Secure occupancy in rental housing: A comparative analysis
Country case study: Germany

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This research had been carried out at request of: Australian Housing and Urban Research Institute

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Foreword

This country case study report was produced by OTB Research Institute for the Built Environment in January 2010 for the Australian Housing and Urban Research Institute (AHURI) project entitled Secure occupancy in rental housing: A comparative perspective. The study was led by by Kath Hulse and Vivienne Milligan with Hazel Easthope. OTB’s contributing report is one of eight country cases which formed the empirical basis for the final peer reviewed report, which can be downloaded from http://www.ahuri.edu.au: Hulse, K., Milligan, V. and Easthope, H. (2011) Secure occupancy in rental housing: conceptual foundations and comparative perspectives, Final Report, Australian Housing and Urban Research Institute, Melbourne.

The four case studies produced by OTB for AHURI, concerning Germany, Austria, Flanders and the Netherlands can be downloaded from http://repository.tudelft.nl/.

Marietta Haffner
February 2011

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Germany

Part A: The context for rental housing in the country

A1 General

If compared to other countries Germany can be considered more or less special in several aspects. First, it is a federal state which consists of 16 federal states (Länder) since the reunification of former West and East Germany in 1990 (Haffner et al., 2009). A federal institutional structure means that different levels of government are responsible for making housing policy. Federal government generally is responsible for legislation affecting housing, such as rent regulation, taxation and housing allowances. In the case of bricks-and-mortar subsidized rental dwellings including their price/rent regulation and allocation, central government has transferred its powers to the federal states by 1 September 2006 in order to enable them to make their own legislation as needed (Bundesregierung, 2009, p. 75).

A second special aspect of former West German housing policy is that it has been based on a social market economy philosophy: social welfare is best served by bringing about economic progress; the market dominates, and government intervention is designed to support the proper operation of market forces (Busch-Geertsema, 2004, 2000). The time-limited bricks-and-mortar subsidization, the market-led rent regulation and the fact that mainly market investors are providing subsidized rental housing are characterizing features of the housing system which Droste & Knorr-Siedow (2007, p. 90) call ‘market-based’ system. The latter means that social housing as a concept formally does not exist in Germany, only dwellings that are temporarily subsidized in exchange for price limits in combination with allocation rules. This housing will be called subsidized (rental) housing in this text.

The fact that housing subsidization has originally been designed tenure neutral can also be considered a result of applying social market policy in order to prevent distortions in the behavior of actors. An example from the past is the depreciation deduction in income and corporate tax which used to be available for investors in all tenures (Braun & Pfeiffer, 2004; Leutner, 1990). Nowadays bricks-and-mortar subsidies and housing allowances are available in all tenures.

Last, but not least, Germany is a country that is confronted with growing and shrinking (not only in former East German) cities and regions at the same time. As a response, it has more or less integrated housing policy into other policy areas, especially the development of the cities and the spatial planning (Bundesregierung, 2009). The new law on spatial planning of 22 December 2008 is to find the balance between standard rules for all federal states and freedom to react to ‘local’ circumstances. On urban development a balance needs to be found between social cohesion, ecological sustainability, economic health and cultural building quality (p. 103).

A1.1 Size of the rental sector in private dwellings and households

With a population of more than 82 million (2005) and more than 39 million households (2004) Germany was the biggest country of the then 25 member-countries in the European Union (Federcasa (eds.) 2006). Housing stock is close to 40 million dwellings of which 60%, almost 24 million dwellings, are supplied in the rental sector, as Table 1 shows. The rental sector appears to be the biggest in the European Union of 25.
Table 1  Distribution of providers/owners of dwellings in Germany, 2006

<table>
<thead>
<tr>
<th>Providers/owners of dwellings</th>
<th>% of stock</th>
<th>Number of dwellings (x1,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>100</td>
<td>39,617</td>
</tr>
<tr>
<td>Owner-occupied sector</td>
<td>40</td>
<td>15,960</td>
</tr>
<tr>
<td>Rented sector</td>
<td>60</td>
<td>23,657</td>
</tr>
<tr>
<td>* Small providers</td>
<td>37</td>
<td>14,507</td>
</tr>
<tr>
<td>* Professional landlords</td>
<td>23</td>
<td>9,150</td>
</tr>
<tr>
<td>Private housing companies</td>
<td>10</td>
<td>4,059</td>
</tr>
<tr>
<td>Housing cooperatives</td>
<td>5</td>
<td>2,079</td>
</tr>
<tr>
<td>Municipal housing companies</td>
<td>5</td>
<td>2,120</td>
</tr>
<tr>
<td>Other government housing agencies</td>
<td>1</td>
<td>206</td>
</tr>
<tr>
<td>Other landlords with subcontracted management</td>
<td>1</td>
<td>453</td>
</tr>
<tr>
<td>Other providers*</td>
<td>1</td>
<td>233</td>
</tr>
</tbody>
</table>


*) ‘Other providers’ refers to churches and others.

A1.2 Policy settings for rental housing

Tenure neutrality implies that renting and owning are treated as equally as possible in housing subsidization. Any occupier –be it owner-occupier or tenant– can apply for housing allowances and any investor in housing –be it owner-occupier or landlord– can apply for bricks-and-mortar subsidies (see A1; Haffner et al., 2009). In the latter case either low-cost loans or interest subsidies are possible (Busch-Geersema, 2000). In the rental sector, the system of bricks-and-mortar subsidies is designed as a concession model, temporarily ring-fencing subsidized dwellings from the rest of the housing market under a special regime.

Tax subsidies are more difficult to be determined (Oxley & Haffner, forthcoming). Owner-occupied dwellings are treated as consumption good in income tax, which could be considered as a subsidy in itself, as dwellings from an economic point of view are considered investment goods. Rental housing indeed is treated as an investment good for income tax and corporate tax purposes. A subsidy in the form of accelerated depreciation nowadays is only available for investors in rental housing, and only as a result of the crisis measures following the start of the global financial crisis.

Next to these subsidies aimed at renting, the national government also aims to stimulate the building of housing equity. In the rental sector this appears to be available only to cooperative tenants (Oxley & Haffner, forthcoming). The possibilities are: 1) using capital saved for pensions to buy housing equity. It facilitates tax deferred savings in the so-called Riester Rente which is a voluntary private pension system based on private savings and government subsidies; 2) using capital saved in housing savings schemes, the so-called Bausparen which is subsidized by government.

A1.3 Sub-sectors in the rental sector

Until 1990 a non-profit tax status existed for landlords in former West Germany. These landlords were also referred to as ‘social’ landlords (see B6.7). The cooperatives and the municipal housing companies formed the traditional non-profit sector (Droste & Knorr-Siedow, 2007). Now that the non-profit tax status has largely been abolished, Germany officially has only private landlords, who let rented property, in some cases with bricks-and-mortar subsidies. Even municipal housing companies are private companies whose shares are owned by municipalities.

Most of the landlords are private and commercial landlords. More than 60% of suppliers of rental housing are small-scale landlords, individuals and partnerships, as Table 1 shows. They are often called amateur landlords (Kemp & Kofner, 2010). The remainder of the rental stock is in the hands of so-
called professional landlords. The for-profit firms, the private housing companies have the biggest share (10% of total stock), followed by public housing in the hands of local and other levels of government (6%). Cooperatives own almost 10% of rental stock.

Rental housing in the form of tenant cooperatives aims to provide accommodation at cost prices (Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004, p. 3). Cooperatives let dwellings to people who buy a share in the housing cooperative. This share usually amounts to about 1% of the cost of building the dwelling (Haffner et al., 2009). This share makes the tenant part-owner of the dwelling, ruling out any conflict of interest between the occupant and the owner. Cooperatives embody a way of building housing equity that central government promotes (see A1.2). Since 1996 it has been possible to do that in ownership cooperatives as well. The majority of cooperatives are tenant cooperatives, however, in which tenants invest.

### A1.4 Role of rental sub-sectors in the housing market

The proportion of rental and ownership tenures has remained relatively stable in the past. One of the reasons is the addition of mainly rented dwellings from the housing stock of former East Germany when Germany reunified (Table 2). In the past however, the depreciation deduction has been ascribed a large part of the success of the private rental sector (Braun & Pfeiffer, 2004; Leutner, 1990). Other reasons are that tenants were attracted to the good quality of the rented dwellings and the strong security of tenure in the rented sector, while home ownership was relatively expensive because of high house prices and the need to save before a dwelling could be acquired. A high proportion of multi-family dwellings is also said to contribute to the size of the private rental sector.

**Table 2** Development dwelling stock (%) according to tenure and subsidisation, former West and East Germany, 1978-1993

<table>
<thead>
<tr>
<th>Tenure</th>
<th>Former West Germany</th>
<th>Former East Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rented</td>
<td>63</td>
<td>60</td>
</tr>
<tr>
<td>* Bricks-and-mortar subsidised</td>
<td>17</td>
<td>15</td>
</tr>
<tr>
<td>* Not subsidised</td>
<td>45</td>
<td>45</td>
</tr>
<tr>
<td>Owner-occupied</td>
<td>38</td>
<td>40</td>
</tr>
</tbody>
</table>

Sources: From Haffner et al. (2009) based on Van der Heijden et al. (2002); Kirchner (2006) for 2002.

n.a. = not available.

Last but not least, the explanation that is put forward for a big private rental sector is the fact that the rented sector apparently serves the same function in Germany – providing security of tenure – as the owner-occupied sector does in other countries (Behring and Helbrecht, 2002; Tegeder & Helbrecht, 2007; see also Toussaint et al., 2007). This situation may also explain why the share of the cooperative rented sector is relatively large. This represents a hybrid form between renting and owning with strong security of tenure because the tenant also owns some share in the property. Some forms of cooperatives allow the creation of more wealth than the required deposit.

*Subsidized versus not-subsidized*

Even though the rental sector as such has been relatively stable in size, this does not apply for the subsectors based on bricks-and-mortar subsidies or not. As the system of bricks-and-mortar subsidies is designed as a concession model, temporarily ring-fencing subsidized rented dwellings from the rest of the housing market under a special regime, the dwellings move to the unsubsidized rental sector when the subsidy period finishes. From the almost 2.5 million available subsidized rental dwellings in
2005, it is expected that no more than almost 1.8 million dwellings will be left at the end of 2010 (Bundesamt für Bauwesen und Raumordnung, 2007, p. 195). In terms of stock, it concerns then less than five percent and in terms of rental stock less than eight percent. Of the more than two million subsidized rental dwelling, almost one million of them can be found in one of the 16 federal states, being North-Rhine Westphalia where about a quarter of the population lives. They are also mostly found in multi-family buildings in the outskirts of cities (Busch-Geertsema, 2000). As the subsidized sector has shrunk, low-income households nowadays can increasingly be found in the private rental sector.

