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# Negotiated Restructuring in Germany

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# The German Discourse

- ‘Structural change’ at macro and meso level constant concern in past 20 years
- Structural shift towards service industries and smaller units of employment
  - but employment in manufacturing still slightly above 30%
- Downsizing, outsourcing, off-shoring, and closures constant topics in the press.
- **Overarching discourse on ‘restructuring’ as a political issue missing**
- Focus on defending the *Standort* (location for production), i. e. maintaining Germany’s export position and thus employment in manufacturing

# Characteristics of the Regulatory Framework

- no tradition of administrative control over dismissals or redundancies (unlike France, Netherlands...)
- highly legalistic framework of rights, obligations, and *procedures* – no prescription of *outcomes* (*rules of the game*)
- high autonomy of social actors and individuals in *playing the game*
- important role of labour courts as a negotiating and decision arena of last resort
- public authorities not defined as stakeholders in the restructuring process

# Principal Actors

- “the employer”
- Works Council: elected by the whole workforce (voluntary)
  - substantial rights of co-determination with regard to both collective redundancies and each individual dismissal
  - 89% of establishments and slight majority of employees without works council
- Trade Unions:
  - may negotiate rules relevant for restructuring in collective agreements
  - may initiate, counsel and coach works councils
  - formally not negotiating partners of employers in the process of restructuring
- Public Employment Service:
  - general offers of counselling and job placement services
  - ‘job transfer’ instruments on request
  - no pro-active involvement in restructuring (despite obligatory advance notification on mass redundancies in accordance with and beyond European Guideline)

# “Betriebsänderung” (‘Change of Operations’): Pivotal Legal Concept in Negotiating Restructuring

- Definition:
  - reduction of operations in or closure of the whole or important departments of the establishment
  - transfer of the whole or important departments of the establishment
  - amalgamation with other establishments or division of establishments
  - important changes in the organization, purpose or plant of the establishment
  - introduction of entirely new work methods and production processes
- where the intended changes “may entail substantial prejudice to the staff or a large sector thereof”
- ↪ not restricted to dismissals – relocation of jobs or staff cuts through ‘voluntary’ separations covered!
- ⇒ stakeholders of restructuring are employer & employees, no one else
- ⇒ ‘Change of operations’ constitutes a claim of the works council vis-à-vis the employer, not a publicly recognized status of the company (like, e. g., insolvency)



## Social Compensation Plan

- agreement between works council and employer on occasion of 'change of operations'
- *"...an agreement on compensation or mitigation for any economic disadvantages employees suffer as a result of the proposed change of operations."*
- no prescription as to content, but enforceable procedure of negotiations
  - in establishments with more than 20 employees
  - + where a works council has been elected
  - + if definition of 'change of operations' is fulfilled
  - + if works council takes the initiative
- ⇒ in a survey, only 8% of dismissed workers reported to be covered by a social compensation plan
- traditionally, financial compensation in the forefront
- now increasingly supplemented by outplacement and career transition services

