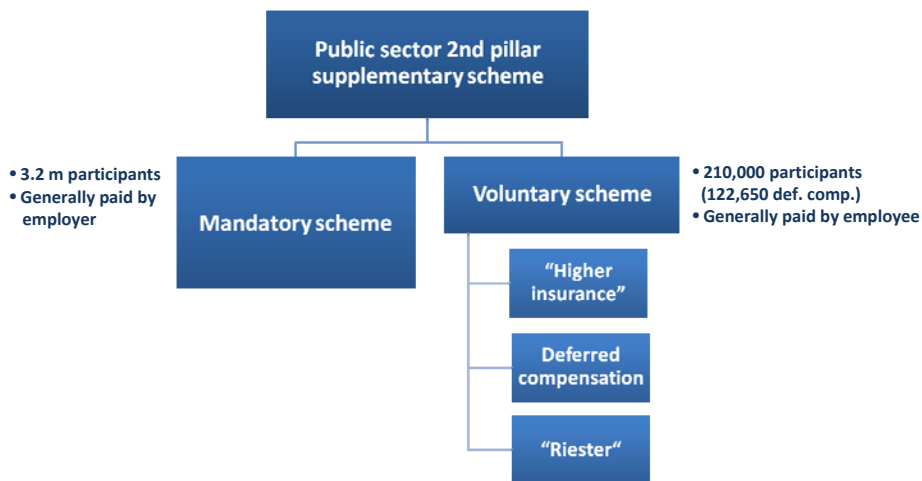


- Employer-paid **top-up scheme** based on pay at career final was **closed**.
- Mandatory, employer-paid **point-based system** introduced
→ entire working career is taken into account, pensions thus mostly reduced.
- Additional, employee-paid **voluntary scheme** introduced.

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The scheme since the 2001 reform



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Legal background

- The **right** of deferred compensation was introduced in **2002**.
- According to the occupational pension act, **deferred compensation for salaries based on collective agreement** is only possible if allowed so by collective agreement.
- In Germany, the **salaries in the public sector** (like occupational pension rights) are based on **collective agreement**.

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Collective agreement

- The collective agreement for the local sector “Tarifvertrag zur Entgeltumwandlung **TV-EUmw/VKA**” lays down principles for deferred compensation as well as...
- ...the **managing institutions (§ 6)**:
 - public sector supplementary pension institutions (AKA schemes),
 - savings banks or
 - local government mutual insurers.

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Main findings of the ECJ

- **Germany has violated public procurement law** as far as “large” public employers awarded occupational pensions directly to managing institutions, without a call for tender at EU level.
- **Freedom of collective bargaining and public procurement law have to be well-balanced** → freedom of collective bargaining must not „erase“ public procurement based on freedom of establishment and to provide services.

Main findings of the ECJ

- Agreements less obstructive to freedoms to provide services/ of establishment would have been possible: **social partners can be involved even if a public call for tenders is issued.**
- **Working conditions only rather marginally concerned**, but selection process totally invalidates public procurement law and thus freedoms to provide services/of establishment.

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Consequences:

Many things are uncertain as this is the first case regarding public procurement and occupational pensions contracts.

Certain is:

- **Directly affected** by the judgment are **only „big“ employers** exceeding the relevant EU threshold values.
- **Existing contracts** on deferred compensation are **valid and remain untouched.**
- **Social partners** have the **right to transform the judgment**, transformation according to national law > § 17 V occ. pens. act.

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Uncertain:

- **Time frame** to transform the judgment
- **Deferred compensation in the meantime:** employers are obliged to offer deferred compensation ↔ the current situation is against public procurement law.
- Effects on municipalities with **frame contracts below EU threshold values**
- **More infringement procedures** coming up?

Thank you for your attention!
Vielen Dank für Ihre Aufmerksamkeit!
Merci de votre attention!