**Social?**

Subsidization via bricks-and-mortar subsidies has not necessarily meant the same as social in former West Germany, as until 1990 a non-profit tax status existed for landlords. These landlords could be referred to as ‘social’ landlords (see B6.7). They were primarily though not exclusively focused on building ‘social’ housing (Busch-Geertsema, 2000). The shrinking of the subsidized sector has helped these former non-profit organizations to develop a stronger commercial orientation, blurring the boundaries with true commercial housing enterprises.

But the cooperatives and the municipal housing companies have been said to form the traditional non-profit or quasi-social sector, and they still exist (Droste & Knorr-Siedow, 2007, p. 93). This stock taken together would equal about 11% of the total stock of dwellings, a share which is larger than only the share of the subsidized dwellings (Table 1). The ‘social’ focus of these landlords in the future remains uncertain, however.

Of local authorities it will be expected (by local politicians) that they will still provide housing for low-income groups (Brech, 2004). But more and more local authorities may sell their dwelling stock (to generate short-term funds), as has started to happen between 1999 and 2006. Veser et al. (2007) conclude that the short-term effects on local housing markets have not been too disturbing, as rental contracts cannot be cancelled and general tenant security is strong (see below). However, it is to be expected that market investors that buy local authority stock will be less willing to take on (extra) social tasks or (extra) tasks of urban development (Droste & Knorr-Siedow, 2007, p. 101). The general concern in the media is that Anglo-American investors do not display the “social conscience” of German enterprises (Barry, 1993, p. 17/21).

**Cooperative landlords**

Cooperative landlords will have to continue to set rents at lower-than-market rents, as they are run indirectly by their members. Also, cooperatives have been put on the political agenda (from Haffner et al., 2009). An ‘expert commission’ was set up in 2002 to make recommendations on securing the future of cooperative housing as the third type of ownership (‘third way’) alongside the rented and owner-occupied sectors (Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004). The government commissioned this report on the basis of expected demographic trends, viz. population decline and an ageing population, which are expected to result in the phasing out of state support. To ensure that social conditions do not deteriorate, the government sees it as necessary to call upon private individuals to take more responsibility, help themselves and be more engaged. The commission made recommendations on how to strengthen the position of housing cooperatives in the areas of funding, communication and marketing, facilities for the elderly and subsidies. The reason being that housing cooperatives produce a public good in the appropriate manner that contributes to the development of civic society. This contribution consists of:

- Guaranteeing safe and qualitative housing;
- Organizing the social embedding and interaction of residents who would otherwise depend on public benefit;
- Experimenting with new forms of housing that fit changed concepts of housing;
• Realizing of the local and community-based integration of ethnic minorities of socially isolated groups of the population (e.g. single parents, elderly people, disabled persons and other people in need);
• Cooperating with municipalities for the maintenance and stabilisation of neighbourhoods beyond the own housing stock.

The government of 2002 saw cooperative housing as the third type of ownership, alongside the rented and owner-occupied sectors (Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004). It wanted to ensure that social conditions would not deteriorate in cooperative housing and believed it necessary to encourage private individuals to take more responsibility, help themselves and become more engaged. The present government is aiming for cooperative housing to become the third pillar of housing next to renting and homeownership (see hyperlink on www.bmvbs.de: Stabilisierung und Weiterentwicklung des genossenschaftlichen Wohnens; last accessed 28 February, 2011). The cooperative principles of identity, self-help, self-government and self-responsibility are considered to become more relevant in the future because of demographic developments such as growing versus shrinking regions and the aging population, and their effects on the social systems.
A2 Rental dwellings

A2.1 Composition of the rental sector by dwellings type

Table 3 shows that the occupied rental stock is in four out of five cases to be found in multi-family dwellings (meaning more than two dwellings in a building) in 2002. In 2006 this share is estimated at 19% (Bundeszentrale für politische Bildung, 2008, p. 216).

Table 3  German dwelling stock (% estimated) according to type of dwelling, 2002

<table>
<thead>
<tr>
<th></th>
<th>West Germany</th>
<th>East Germany</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>All dwellings</td>
<td>80</td>
<td>20</td>
<td>100</td>
</tr>
<tr>
<td>Occupied dwellings</td>
<td>73</td>
<td>17</td>
<td>90</td>
</tr>
<tr>
<td>of which rented</td>
<td>51</td>
<td>56</td>
<td>52</td>
</tr>
<tr>
<td>* in one- and two family dwellings</td>
<td>12</td>
<td>7</td>
<td>11</td>
</tr>
<tr>
<td>* in multi-family dwellings</td>
<td>39</td>
<td>49</td>
<td>41</td>
</tr>
<tr>
<td>of which owner-occupied</td>
<td>41</td>
<td>29</td>
<td>38</td>
</tr>
<tr>
<td>* in one-and two-family dwellings</td>
<td>33</td>
<td>26</td>
<td>31</td>
</tr>
<tr>
<td>* in multi-family dwellings</td>
<td>8</td>
<td>3</td>
<td>7</td>
</tr>
</tbody>
</table>


A2.2 Purpose built rental housing

As the size of the rental sector is large (Table 1), presumably most dwellings will have been constructed for this purpose (see also A1.4). First, the income/corporate tax regime with a depreciation allowance has been favorable to these types of investments (Braun & Pfeiffer, 2004; Leutner, 1990; see also A1, A1.2). Secondly, there were the temporary bricks-and-mortar subsidies that after the subsidy period ended ‘delivered’ the dwellings to the private rented sector. More recently inheritance may have helped to filter in dwellings that were owner-occupied or rented out previously (Braun et al., 2002). The value of real estate on average is three times the value of wealth in the form of money. And almost three quarters of those who inherited real estate in the ten years before the survey indicated that the kept it either to occupy or to rent out. Inherited sums of money will also have been used to invest in housing. Kemp & Kofner (2010) report that 46% of properties of individual landlords is inherited or gifted. This information comes from a (not completely representative, but biggest) survey of private individual landlords which own multi-family buildings that were constructed before 1991 (BMVBS, 2007).

A2.3 Ownership structure of rental stock

The ownership structure in the rental stock corresponds to its subsectors. See Table 1.

A2.4 Quality issues and strategies to address them

Overcrowding, defined as a larger number of household members than rooms with a size of at least six square meters (except kitchen and bathroom), amounted to 2.8% in 2006 (Bundesanstalt für politische Bildung, 2008). It occurs especially in lower income households, between six and eleven percent of households in the first quintile. Only in the second quintile in former West Germany is the share of 6.7% also higher than the average of 4.5%. Based on family type, the biggest overcrowding occurs with couples with children up to the age of 16 years, 15% and 12% in former West and East Germany respectively.
Because the distinction between social and market rented housing is not generally made in Germany, the statistics are not compiled on this basis (mostly from Haffner et al., 2009). However, Hubert (1998) reports that neither private nor social rented housing is regarded as inferior within the housing market. Most of the statistics distinguish between the owner-occupied and rented sectors, as Table 4 and Table 5 show. Generally owner-occupiers have larger dwellings and value their dwelling better than tenants. The difference between renting and owning may be reinforced by the fact that older homes are more likely to be rented, whereas newer ones from 1969 onwards are more likely to be owner-occupied. Other analyses show that the satisfaction with housing quality increases after modernization or a move to newly-built dwellings. The general impression is that the quality of rental dwellings is relatively good, even in former East Germany (Table 5). Busch-Geertsema (2000, p. 6) states: “Overall, the quality of rented homes in West Germany is significantly high.”

Table 4  Occupied dwellings according to the size of the dwelling (m²), Germany, 2006

<table>
<thead>
<tr>
<th>Size of the dwelling</th>
<th>Rent</th>
<th>Owner-occupation</th>
<th>Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;40</td>
<td>8</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>40-59</td>
<td>28</td>
<td>3</td>
<td>18</td>
</tr>
<tr>
<td>60-79</td>
<td>34</td>
<td>12</td>
<td>25</td>
</tr>
<tr>
<td>80-99</td>
<td>17</td>
<td>18</td>
<td>17</td>
</tr>
<tr>
<td>100+</td>
<td>13</td>
<td>66</td>
<td>35</td>
</tr>
<tr>
<td>Average m² per dwelling</td>
<td>71</td>
<td>118</td>
<td>90</td>
</tr>
</tbody>
</table>


Table 5  Condition of the dwelling as evaluated by the head of household (%) and score of satisfaction (on a scale from 0 to 10), former West and East Germany, 2006

<table>
<thead>
<tr>
<th>Table of score of satisfaction of head of household</th>
<th>Former West Germany</th>
<th>Former East Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>%</td>
<td>score</td>
<td>%</td>
</tr>
<tr>
<td>Owner-occupier</td>
<td>8.3</td>
<td>8.0</td>
</tr>
<tr>
<td>Good</td>
<td>78</td>
<td>8.5</td>
</tr>
<tr>
<td>Needs some renovation</td>
<td>21</td>
<td>7.5</td>
</tr>
<tr>
<td>Needs complete renovation or demolition</td>
<td>1</td>
<td>6.6</td>
</tr>
<tr>
<td>Main tenant</td>
<td>7.1</td>
<td>7.2</td>
</tr>
<tr>
<td>Good</td>
<td>61</td>
<td>7.6</td>
</tr>
<tr>
<td>Needs some renovation</td>
<td>34</td>
<td>6.5</td>
</tr>
<tr>
<td>Needs complete renovation or demolition</td>
<td>4</td>
<td>4.2</td>
</tr>
<tr>
<td>Total</td>
<td>7.6</td>
<td>7.4</td>
</tr>
<tr>
<td>Good</td>
<td>69</td>
<td>71</td>
</tr>
<tr>
<td>Needs some renovation</td>
<td>28</td>
<td>26</td>
</tr>
<tr>
<td>Needs complete renovation or demolition</td>
<td>3</td>
<td>4</td>
</tr>
</tbody>
</table>


In the future the improvement of dwelling quality will be enforced especially in areas where population is shrinking and vacancies are large (see A1 and A1.4; Haffner et al., 2009). Even though there are no national data on vacancies, they are substantial (Bundesamt für Bauwesen und Raumordnung, 2007, p. 149 and further). And even though the number of households is predicted to increase up until 2020, regional differences are large (p. 59). In former West Germany the increase is forecasted at another five percent while in former East Germany the number of households is
forecasted to further decrease with 2.5%. The regional differences are even larger than these averages show, as in and around Berlin an increase is expected against a decrease in the old industrial areas in former West Germany. As of yet, there are programs (Stadtumbau Ost, Stadtumbau West) in place that subsidize the redevelopment of cities in combination with the demolition and downsizing of dwellings in cities of all of Germany (see A1).
A3 Households who rent their accommodation

A3.1 Profile of households in rental housing

The bigger the household, the larger the chance of it being a homeowner (Bundeszentrale für politische Bildung, 2008, p. 219). Of the one-person households in 2006 74% is tenant, while of the four and more person households 40% is tenant. Table 6 shows more details in time and for some household types. Generally couples with or without children are more often owner-occupiers than the average for all household types. By age the younger households are more often than average tenant (Table 7).