# Individual Legal Employment Protection

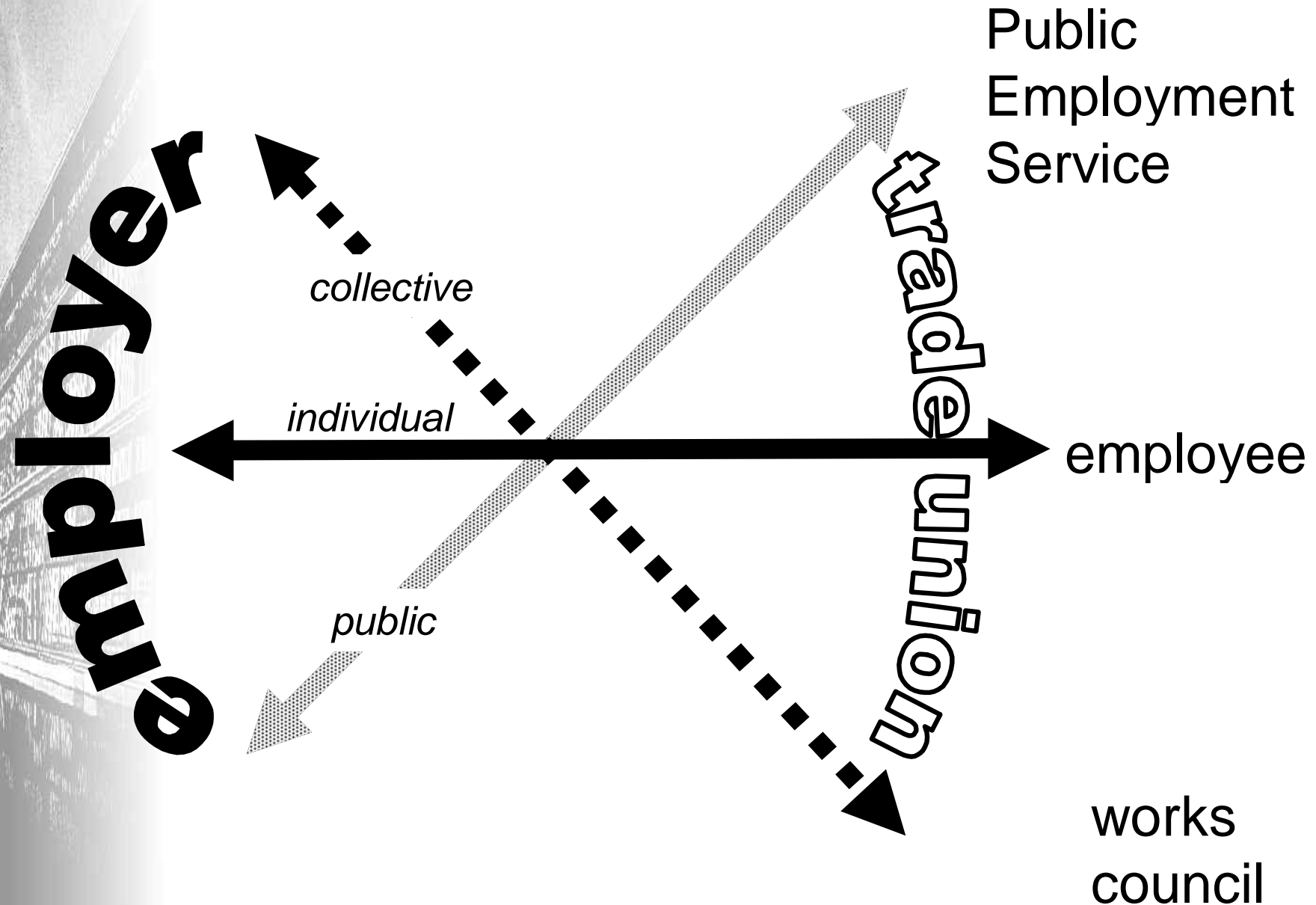
- in establishments with more than 10 employees
  - ⇒ 20% of establishments, 80% of the workforce
- after 6 months' tenure
  - ⇒ excludes  $\approx$  15%
  - ⇒ plus 11% fixed-term contracts
- ⇒ applicable to 65-70% of the workforce
- independent of existence or activity of a works council
  - though objection of works council against an individual's dismissal is a strong point in court procedure
- independent of trade union membership
- ⇒ legal employment protection  $\approx$  civil right
- ⇒ interaction between collective and individual rights can be complex