Table 6 Tenants as percentage of households by household type in Germany, 1991, 1996, 2001, 2006

<table>
<thead>
<tr>
<th>Household type</th>
<th>West Germany</th>
<th></th>
<th></th>
<th>East Germany</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Single, man</td>
<td>84.3</td>
<td>78.8</td>
<td>77.9</td>
<td>73.7</td>
<td>87.0</td>
<td>89.9</td>
</tr>
<tr>
<td>Single, woman aged up to 64</td>
<td>78.9</td>
<td>81.5</td>
<td>80.4</td>
<td>77.7</td>
<td>91.3</td>
<td>92.8</td>
</tr>
<tr>
<td>Single women 65+</td>
<td>69.5</td>
<td>67.0</td>
<td>61.4</td>
<td>58.8</td>
<td>85.7</td>
<td>88.6</td>
</tr>
<tr>
<td>Couple without children</td>
<td>55.0</td>
<td>53.6</td>
<td>48.7</td>
<td>46.1</td>
<td>69.0</td>
<td>69.6</td>
</tr>
<tr>
<td>Couple with children up to age 16</td>
<td>54.7</td>
<td>50.9</td>
<td>49.3</td>
<td>47.4</td>
<td>74.9</td>
<td>65.7</td>
</tr>
<tr>
<td>Couple with children aged 17+</td>
<td>30.1</td>
<td>37.5</td>
<td>32.2</td>
<td>31.3</td>
<td>57.6</td>
<td>58.3</td>
</tr>
<tr>
<td>Single parent</td>
<td>61.2</td>
<td>69.9</td>
<td>73.5</td>
<td>74.1</td>
<td>87.5</td>
<td>83.7</td>
</tr>
<tr>
<td>Average</td>
<td>60.1</td>
<td>60.0</td>
<td>57.5</td>
<td>55.3</td>
<td>75.2</td>
<td>74.0</td>
</tr>
</tbody>
</table>


Table 7 Tenants as percentage of households by age of head of household in Germany, 1991, 1996, 2001, 2006

<table>
<thead>
<tr>
<th>Age group</th>
<th>West Germany</th>
<th></th>
<th></th>
<th>East Germany</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Aged up to 40 years</td>
<td>76.2</td>
<td>74.7</td>
<td>77.2</td>
<td>76.5</td>
<td>79.2</td>
<td>78.4</td>
</tr>
<tr>
<td>41-65 years</td>
<td>49.7</td>
<td>51.6</td>
<td>48.0</td>
<td>46.9</td>
<td>70.9</td>
<td>67.4</td>
</tr>
<tr>
<td>66+</td>
<td>57.7</td>
<td>54.9</td>
<td>48.7</td>
<td>44.3</td>
<td>76.6</td>
<td>80.2</td>
</tr>
<tr>
<td>Average</td>
<td>60.1</td>
<td>60.0</td>
<td>57.5</td>
<td>55.3</td>
<td>75.2</td>
<td>74.0</td>
</tr>
</tbody>
</table>


A3.2 Position of lower income households in the rental market

Table 8 shows the market share of the tenants in different years according to net household income quintile and by part of the country. As may be expected, there was a lower share of renters among higher income groups, and the share of renting also fell over time, except in the first quintile where it increased with two percentage point in former West Germany and with less than one percentage point in former East Germany. The market share of renting remains higher on average in former East Germany than in former West Germany. In comparison to the national share of renters (Table 1), the share for the bottom 40% of households is about eight percentage points higher in former West Germany and about 13 percentage points higher in former East Germany.
In 2005 the new means-tested Hartz IV support (based on so-called Hartz IV reforms) was introduced, large number of rent allowance recipients (3.5 million) became ineligible for rent allowance. If this move is evaluated on housing itself, these households on average are receiving within their Hartz IV support a larger amount on average as help for their housing costs than they would receive via housing allowances. In 2005 the share of rent covered was about 50% verses 24% (Bundesregierung, 2006; see A3.4).

As the subsidized sector that can mostly be found in multi-family buildings in the outskirts of cities has shrunk (see A1.4), low-income households nowadays can increasingly be found in the private rental sector (Busch-Geertsema, 2000). The position of low-income tenants will depend on the situation on the housing market. If it is tight these households will be the first ones to loose out (Hallenberg, 2008).

A3.3 Capacity to pay for rental accommodation amongst low income households

The average gross cold rents paid to different types of landlords are shown in Table 9. In the period under consideration, former West German households paid more rent per month for their dwellings than former East German ones, also because rented dwellings in former West Germany in 2002 were larger on average than those in former East Germany (from Haffner et al., 2009 based on Deutscher Bundestag, 2003, p. 21). The average size of dwellings in the East had risen by an average of five square meters since 1994, however, whereas that in the West had gone up by only two square meters (from Haffner et al., 2009 based on Bundeszentrale für politische Bildung, 2004). As may be expected, in most years rents paid to private landlords were the highest, on average. In former West Germany, the relatively low rents of municipal housing companies and cooperatives, as the landlords with historically more of a social focus, can be observed.

On household incomes the differences between rental and owner-occupied households in average equivalent income per household do not seem to be too big in 2006 with 400 Euro per month (2000 prices) and 250 Euro per month in former West and East Germany respectively (Bundeszentrale für politische Bildung, 2008, p.232). In 2006 monthly equivalent income for main tenants amounted to 1,346 Euro (prices of 2000) in former West Germany and 1048 Euro in former East Germany. Between 2001 and 2006, however, average income increased for homeowners with at least 1.5%, while it increased with only 0.3% in former West Germany and it decreased on average with 0.7% in former East Germany.

Table 10 shows the average gross rent as a percentage of net household income according to income quintiles of tenants. As may be expected based on the wet of Schwabe, this ratio becomes lower on
average as income is higher. The ratios of 42% and 37% in former West and East Germany in the first quintiles are on average much higher than in the other quintiles in 2004. Between 1991 and 2006 the ratios rose. On average, it was lower in former East Germany than in former West Germany, but the East German ratios were catching up; especially between 1996 and 2001. Between 2001 and 2006, the average ratios rose much less than in the previous period and even declined in the two higher income quintiles, reflecting the smaller rent increases on average than in previous periods (see below). In all of Germany households in work (23.5%) on average had lower gross-rent-to-income ratios than retired households (26.6%) and unemployed households (33.4%) in 2005 (Bundesregierung, 2006). In 2006 the ratio of the unemployed rose above 35% (Table 10). The ratio of the households that receive housing allowances, before receiving housing allowances is even higher than 36%.

### Table 9

Average monthly rent (in Euros) including 'cold' additional charges\(^1\) per square meter by type of landlord in former West and East Germany, 1994, 1999 and 2004

<table>
<thead>
<tr>
<th>Type of landlord</th>
<th>Former West Germany</th>
<th>Former East Germany</th>
<th>East as % of West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Municipal</td>
<td>4.54</td>
<td>5.55</td>
<td>5.80</td>
</tr>
<tr>
<td>Cooperative</td>
<td>4.67</td>
<td>5.59</td>
<td>5.95</td>
</tr>
<tr>
<td>Employer</td>
<td>4.30</td>
<td>5.00</td>
<td>5.85</td>
</tr>
<tr>
<td>Private</td>
<td>5.11</td>
<td>5.87</td>
<td>6.38</td>
</tr>
<tr>
<td>Average</td>
<td>4.94</td>
<td>5.78</td>
<td>6.30</td>
</tr>
</tbody>
</table>


\(^1\) Gross cold rent = basic rent plus 'cold' additional charges (\textit{Brutokaltmiete} = \textit{Grundmiete} + \textit{kalte Nebenkosten}); ‘cold’ means excluding charges for heating and hot water but including those for water supply, sewerage and refuse disposal (Deutscher Bundestag, 2003, p. 19).

### Table 10

Gross cold rent\(^1\) as percentage of household income by income quintiles of main tenant and by unemployment or housing allowances in the household, former West and East Germany, 1991, 1999, 2001, 2006

<table>
<thead>
<tr>
<th>Quintiles of net household income</th>
<th>West Germany</th>
<th>East Germany</th>
</tr>
</thead>
<tbody>
<tr>
<td>First quintile</td>
<td>35.5</td>
<td>38.4</td>
</tr>
<tr>
<td>Second quintile</td>
<td>24.6</td>
<td>25.9</td>
</tr>
<tr>
<td>Third quintile</td>
<td>20.1</td>
<td>23.0</td>
</tr>
<tr>
<td>Fourth quintile</td>
<td>16.5</td>
<td>19.6</td>
</tr>
<tr>
<td>Fifth quintile</td>
<td>14.5</td>
<td>17.9</td>
</tr>
<tr>
<td>Households with unemployed</td>
<td>23.3</td>
<td>32.0</td>
</tr>
<tr>
<td>Households with housing allowances</td>
<td>-</td>
<td>38.4</td>
</tr>
<tr>
<td>Average</td>
<td>21.1</td>
<td>25.3</td>
</tr>
</tbody>
</table>


\(^1\) Gross cold rent = basic rent plus ‘cold’ additional charges (\textit{Brutokaltmiete} = \textit{Grundmiete} + \textit{kalte Nebenkosten}); ‘cold’ means excluding charges for heating and hot water but including those for water supply, sewerage and refuse disposal (Deutscher Bundestag, 2003, p. 19).
Table 11  Share of main tenant households that receive housing allowances, former West and East Germany, 1996, 2006

<table>
<thead>
<tr>
<th>Quintiles of net household income</th>
<th>West Germany 1996</th>
<th>West Germany 2006</th>
<th>East Germany 1996</th>
<th>East Germany 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>First quintile</td>
<td>26.0</td>
<td>14.1</td>
<td>34.1</td>
<td>20.5</td>
</tr>
<tr>
<td>Second quintile</td>
<td>5.0</td>
<td>4.2</td>
<td>6.1</td>
<td>4.2</td>
</tr>
<tr>
<td>Third quintile</td>
<td>2.3</td>
<td>0.4</td>
<td>0.8</td>
<td>1.1</td>
</tr>
<tr>
<td>Fourth quintile</td>
<td>0.5</td>
<td>0.3</td>
<td>0.2</td>
<td>0.0</td>
</tr>
<tr>
<td>Fifth quintile</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
<td>0.0</td>
</tr>
<tr>
<td>Households with unemployed</td>
<td>17.5</td>
<td>10.2</td>
<td>29.1</td>
<td>18.9</td>
</tr>
<tr>
<td>Households with housing allowances</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Average</td>
<td>7.2</td>
<td>4.2</td>
<td>11.7</td>
<td>8.1</td>
</tr>
</tbody>
</table>


The share of households receiving housing allowances in 2006 has decreased (Table 11) with the start of the Hartz IV reform which introduced a new means-tested income support (see A3.4). Still the main recipients are found in the first quintile, relatively more in former East (14%) than in former West Germany (22%). The share of unemployed households that receive housing allowances is higher than on average, but lower than in the first quintile in both parts of Germany.

On average in 2005 housing allowances lowered housing expenses for tenants expressed as share of income in Table 12 on average with ten percentage points to less than one third of income. The ratio for 2004 for recipients is about three percentage points lower than for the households in the first quintile though (Table 10). In the period 2002 to 2005 the rent-to-income ratio after the deduction of housing allowances has increased with two percentage points. In 2007 the after housing allowance ratio increased to 33% (down from 41%; Bundesregierung, 2009, p. 72). Housing allowances on average covered 24% of the rent of recipients which on average was Euro 379 per month with an associated average so-called total income (for definition, see Table 14) of 815 Euro per month. The average size of the dwelling was 65 square meter.

Table 12  Rent as percentage of disposable household income of housing allowance recipients before1 and after housing allowances by number of persons per household in Germany, 2002-2005

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>46.1</td>
<td>34.3</td>
<td>48.3</td>
<td>35.3</td>
<td>49.3</td>
<td>35.9</td>
<td>45.6</td>
<td>37.4</td>
</tr>
<tr>
<td>2</td>
<td>40.6</td>
<td>29.3</td>
<td>41.6</td>
<td>29.1</td>
<td>42.2</td>
<td>29.5</td>
<td>40.3</td>
<td>31.1</td>
</tr>
<tr>
<td>3</td>
<td>37.0</td>
<td>24.8</td>
<td>37.7</td>
<td>25.3</td>
<td>38.0</td>
<td>25.5</td>
<td>37.2</td>
<td>26.5</td>
</tr>
<tr>
<td>4</td>
<td>32.8</td>
<td>20.9</td>
<td>33.4</td>
<td>21.3</td>
<td>33.9</td>
<td>21.0</td>
<td>31.7</td>
<td>22.0</td>
</tr>
<tr>
<td>5</td>
<td>31.4</td>
<td>18.9</td>
<td>31.9</td>
<td>19.1</td>
<td>32.4</td>
<td>19.0</td>
<td>29.7</td>
<td>20.0</td>
</tr>
<tr>
<td>6 or more</td>
<td>30.7</td>
<td>16.4</td>
<td>31.3</td>
<td>16.5</td>
<td>31.3</td>
<td>16.5</td>
<td>28.4</td>
<td>17.4</td>
</tr>
<tr>
<td>Average</td>
<td>41.2</td>
<td>29.3</td>
<td>42.9</td>
<td>30.1</td>
<td>43.8</td>
<td>30.7</td>
<td>40.6</td>
<td>31.6</td>
</tr>
</tbody>
</table>


1) Gross cold rent = basic rent plus 'cold' additional charges (Brutokaltmiete = Grundmiete + kalte Nebenkosten); 'cold' means excluding charges for heating and hot water but including those for water supply, sewerage and refuse disposal (Deutscher Bundestag, 2003, p. 19).
About 25% of housing allowance recipients in former West Germany and less than 2% in former East Germany lived in rental dwellings subsidized with bricks-and-mortar subsidies in 2004. This contrasts with 10% of all rental households (Bundesregierung, 2006). On the point of affordability this apparently will not be a big problem for housing allowance recipients, as rents on average have been increasing less than inflation in the period 2000 to 2006 (p. 30). Generally this came about on a national level because of less tight housing markets and even vacancies in some areas, the advantages from a subsidized or social rent may not be reality any more (p. 90 see also p. 29) in many municipalities, except for in bigger cities with tight housing markets (p. 53).

In conclusion, affordability does not seem to be a key issue, generally if vacancies are taken into account which on average curbs rents and prices (see also Deutscher Bundestag, 2003). Housing allowances do seem to keep rental housing affordable, but their impact in number of households has gone down since 2005 as most recipients, the long-term unemployed who in principle are available for employment, are now receiving a means-tested unemployment benefit. The amount of this benefit seems to be on average lower than the benefits it substituted for, but the average amount for housing within that benefit was higher than for housing allowance recipients.

A3.4 Eligibility criteria for subsidies for renting households

Households with lower incomes are eligible for help with their housing costs via a housing allowance system (Kofner, 2007). The amount of benefit received is based on the number of persons in the household and six categories of local rent level (per 1 January 2009; BBSR, 2009). Table 13 shows the maximum local rent level per rent class that is subsidized by number of household members, if actual rent paid is higher than the maximum rent. When taking household income into account, and taking a one-earner household as example, Table 14 shows the maximum amounts of income per month that would allow a household to apply for housing allowances. For other types of earners, different tables are generated based on a formula that includes the mentioned variables plus three coefficients that vary with household size. Since 1 January 2009 heating costs are also subsidized within the housing allowance scheme. About six Euro per month and per eligible person can be added to the rent to be subsidized starting at 24 Euro per month for the first person.

A major drawback of the housing allowance system from the point of view of the recipient is the required action by the federal parliament to index amounts to inflation. The adjustments have been applied every five or six years, and each time have resulted in a number of recipients dropping out of the scheme as rents and incomes have generally continued to rise in the interim. Nine adjustments were made between 1965 and 1991. Over the ten years before the next adjustment took place in 2001, the real value of housing allowances was halved (Deutscher Bundestag, 2003, p. 23). The last adjustment in the parameters of the housing allowances was scheduled for 1 January 2009. The average monthly amount of rent allowance was to rise from Euro 90 to Euro 140, and the annual budget was to rise by Euro 520 million (see hyperlink on www.bmvbs.de: Die Wohngeldreform zum 1. Januar 2009, last accessed 28 February, 2011).

Within the fourth package of reform laws called Hartz IV Germany in 2005 introduced a means-tested instead of earnings-related system of social security for unemployment assistance after the first year of unemployment (Busch-Geerstena, 2004; Droste & Knorr-Siedow, 2007; Kirchner, 2006). Everyone with a transfer income and who is in principle available for the labor market will receive a Hartz IV transfer. It was introduced in order to incentivise the unemployed to find work, although the average amount within the transfer amount reserved for housing of Euro 275 per month in 2005 was

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1 This section stems mostly from Haffner et al. (2009) except for the newer references.
higher than the Euro 132\(^2\) for housing allowances recipients (Kofner, 2007, p. 161). One important result of these changes for housing was that the number of recipients of housing allowances, mostly tenants, decreased dramatically to 781,000\(^3\), a number that was a little over one fifth of the number of recipients in 2004 (9% of households).

Table 13  Maximum monthly rent levels subsidized with housing allowances according to number of household members and category of local rent level in Germany, 2009

<table>
<thead>
<tr>
<th>Number of household members</th>
<th>Rent level class</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>I (low rents)</td>
</tr>
<tr>
<td>1</td>
<td>292</td>
</tr>
<tr>
<td>2</td>
<td>352</td>
</tr>
<tr>
<td>3</td>
<td>424</td>
</tr>
<tr>
<td>4</td>
<td>490</td>
</tr>
<tr>
<td>5</td>
<td>561</td>
</tr>
</tbody>
</table>

Extra amount of eligible rent per extra household member

|                           | 66  | 72  | 77  | 83  | 83  | 99  |


Table 14  Example of income limits (Euro) for dwellings in municipalities with rent level class VI (high rents) in Germany, 2009

| Number of household members | Maximum total income per month according to housing allowance table | Maximum monthly gross income (without child support) for a one-earner household before a lump sum deduction of ...
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6%</td>
<td>10%</td>
</tr>
<tr>
<td>1</td>
<td>870</td>
<td>925</td>
</tr>
<tr>
<td>2</td>
<td>1,190</td>
<td>1,265</td>
</tr>
<tr>
<td>3</td>
<td>1,450</td>
<td>1,542</td>
</tr>
<tr>
<td>4</td>
<td>1,900</td>
<td>2,021</td>
</tr>
<tr>
<td>5</td>
<td>2,180</td>
<td>2,319</td>
</tr>
<tr>
<td>6</td>
<td>2,440</td>
<td>2,595</td>
</tr>
<tr>
<td>7</td>
<td>2,700</td>
<td>2,872</td>
</tr>
<tr>
<td>8</td>
<td>2,960</td>
<td>3,148</td>
</tr>
</tbody>
</table>


Since these changes have taken place, regular housing allowances have become a financial contribution to housing for households above the social minimum. Housing allowances are no longer paid to those who receive any other transfer of income, with the possible exception of the short-term jobless. According to Kofner (2007, p. 159), “housing allowances are widely seen in Germany as a relatively market-conforming instrument of social policy … with the ability to act as a substitute for an important part of the social housing programmes [which have been cut down; see B7.1]”. Nevertheless, there appears to be evidence that only about 40\% to 50\% of entitled households claim

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\(^2\) For tenant recipients the amount of housing allowances averaged Euro 120 per month in 2005 (Bundesamt für Bauwesen und Raumordnung, 2007).

\(^3\) According to Bundesregierung (2006) the number was almost 811,000 recipients in 2005, 90\% of which were tenants.
housing allowances\textsuperscript{4} (p. 175). Possibly the system is perceived as complex and the fact that amounts are not annually indexed with inflation may help to make it even more complex.

A3.5 Differences in access to allowances across rental sub-sectors

There are no differences in eligibility for housing allowances between housing tenures and subsectors (tenure neutrality; Haffner \textit{et al.}, 2009; Bundesministerium für Verkehr, Bau und Stadtentwicklung, 2008). Housing allowances are ‘transferable’ from one dwelling to another for as long households and housing costs fulfill the requirement of the instrument, as housing allowances are an open-ended system. A new application will have to be made.