# Interaction of Redundancy Regulations on Three Axes

Wissenschaftszentrum  
Nordrhein-Westfalen  
Kulturwissenschaftliches  
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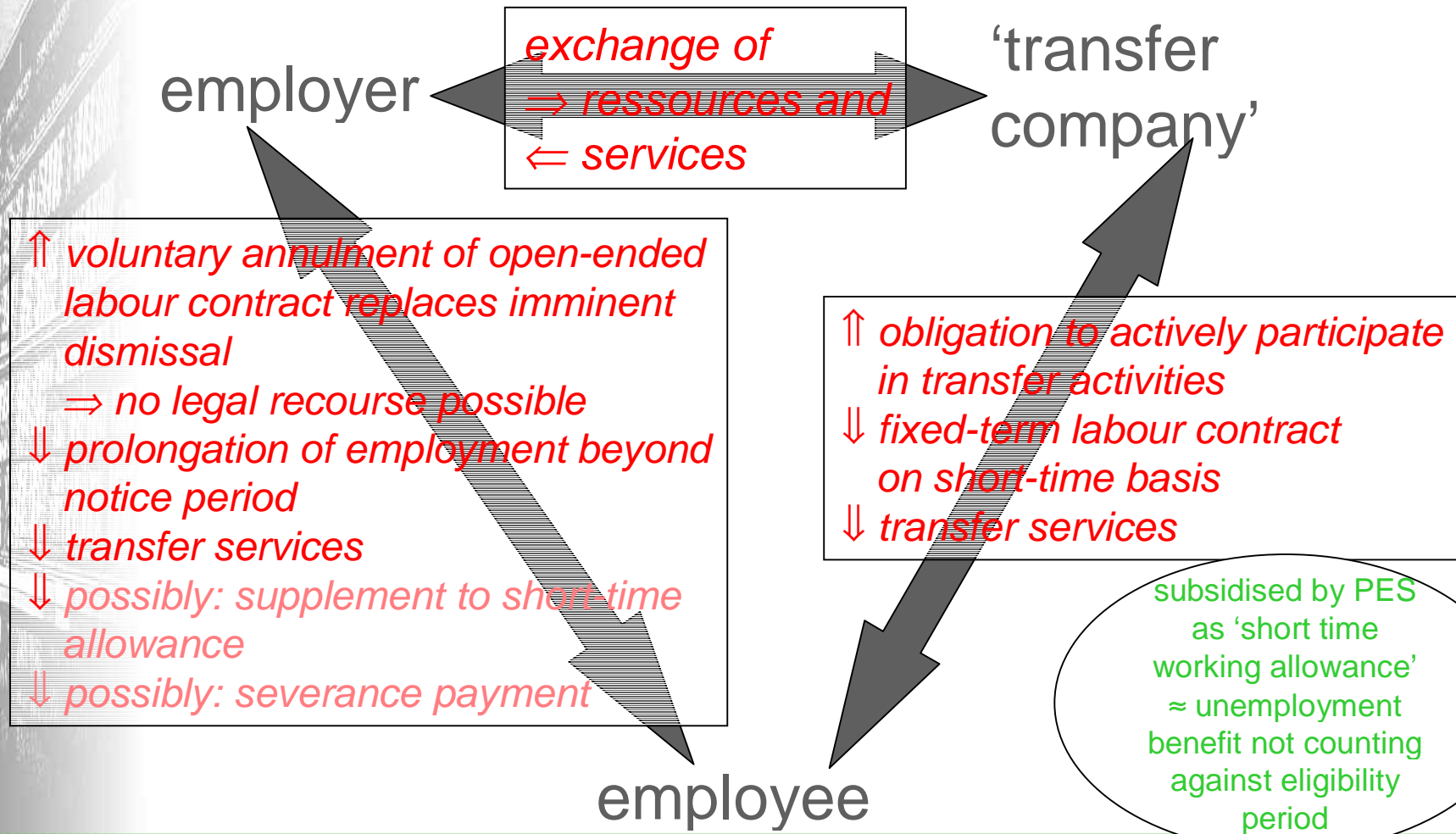
Wuppertal Institut für  
Klima, Umwelt, Energie  
Institut Arbeit  
und Technik





# Negotiated Redundancy: Trilateral Transfer Deal

framed in collective agreement between employer and works council



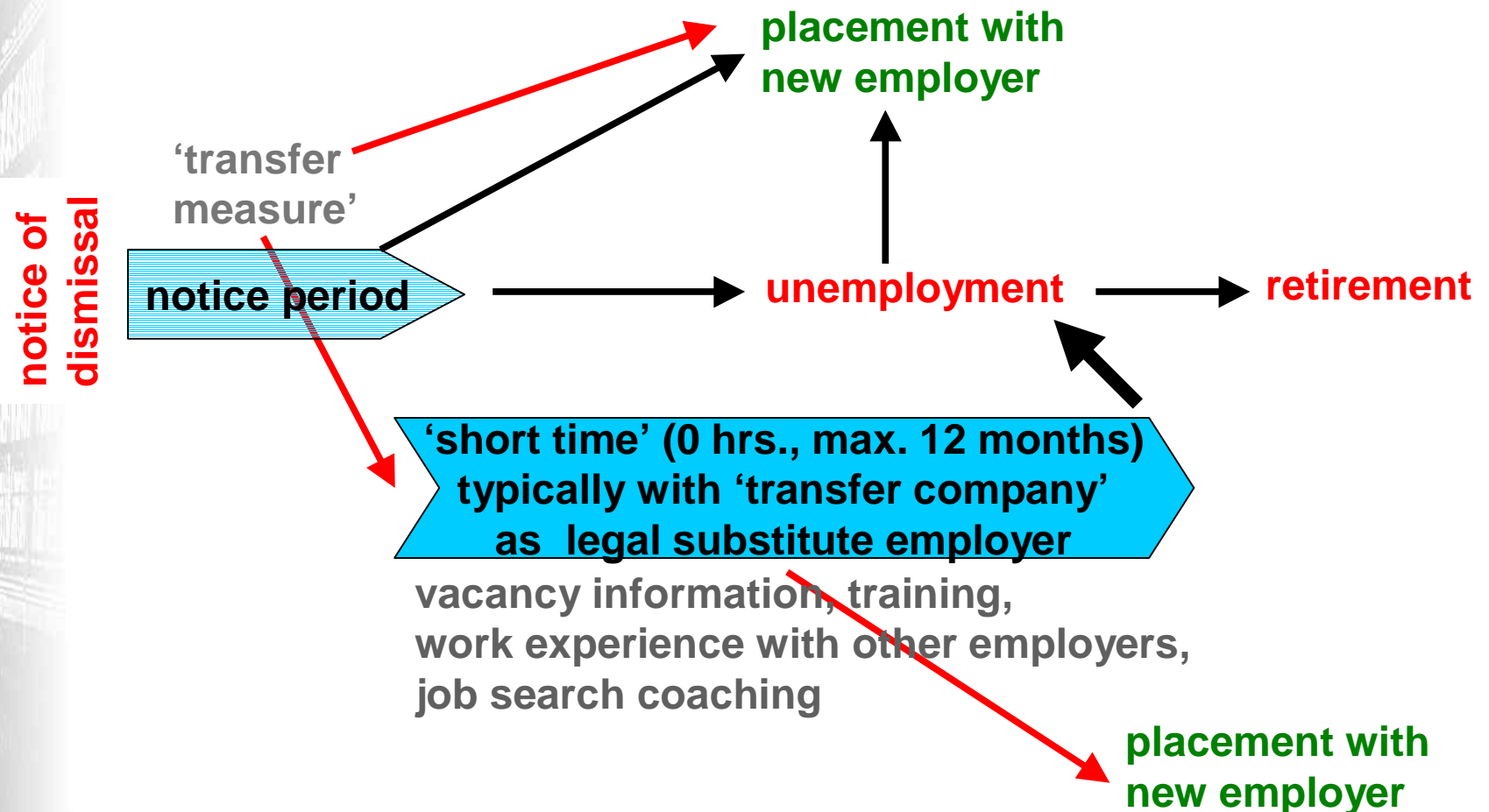
# Choice Presented to Workers Facing Redundancy

- voluntarily trade existing open-ended contract with employer company for fixed-term contract with transfer company, lasting longer than notice period

or

- be dismissed with notice period (and with possibility of judicial recourse)
  - ⇒ compensation payments under framework of social compensation plan may be lower, if partners of the agreement so wish
  - ⇒ individual bargaining on the sidelines of judicial procedure bears chance of getting higher compensation

# The 'Transfer Chain'



## Needs for Innovation

- more job creation  $\Rightarrow$  offer of job transfer more credible and successful
- new approach to local regeneration
- transfer into retirement creates deadweight impeding transfer into new jobs
- better outreach towards SME's in restructuring
- outplacement providers should have better networks with companies in demand of labour – not only with companies in demand of outplacement
- more active role of Public Employment Service
- addressing the 'soft factors' impeding job transfer: health, attitudes, self-perception