\textsuperscript{4} In 2005 almost 40\% of recipients were retired, more than 39\% were working, mostly employed, and more than 11\% were unemployed (Bundesregierung, 2006).
Part B: Legislation, regulation, policy and programs

B1 Legislative framework for secure occupancy in rental housing

That tenants and landlords are both satisfied with the situation must be one of the explanatory factors of the relatively large size of the rented sector in Germany. Landlords are allowed to make a competitive profit, while tenant security seems to quite strong, at least formally, as the fact that a phenomenon as renting nomad can exist (C1.1).

B1.1 Type and coverage of residential tenancies legislation

The regulation on contract length and reasons for termination and rent levels was last reformed on the federal level in 2001 with the rent law reform law (Mietrechtsreformgesetz; Wurmnest, 2010; see B3.1). The tenancy law became an integral part of the federal Civil Code (Bürgerliches Gesetzbuch; Busch-Geertsema, 2000). It contains requirements on the termination of tenancies in the not subsidized rented sector.

Economic criminal law (Wirtschaftsstrafgesetz) “declares profiteering to be a regulatory offence.” (Wurmnest, 2010, p. 10; see B1.1)

The regulation on the calculation of heating costs (Verordnung über Heizkostenabrechnung) gives the rules on the calculation and distribution of other costs than rent, for example the heating costs and the costs for warm water, for buildings with at least two dwellings (Wurmnest, 2010; see B3.2).

The law on the regulation of intermediation (Gesetz zur Regelung der Wohnungsvermittlung) contains rules about the contractual relationship between the prospective tenant and the intermediary (real estate agent; Wurmnest, 2010; see B2.3). It regulates the commission of the real estate agent and the key money to be paid.

The federal bricks-and-mortar subsidy act of 2001 (Wohnraumförderungsgesetz 2001; WoFG, Section 28), came into force on 1 January 2002. It regulates allocation and price limits for rental dwellings subsidized with bricks-and-mortar subsidies and allows for federal states to design their own rules within the national framework. An example is that income limits could be set higher than the national one. This law was changed in 2006 in order to decentralize completely the bricks-and-mortar subsidization (Bundesministerium für Verkehr, Bau und Stadtentwicklung, 2006; see A1 and B7.1). The responsibility for making own regulation moved as of 1 September 2006; the federal financial assistance seized to exist as of 1 January 2007.

The rent surcharge is regulated in the federal law for the reduction of the wrongly-focused or ineffective bricks-and-mortar subsidization (Gesetz zum Abbau der Fehlsubventionierung im Wohnungswesen; see B3.1).

For allowances there is the federal housing allowance wet (Wohngeldgesetz; see A3.4).

Part two of the federal social assistance act (Bundessozialhilfegesetz II) merged two types of benefits, the former unemployment assistance and the former social assistance into the Hartz IV assistance for the long-term (more than 12 months) unemployed who are available for work (Busch-Geertsema, 2007; see A3.4).

The construction regulation law (Bauordnungsrecht) and other laws and regulations such as various German Industrial Standard Norms (DIN) regulate the quality standards in construction (Busch-
Geertsema, 2000; see B4.1). They will be checked when building permissions are applied for and also via inspections of the dwelling that have been built.

As the descriptions of the aims of the different laws show, differences between subsidized and non-subsidized renting can be found only on rent regulation. For subsidized renting it is based on the agreement in the subsidy contract and allows for a rent surcharge (see B3.1), if the income of a tenant becomes too high according to the standards of the bricks-and-mortar subsidy regulation.

Plans to reform are discussed in C1.1.

**B1.2 Impact of other legislation on secure occupancy**

The German tenancy law that is contained in the Civil Code (see B1.1) integrates several constitutional influences (Wurmnest, 2010, p. 7). The tenancy law has “is no longer characterised solely by the autonomy of the private parties. It has been converted into something of a publicly regulated social owner-and-user relationship.” This shift has been influenced by the German Constitution which guaranteed both private property and private autonomy. This means that even though the tenant is not the owner, he can require the approval of the landlord to modify the dwelling to make it suitable for handicapped occupiers (“a tenant can rely on Art. 14(I) GG to require the approval of a modification of the leased object from the landlord in order to allow proper use for handicapped peoples” (Wurmnest, 2010, p. 7); see also B3.2). The constitutional right of the freedom of information has found its way into jurisprudence on antenna dishes installed by a tenant without the landlord’s permission. The constitutional right of equal treatment has been put into practice and is dominated by the principle of private autonomy that a landlord does not have to treat his tenants equally when the lease is concerned in relation to tenants in the same building. On collective aspects, such as the house rules or the allocation of shared costs, equality is to be the basic rule, however. Last but not least, the constitutional right embodying the protection of marriage and family has been applied to cohabiters in the case of the takeover of the lease when the tenant has come to die (see B6.2).

Wurmnest (2010, p. 4) in his description of German tenancy law, focuses on rules for dwellings which are not subsidized with bricks-and-mortar subsidies and excludes rules for what he calls “co-operative building societies and public building companies”, implying that there may be differences between these different types of landlords/owners and whether or not dwellings have been built or acquired with bricks-and-mortar subsidization. As has been described for subsidization versus non-subsidization elsewhere in this text, these differences will be mainly concerned with allocation and rent regulation, and probably less with rent termination, while for cooperative tenants the tenant security seems to be stronger than in general as owner and tenant are the same person (see also A 1.3, A1.4 and B7.1). Not-subsidized dwellings imply that there will not many differences in rights between legal entities as owners and individual owners. Germany tenancy law thus applies to the majority of the rental dwellings (90%).
B2 Access to rental housing

B2.1 Effect of selection processes upon access to secure housing

For dwellings subsidized through the bricks-and-mortar subsidy, housing allocation is regulated during the subsidy period (Haffner & Hoekstra, 2006). When allocating dwellings, federal states may include a provision in the subsidy scheme concerning whether the municipalities that provide subsidies have a ‘right of allocation’ to house home seekers who have residence permits (Wohnberechtigungsschein, WBS; see below), and if so, by what kind of allocation procedure. All the federal states have availed themselves of this ‘right of allocation’ to regulate the allocation of subsidized rented dwellings. Municipalities can use this right to house vulnerable groups, which is one of their responsibilities (Häußermann, 1994). They can also exercise the right of allocation in cases where they subsidize housing refurbishment. If a municipality needs to house certain home seekers urgently, agreeing a right of allocation in return for additional subsidy can be a means of achieving this. Municipalities are permitted to use bricks-and-mortar subsidies out of their own funds.

The length of the period for the allocations rights differs (Statistisches Bundesamt, 2007). In 2006, the period was set at 16 to 25 years in more than half of the over 11,000 newly built subsidized rented dwellings. The period was 25 years or longer for a few more than 500 dwellings. For the other 4,500 dwellings the period was set at 15 years or less with two possible categories: up to ten years or up to 15 years. In the case of the subsidization of 7,000 existing dwellings, the majority of the dwellings (almost 4,000) had allocation periods of 11-15 years, and none were longer than 25 years. About 1,800 dwellings each had periods set at up to ten years or 16-25 years.

There are three types of allocation rights that municipalities can negotiate with the landlords in question (2001 WoFG):

1. A general right of allocation (allgemeines Belegungsrecht)
   This is really more of an agreement between the subsidising body and the recipient landlord to let a particular dwelling only to home seekers with an occupancy permit from the municipality. The landlord can then choose freely among the candidates. This is, in effect, a right of placement that can be exercised by the landlord.

2. Right of nomination (Benennungsrecht)
   This allows the subsidising body to nominate three home seekers with occupancy permits, from whom the recipient landlord can then choose. This is, in effect, a limited right of placement by the landlord.

3. Individual right of allocation (Besetzungsrecht)
   This gives the municipality the right to allocate the dwelling in question to a particular home seeker with an occupancy permit. Thus the landlord has no say at all in the allocation of the dwelling.

In the past, municipalities exercised the individual right of allocation (type 3), resulting in whole complexes or districts with an unbalanced residential mix. For this reason, landlords have, over the years, generally been given more freedom to decide which dwellings to use and which tenants to house in each one. Landlords would thus seem to have a fair degree of power to allocate dwellings, since they are often allowed to choose their new tenants from among those candidates who can produce occupancy permits. When the municipality nominates potential tenants, the landlord can usually choose from a number of candidates and in many cases the landlord can decide which dwelling is suitable for a particular tenant. The result of the allocation system, then, is that in most cases the landlord places a candidate with an occupancy permit in a dwelling (Bundesministerium für Verkehr, Bau und Stadtentwicklung, 2006). It seems that there is not a waiting list, as such, for each municipality or landlord, where allocation is based on the length of time on the list. As landlords tend

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5 Mostly from Haffner et al. (2009).
to select the candidate with the lowest risk, a discussion has started on whether municipal housing companies still have a role here (Hallenberg, 2008).

In addition to the above-described rights of allocation, the 2001 WoFG allows a municipality to enter into a ‘cooperation agreement’ (Kooperationsvertrag) with landlords (Kirchner, 2006). The aim of this agreement is to keep the provision of social housing up to scratch, improve the housing situation and bring about a stable residential mix. A covenant of this kind can stipulate such things as the circumstances under which the period of rent and allocation control may be extended or shortened, and it can include provisions on measures to improve quality of life. For example, in Hamburg, it is agreed that target households can also be allocated non-subsidized dwellings to create mixed neighborhoods.

The case of the city/municipality of Cologne in the federal state of North-Rhine Westphalia

In Cologne two types of housing permits, or certificates of entitlement as Busch-Geertsema (2000) translates the term (Wohnberechtigungsschein, WBS) are available, the WBS-A and the WBS-B. The income limits for the B-group are 40% higher than for the A-group (http://www.stadt-koeln.de/buergerservice/themen/wohnen/wohnberechtigungsschein-wbs/; last accessed on 28 February 2011). The income limits will be adapted in special cases, where need is considered to be high: single parent, handicapped and newly married. In 2008 half of all applicants were recipients of Hartz IV support, the support for the long-term unemployed (Stadt Köln, 2009, p. 27).

A WBS is valid for one federal state. As people will be put on the waiting list for housing, even though tenants on the waiting list will have to be active and approach landlords in order to find a dwelling, it is advised to apply for the WBS in the city where one would like to live. The size of the dwelling that is allocated should be linked to the size of the household (one room or 45 square meters for one person, up to six rooms or 120 square meters for six persons).

B2.2 Incentives for landlords to accommodate low income households

There are the bricks-and-mortar subsidies available according to the WoFG 2001 which allow for maximum income levels of tenants for as long as the subsidy scheme runs (see B1.1 and B7.1). Any prospective tenant whose income is according to the rules will receive a housing permit and can then apply for a dwelling which should also satisfy the size requirements in relation to household size (see B2.1). As was explained elsewhere (B2.1), there are different allocation rules possible, but they seemed to have developed in the direction of more choice for the landlord. The city of Cologne offers the landlords to help choose candidates from their list of all potential candidates, but advises tenants at the same time to be active and approach landlords themselves (last accessed on 21 January 2010: http://www.stadt-koeln.de/buergerservice/themen/wohnen/wohnungsvermittlung/). The incentives to accommodate especially low-income households are not given.

Force, instead of incentive, by the government can be used when homelessness is threatening. The laws of police of the federal states allow municipalities to order a landlord to allow a tenant to stay on beyond the landlord’s valid termination of the contract if a household is at risk of becoming homeless. As Wurmnest (2010, p. 13) calls this a measure of “last resort”, it will not often be used. Wurmnest (2010) specifies that municipalities will use this measure only when there is no space in the publicly owned accommodation for the homeless.6

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6 The author was told informally that when the court decides to evict a tenant, the municipality will get this information on which it will act. Up until then, when the tenant has not turned to the municipality, no help will have been received.
B2.3 Costs of establishing a tenancy

Refundable deposit

The standard lease, as presented by the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7), contains a clause about the deposit (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/wohnungs-mietvertrag.pdf; last accessed on 28 February 2011). It explains that it could either be a deposit, payable in three installments after the lease has started, a bank guarantee or a savings account that is hypothecated to the landlord. The deposit is refundable, the latest three months after the termination of the lease. The amount deposited is smaller, the lower the rent (information of a colleague). The deposit for a room would be the rent for one month, for a dwelling an amount of rent for three months at the most.

Brokerage costs

As there is a law on the regulation of intermediation (Gesetz zur Regelung der Wohnungsvermittlung) which contains rules about the contractual relationship between the prospective tenant and the intermediary (real estate agent) and which regulates the commission of the real estate agent and the key money to be paid (Wurmnest, 2010; see B1.1), the situation of intermediation must be reality.

Typically unfurnished

According to the information of a colleague rental properties are typically unfurnished, except for student housing. The kitchen may or may not be included. If it is included, the tenant will have to pay for that.

Assistance with costs for low income tenants

The website of the city of Cologne offers loans to households if financial problems prevent them from getting rental housing (last accessed on 21 January 2010: http://www.stadt-koeln.de/buergerservice/themen/wohnen/hilfen-zur-beschaffung-einer-wohnung/; see B7.3). This help can be received when a dwelling is on offer and the rent level is reasonable and can be used for deposits, guarantees, shares in rental cooperatives and real estate agent costs. This help can be provided based on the federal social support law (Bundessozialhilfegesetz).

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7 This sounds different from the advice in the case of renting nomads (see C1.1).
B3 Affordability of Rental Housing

B3.1 Rent payments and secure occupancy

The regulation on contract length, termination reasons and rent levels was last reformed in 2001 with the rent law reform law (Mietrechtsreformgesetz). The modernization of the tenancy law was deemed necessary in order to bring it up to date with changes in society. These changes mainly concerned the increased mobility needs of tenants, new forms of cohabitation and the political goal of promoting the conservation of energy (Wurmnest, 2010). The tenancy law “has been converted into something of a publicly regulated social owner-and-user relationship” (p. 7). This occurred in a situation where from the beginning of the 1960s, although tenancy law was gradually liberalized, “the social elements of tenancy law aimed at protecting the tenant were constantly reinforced.” (p. 6).

In principle, tenancy law enables tenants and landlords to draw up any contract they wish. However, changes to the rents of non-subsidized rented dwellings and subsidized rented dwellings are regulated. Tenancies are secure once there is a written contract. A rent surcharge is available for subsidized rented dwellings in most federal states, when household income rises above limits set for subsidization. A right to buy is not available, probably because subsidized dwellings are only subsidized on a temporary basis.

Rent control: not-subsidized dwellings

Rent control in Germany is concerned with protecting sitting tenants, not new tenants (Haffner et al., 2008). Rents for new leases in the market rented sector can be negotiated freely, as long as they are not considered exorbitant rents under economic criminal law (Wirtschaftsstrafgesetz; Busch-Geertsema, 2000; see B1.1). Rent increases of over 50% when a home changed tenants were not out of the ordinary in the case of the expensive new-build homes of the 1980s and 1990s (Hubert, 1998, p. 215). Such increases are in principle regarded as illegal under German criminal law. This is a matter for the courts. According to Section 5 of economic criminal law the rule holds that rents for new contracts must not be higher than 20% above the local reference rent.

Rent control for sitting tenants in the not-subsidized rented sector can occur (Civil Code; Bürgerliches Gesetzbuch, BGB) by several legal means. Rent changes for sitting tenants can be based on the rents of three similar rented dwellings. Alternatively, rent changes can be based on a so-called Mietspiegel (translated as rent mirror), a database with local reference rents. Local reference rents are non-subsidized market rents agreed to in the new contracts and also the existing contracts (with adjusted rent level) between landlords and tenants in the four years preceding the reference date for the collection of the local reference rents. They are based on comparable quality characteristics for buildings and dwellings and their locations.

Of the major towns and cities with populations of over 100,000, 87% had a database of reference rents (Mietspiegel) in place on 1 October 2003 (Deutscher Bundestag, 2003). About half of municipalities with populations of over 20,000 have introduced it. Less than a third of municipalities with up to 50,000 inhabitants have compiled one.

Changes in the rent law of 2001 have made it possible to compile a ‘scientific’ Mietspiegel instead of a ‘regular’ one, which must be compiled along scientific lines, e.g. based on a hedonic regression analysis or with 30 observations per type of dwelling. The advantage of a reference rent database put together based on scientific principles is that rent rises are easier to implement (Deutscher Bundestag, 2003) than with a normal one, especially where the rent is lower than the maximum rent according to the Mietspiegel (Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2001/2002). It makes obtaining the tenant’s permission which is compulsory for any rent increase easier for the landlord, if the rent has not been changed for the past fifteen months and if the request for a rent increase is

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8 Mostly from Haffner et al. (2009).
submitted after at least twelve months. Apart from ‘normal’ rent increases, landlords are allowed to increase rents after modernization with 11% of modernization costs.

The market rents that are agreed for new contracts in the four years preceding the reference date for the Mietspiegel represent the market effect on the rent levels in the Mietspiegel. According to the Bundesregierung (2006) this effect is relatively low, as the share of these contracts in all relevant contracts is not very high.

Next there are various elements in the (scientific) Mietspiegel that slow down the increases in market rents. Firstly, there is the maximum rent for existing contracts given certain quality characteristics. Secondly, the contracts of the four years (and not for example the last year) prior to initiating the Mietspiegel will be included. In a rising market, the reference rents will lag. Thirdly, there is a correction after two years. If this is done in line with inflation, inflation may be lower than rent increases on the market. Finally, there is the general rule that rents may not increase by more than 20% within a three-year period (Kappungsgrenze).

Rent regulation appears to have succeeded in slowing rent increases when rents are rising. Early this century, the average rent for new contracts was around 5% higher than the average rent (Deutscher Bundestag, 2003). For sitting tenants the average rent was about 8% lower than the average rent. Table 15 also shows this difference: the longer the contract, the lower the rent per square meter.

Since there is less scarcity on the housing market in some parts of Germany, and in fact currently even more of a housing surplus than a shortage in some areas, the length of occupancy now has less effect on rents than it used to (Bundesamt für Bauwesen und Raumordnung 2007; Bundesregierung, 2006; Deutscher Bundestag, 2003; Hubert, 1998). Overall rents (adjusted for quality) rose by more than inflation between 1997 and 1999, and by less than or about as much as inflation until 2003. Since 1983, gross rents (not adjusted for quality) have generally risen by more than inflation (GdW Bundesverband deutscher Wohnungsunternehmen, 2004b, p. 29). Since 2001 gross cold rents per square meter on average have risen with 7% in both parts of Germany, while it was more than 11% and more than 20% in the period 1996-2001 in former West and East Germany respectively (Table 15).

Table 15 Average monthly gross cold rent (in Euro) including ‘cold’ additional charges per square meter by length of contract, former West and East Germany, 1996, 2001 and 2006

<table>
<thead>
<tr>
<th>Length of contract</th>
<th>Former West Germany</th>
<th>Former East Germany</th>
<th>East as % of West</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up until 4 years</td>
<td>6.01</td>
<td>6.34</td>
<td>6.58</td>
</tr>
<tr>
<td>5 to 11 years</td>
<td>4.13</td>
<td>5.92</td>
<td>6.45</td>
</tr>
<tr>
<td>12 and more years</td>
<td>3.80</td>
<td>5.48</td>
<td>6.00</td>
</tr>
<tr>
<td>Average</td>
<td>5.37</td>
<td>6.38</td>
<td>6.38</td>
</tr>
</tbody>
</table>


1) Gross cold rent = basic rent plus ‘cold’ additional charges (Brutokaltmiete = Grundmiete + kalte Nebenkosten):
   ‘cold’ means excluding charges for heating and hot water but including those for water supply, sewerage and refuse disposal (Deutscher Bundestag, 2003, p. 19).

According to the tenants’ umbrella organization Deutscher Mieterbund (see B6.7) more than 100,000 rent increases per year are wrong, illegal or not well-motivated (http://www.mieterbund.de/mieterhoehung.html; last accessed on 28 February 2011). The main errors in relation to the reference rents are that they are not motivated as they should be, the
maximum increase of 20% in three years time is not taken into account, the rent per square meter is incorrect, the size of the dwelling is incorrect or the required period of not increasing rents is not waited for. About correct motivation the highest federal court (Bundesgerichtshof) decided that even if tenants have to pay to buy access to the database of reference rents (to buy the brochure), the proof of the reference rents as such does not need to be provided by the landlord (BGH VIII ZR 276/08). The tenant has an own responsibility here. For possibilities to dispute rent adjustments see B6.5.

Rent control: subsidized dwellings

Rent inequality has resulted from a disparity between subsidized at-cost rents, which have been and are controlled, and market rents. The rent level for subsidized rented dwellings was based on the total cost of construction, the subsidy scheme and other running costs, including a ‘normal’ profit. The level of ‘social’ rents and rent rises did not depend on that of market rents, then, so that market rents could become even lower than cost price rents. Such a difference in rent level (with no correction for quality) on average turned out to be reality in 2001 for smaller municipalities in former West Germany (Deutscher Bundestag, 2003, p. 16). In cities with 500,000 residents or more, the rent for subsidized rented dwellings was a maximum of 0.63 Euro per square meter lower on average than for non-subsidized rented dwellings. In comparison to average rent in former West Germany in Table 9, this meant a 10% difference. For 2005, for former West Germany subsidized rents were on average about 9% (0.60 Euro) lower than gross cold rent (Brutokaltmiete; see Table 9 for definition). In tight housing markets the difference in rents between subsidized and not-subsidized dwellings, not corrected for quality differences, will be higher. But in principle, the use of cost price rents could always result in a substantial difference in rent between one subsidized dwelling and another, even in the same municipality.

The new bricks-and-mortar subsidy act of 2001 (Wohnraumförderungsgesetz 2001; WoFG, Section 28), which came into force on 1 January 2002 (see B1.1 and B7.1), abandoned the at-cost rent system. The rent control system based on this principle remains in force, although for dwellings covered by the pre-2002 regime. The 2001 WoFG stipulates that the subsidy contract entered into by the subsidizing body (the municipality) and the recipient (the landlord) must stipulate the maximum amount of rent that may be imposed on the tenant. Thus the subsidizing body and the recipient can negotiate a ‘maximum rent’, taking the local rent level into account. It is not only the initial rent but also annual rent rises and other terms and conditions that are the subject of negotiation between the subsidizing body and the recipient. A possible drawback of the new rent control system is that the risk of disproportionate rises in costs is borne by the landlord contrary to the previous system where rents were set according to costs.

To what extent allocation rights (see B2.1) have been acquired with bricks-and-mortar subsidies for which market rents are used to set rents, is not clear. On the website of the municipality of Cologne (last accessed on 21 January 2010: http://www.stadt-koeln.de/buergerservice/themen/wohnen/mietpreiskontrolle-im-offentlich-gefoerderten-wohnungs-bau/) we find that “rents design ... orients itself on cost prices...” (translation). On the control of these rents the website indicates that landlords and tenants are welcome to ask for help from the municipality with the determination of the rents and rent adjustments. Tenants can also drop a complaint which will be followed up if there is a suspicion that rents are much too high. General controls will not take place.

Next to regulation of rents for rental dwellings subsidized with bricks-and-mortar subsidies there is also a provision available to prevent these subsidies leaking away to households with income above the limits set. The rent surcharge was introduced in 1981. It is known as the Fehlbelegungsabgabe (Kirchner, 2006). Although the terms of the 2001 WoFG mean that only households with a residence permit from a local authority and with an income below specified limits are allowed to move into a rented dwelling with a subsidized rent, there is no way to terminate the contract if their income subsequently rises above the set limits (Ditch et al., 2001).
For this reason, the federal government introduced the law entitled law for the decrease of the ineffective housing subsidization (Gesetz zum Abbau der Fehlsubventionierung im Wohnungswesen) which allows federal states to apply a rent surcharge in communities where the difference between subsidized rents and local reference rents is relatively large. The rent surcharge is aimed at households whose income is over 20% higher than the limits set. Busch-Geertsema (2000) tells us that six of the eleven states of former West-Germany and one out of six former East German states introduced the rent surcharge.

With the discussion on segregation in the subsidized rented stock in the 1990s, the problem of ineffective bricks-and-mortar subsidization was pushed more into the background. A combination of high administration costs and considerations about segregation led Berlin to discontinue the surcharge in 2002. Whitehead & Scanlon (2007, p. 18) mention that the taxation is “rarely” levied for fear of ‘losing’ these households from the social housing estates. North-Rhine Westphalia abolished the rent surcharge as of 8 June 2006 (last accessed on 21 January 2010: http://www.stadt-koeln.de/buergerservice/themen/wohnen/gibt-es-die-so-genannte-fehlbelegungsabgabe-noch/).

Payments directly to landlord

Presently arrangements to allow direct payments for long-term unemployed and income support beneficiaries (both Hartz IV beneficiaries) are allowed, but do not seem to be a significant practice (last accessed on 21 January 2010: http://www.focus.de/immobilien/mieten/mietrecht-koalition-kippt-sonderrechte-fuer-mieter_aid_444866.html).

B3.2 Other expenditure which affects secure occupancy

Tenants are to pay certain running costs such as the so-called cold costs and the costs for heating (http://www.mieterbund.de/774.html?&no_cache=1&sword_list[]=miete; last accessed on 28 February 2011). According to the tenants’ umbrella organization Deutscher Mieterbund (see B6.7) 37% of advice given to tenants is about the topic of wrongly calculating such costs or including the wrong types of costs. These costs are quite substantial. They include costs for street-cleaning, waste collection, water and sewerage, land taxes, insurance and maintenance. They add up on average for Germany to almost three Euro per square meter per month in 2007 (last accessed on 26 January 2010: http://www.mieterbund.de/fileadmin/pdf/bks/2008/BKS2008.pdf). It is understandable why these costs, including heating, have become known as ‘second rent’ (see also Busch-Geertsema, 2000)

According to the example rent contract of the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7), the tenant may and pay for or may not use and pay for common machines for laundry (see B4.3), if they are available (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/wohnungs-mietvertrag.pdf; last accessed on 28 February 2011). It also contains other clauses which are linked to the question of who pays, e.g. clause(s):

- for running costs that could be prepaid or by lump sum. In the former case they will be settled definitely afterwards, in the latter not. In the case of a settlement afterwards, the contract tells under which circumstances an additional claim can be made;
- for a list of tasks to be included in the contract that the landlord will do before the contract starts;
- about how to go about deficiencies of the dwelling (see B4.1);
- about how to go about renovations and improvements (see below);
- for a list of tasks to be included in the contract that the tenant will do and will pay for and how the landlord should go about taking over the investments and paying for them when the tenant moves out;
- on changes that the tenant is allowed to make; the tenant e.g. can put a different heater in instead of one using coal; the tenant can adapt the dwelling to a handicap and pay for it after
getting permission from the landlord who can ask for a reasonable guarantee to change the dwelling back when the tenant leaves (see B1.2);

If the dwelling is modernized, there is little that a tenant can do about that. In principle, the landlord can increase rent with 11% of costs, if utility increases and environmental savings become reality (http://www.mieterbund.de/modernisierung.html; last accessed on 28 February 2011; see also B3.1). If the landlord does not do any modernization, the tenant will be able to do that himself, but should arrange for a modernization agreement with the landlord about recouping (depreciated) investments when moving out.
B4 Safety, privacy and quiet enjoyment

B4.1 Standards to improve safety and their regulation

The construction regulation law (Bauordnungsrecht) and other laws and regulations such as various German Industrial Standard Norms (DIN) regulate the quality standards in construction (Busch-Geertsema, 2000). They will be checked when building permissions are applied for and also via inspections of the dwelling that have been built.

Based on the information found on the website of the city of Cologne on dwelling deficiencies (http://www.stadt-koeln.de/buergerservice/themen/wohnen/wohnungsmaengel/; last accessed on 28 February 2011; see B5.1) the question arises that as the tenant has to take action and inform the municipality about structural deficiencies whether there indeed is no system of inspection after the delivery of the new dwelling.

B4.2 Autonomy in home making

According to the tenants’ umbrella organization Deutscher Mieterbund (see B6.7) the share of rent contracts with invalid clauses concerning small repairs is estimated to be 75%; this is especially said to be true for the older ones from before 2003 (http://www.mieterbund.de/geld_sparen_beim_umzug.html; last accessed on 28 February 2011). One example is that tenants do not need to do any repairs when moving out, nor do they have to pay a share of costs for such repairs. If they have paid such costs, they can reclaim them, even after years have passed. Another clause that the highest federal court (Bundesgerichtshof) decided to be void is that doors are to be painted only in white (BGH VIII ZR 50/09; http://www.mieterbund.de/pressemitteilung+M5108912839.html; last accessed on 28 February 2011). The tenant cannot be asked to paint walls, ceilings or woodwork in a certain color or to put on the walls certain tapestry, for as long as he lives in the dwelling, and also when he moves out.

According to the tenants’ umbrella organization Deutscher Mieterbund (see B6.7) there have been many more rulings by the highest federal court (Bundesgerichtshof) and other courts about home making aspects (http://www.mieterbund.de/mieterrechte_mieterpflichten.html?&no_cache=1&ssword_list[]=mieterpflichten; last accessed on 28 February 2011). These include that

- small animals are always allowed in rental dwellings (BGH VIII ZR 340/06);
- buggy and wheel chair may be stalled in the hall way if there is no other option and the hallway is big enough (BGH V ZR 46/06);
- smoking, even excessively, is considered normal use of the dwelling (BGH VIII ZR 124/05 and (BGH VIII ZR 37/07);
- taking a shower or a bath is allowed on every hour of the day (LG Köln 1 S 304/96);
- playing of grandchildren is allowed, but children are not allowed to jump off beds and chairs or use roller skates (AG Celle 11 C 1768/01); the landlord has to intermediate, if the noise is louder than normally with grandchildren;
- playing an instrument is allowed and cannot be forbidden by the contract (BGH V ZB 11/89). There may be times of quiet included in the contract;
- Making holes in the wall is considered normal usage (BGH VII ZR 10/92).

9 A story was told informally to the author that a contract contained points about the tenant having to do regular maintenance every so often. When this tenant moved out, he did not have to do that in exchange for bringing in a new tenant.
The standard lease, as presented by the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7), contains clauses about home making (last accessed on 28 February 2011; http://www.mieterbund.de/fileadmin/pdf/mietvertrag/wohnungs-mietvertrag.pdf). It confirms some of the above points, like keeping pets, as far as in number and size they are usual (see also B4.3). The landlord can refuse when keeping pets goes against the interest of the other tenants. On the garden (if there is one) the respective clause indicates that the tenant should be able to use it. On maintenance of the garden it can be decided in the contract who is responsible for that and who will bring in the necessary tools.

Compensation for improvements done by the tenant is possible (B3.2). First there is the list to do in the contract. For the list of the tenant it may be wise to make an agreement about the value development. The same applies for adaptations to the dwelling in case of a handicap or in case the tenant wants to have them, while the landlord does not.

**B4.3 Measures to support privacy and quiet enjoyment of home**

**Noise**

There should not be too much noise, otherwise it will be considered a deficiency of the dwelling (http://www.mieterbund.de/wohnungsmaengel_mietminderung.html; last accessed on 28 February 2011; see also B5.1). The deficiency called noise comes in many forms: construction noise in the house or in the surroundings or noise by neighbors. Neighbors can make noise, such as taking a shower, having noisy grandchildren and practicing an instrument (see B4.2). On the point of grandchildren, it is said that the landlord has to intermediate, when there are complaints. Whether or not there is a deficiency is not dependent on whether the landlord is causing it (see B5.1). Tenants can lower the rent paid for as long as the deficiency continues.

According to the standard house rules that accompany the standard lease of the tenants’ umbrella organization Deutscher Mieterbund (see B6.7) some of the noise rules are given in more detail (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/hausordnung.pdf; last accessed on 28 February 2011). The noise levels need to be normal especially between 1 and 3 pm and between 7 pm and 8 am (night). If there is to be a party, the co-tenants should be informed on time. Furthermore, children are allowed to play in and around the house in normal situations (e.g. not in cellars and parking garages).

**Sharing situation**

Sharing situations may happen for the laundry (see B3.2). The standard contract, as presented by the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7), allows for usage of the area and machines or not (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/wohnungs-mietvertrag.pdf; last accessed on 28 February 2011).

**Privacy**

The standard lease, as available on the website of the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7), does not allow the landlord to come into the dwelling (with e.g. workmen of potential tenants) without previously having an agreement with the tenant on when that is to happen (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/wohnungs-mietvertrag.pdf; last accessed on 28 February 2011). If the tenants is absent for a longer period, he should tell the landlord who is in charge of the key of the dwelling, in case the landlord needs to enter the dwelling.
Other aspects

The standard house rules that accompany the standard lease of the tenants’ umbrella organization Deutscher Mieterbund (see B6.7) include the following topics (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/hausordnung.pdf; last accessed on 28 February 2011). In order to guarantee safety doors etc. should be locked at night, and escape routes should be kept free. There are also some instructions about how to act when gas or water pipe leakages are discovered and also where to use the coal grill. Furthermore, there are instructions about that shared facilities such as elevators and stairs should be cleaned by the tenants determined by a schedule, and that trash should be put in the designated places. Last but not least, the house rules explain that the dwelling needs to aired, also in the winter, the cars need to be parked in designated spots and pets (see also B4.2) need to be in company, etc.
B5 Comfort and Standard of repair

B5.1 Means for ensuring basic standards of physical comfort

Quality standards

The construction regulation law (Bauordnungsrecht) and other laws and regulations such as various German Industrial Standard Norms (DIN) regulate the quality standards in construction (Busch-Geertsema, 2000). They will be checked when building permissions are applied for and also via inspections of the dwelling that have been built.

On energy, a so-called energy pass for existing dwellings is obligatory since 1 October 2007 (http://www.energiepass.info/; last accessed on 28 February 2011). The pass needs to be included when selling, renting or leasing dwellings. It also needs to be shown when prospective users of the dwelling would like to see it. This is based on the energy savings regulation of 26 July 2007 (Die Energieeinsparverordnung, EnEV).

Deficiencies

According to the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7) a dwelling is deficient if a tenant cannot use it as desired (last accessed on 28 February 2011; http://www.mieterbund.de/wohnungsmaengel_mietminderung.html). That means that the rooms should be fit to use, the technical appliances should work, there should not be too much noise. Whether or not there is a deficiency is not dependent on whether the landlord is causing it (B4.3). The five most often mentioned deficiencies of dwellings are:

1. dampness damage of mould,
2. noise caused by construction in the house or in the surroundings or noise by neighbors,
3. dwelling smaller than stated in contract,
4. malfunctioning of technical appliances, such as elevator, boiler and heater, and
5. damage to the dwelling such as damage to wood (decayed) or leaking roof.

The website of the city of Cologne advises to contact the municipality if there is a suspicion of large constructional/structural problems of a dwelling (http://www.stadt-koeln.de/buengerservice/themen/wohnen/wohnungsmaengel/; last accessed on 28 February 2011). The constructional situation should at least fulfill the minimum requirements for acceptable living conditions. As examples of acceptable living conditions it is mentioned that water and electricity are to be functioning and that e.g. toilets can be used as they should be used. Furthermore, there should not be too much humidity. If for example there is mould, the minimum requirements are not being fulfilled. If there are structural shortcomings the municipality can summon the landlord to correct them. The judicial basis is the law for the upkeep and maintenance of housing units of the federal state of North-Rhine Westphalia (Gesetz zur Erhaltung und Pflege von Wohnraum für das Land Nordrhein-Westfalen, WoG).

When there are deficiencies, the tenant is allowed to pay less rent than rent owed, if the landlord is not doing anything about them (http://www.mieterbund.de/wohnungsmaengel_mietminderung.html; last accessed on 28 February 2011). The tenant has to prove the deficiencies and has to prove that he has reported them. He can leave the dwelling without handing in a notice, if the dwelling is unfit for occupation. In case of deficiencies reported by the tenant, when the landlord does not agree, the landlord can either try to prove that it is not a large deficiency or that the tenant knew about it before the tenancy started.
Right to adaptation in view of disabilities

See B1.2 and B3.2.

Provision to negotiate trade off between maintenance items and rent levels

There are different ways of trading of rent levels and maintenance or tasks. There is the list of tasks that the tenant will do or the landlord, as well as who is going to be responsible for the garden and renovation (see B3.2 and B4.2).
B6 Landlord Tenant Relations

B6.1 Policies and programs to improve the quality of rental management and provide information for landlords and tenants

The city of Cologne has a list of landlords on its website that rent out subsidized rental dwellings (http://www.stadt-koeln.de/buergerservice/themen/wohnen/wohnungsvermittlung/; last accessed on 28 February 2011). This implies that there is no register of accredited landlords/managers, it is a list of facts.

B6.2 Form of tenancy agreement and affect on secure occupancy

The standard lease in Germany, regardless of the rental subsector (subsidized or not) is an indefinite one (see also B6.4). As presented by the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7), the standard lease contains mostly fixed clauses such as about the use of the rented unit (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/wohnungs-mietvertrag.pdf; last accessed on 28 February 2011). It contains some choices, such as in relation to how to calculate and pay for running costs and lists of tasks performed by either the tenant or the landlord (see B3.2). It contains an appendix with house rules (http://www.mieterbund.de/fileadmin/pdf/mietvertrag/hausordnung.pdf; last accessed on 28 February 2011) which cannot overrule the contract.

On the use of the rented unit the example rent contract of the tenants’ umbrella organization called Deutscher Mieterbund (see B6.7) contains clauses about passing the lease to family members, subletting, and about using the home for work. If the dwelling will not become overcrowded, any family member can be taken into the house. Any of these persons may take over the lease when the tenant that signed the contract leaves the dwelling or dies. In the former case the tenant needs to consent, and the situation should not go against the interest of the landlord. In the case of subletting, the landlord needs to agree. The landlord has to agree when after the contract has been signed the situation arises that the tenant has to sublet part or all of the dwelling. Again the dwelling should not become overcrowded by subletting and the subtenant should not be a reason for not allowing the subletting. Another clause is about communes and leaving members. Changes in membership should be reported to the landlord. Last but not least, the dwelling can be used for working purposes, unless it goes against the interests of neighbors or landlord.

The standard lease also contains some clauses on the termination of the contract. It needs to be done in written form, the different notice periods are given (see B6.4), part termination is not possible. On handing in the notice, the contract states that the tenant can shorten the notice period by bringing in the next tenant. There are also some statements about who has pay for any detriments in case of immediate termination.

B6.3 Management arrangements for rental properties and impact on secure occupancy

As is explained in B2.2, the city of Cologne offers landlords help in choosing candidates from their list of all potential candidates (http://www.stadt-koeln.de/buergerservice/themen/wohnen/wohnungsvermittlung/; last accessed on 28 February 2011).

The law on the regulation of intermediation (Gesetz zur Regelung der Wohnungsvermittlung) contains rules about the contractual relationship between the prospective tenant and the intermediary (real estate agent; Wurmnest, 2010; see B1.1). It regulates the commission of the real estate agent and the key money to be paid. This implies that brokerage is available to arrange for secure occupancy.
B6.4 Length of tenancy and reasons why it finishes

Since the 1971 act (Wohnraumkündigungsgesetz), which regulated rents, the length of tenancy and the reasons for termination, tenure has generally taken the form of a tenancy contract for an indefinite period (Hubert, 1998; Kirchner, 2006; from Haffner et al., 2009) and this has provided fairly good protection for tenants. 'Fixed-term lease contracts' were only permitted under special circumstances. Notice periods for landlords, along with the terms of contract, were extended, from three months to one year, and contracts could only be terminated in very special circumstances, such as if the tenant had at least three months' rent arrears or was causing a nuisance. If the landlord or his family needed the home themselves, there may also be grounds for terminating the contract, provided this would not cause unacceptable inconvenience to the tenant. The tenant is also allowed to transfer the contract to a new tenant accepted by the landlord (Wurmnest, 2010). A contract cannot be terminated if the aim is to increase the rent for the property.

After reunification, rent law and regulations were harmonized throughout the Federal Republic, with effect from 1998 (Deutscher Bundestag, 2003; from Haffner et al., 2009). It was felt that they needed to be thoroughly modernized and simplified, and a working group with members from the federal government and the federal states was set up (Bund-Länder-Arbeitsgruppe “Mietrechtsvereinfachung”). Its proposals led to the reform of the rent law, which came into effect on 1 September 2001 with the tenancy law reform law (Mietrechtsreformgesetz). The aim of the reform was to simplify tenancy law by consolidating issues and introducing a common structure (Wurmnest, 2010).

Content wise the aim of the reform was to distribute rights and responsibilities more equally between tenants and landlords (from Haffner et al., 2009). Contractual freedom was enhanced to take account of individual situations. For instance, the notice period for tenants was reduced to a maximum of three months. The length of occupancy by the tenant was prescribed to determine the notice period for landlords. The maximum was set at nine months for occupation periods of eight or more years (http://www.focus.de/immobilien/mieten/tid-15781/mietrecht-initiative-pro-vermieter_aid_442799.html; last accessed 28 February 2011). Up until an occupation period of five years the notice period was set at three months for both parties. The difference between both however is that the tenant does not need a reason, while landlord does in order to hand in a written notice (http://www.mieterbund.de/kuendigung_mieterschutz.html; last accessed on 28 February 2011). The new law also took various forms of cohabitation into account, enabling a non-married partner to take over an existing tenancy, for example. This reform also created the option for municipalities of compiling and keeping a scientific database of reference rents (Mietspiegel) in order to facilitate rent adjustments which strengthened the role of the Mietspiegel (see also B3.1). Also the maximum rent increase of 30% over three years has been reduced to 20% (Kappungsgrenze; see B3.1). Regulations, such as these from the Rent Level Law (Miethöhegesetz) were integrated in the Civil Code (Kirchner, 2006; see B1.1).

The Civil Code is mainly based on Roman law without many Germanistic elements (Wurmnest, 2010). The rule that the sale of a dwelling will not break the lease, however, is one of those elements which has been put into force in 1900.

In 2009 the government announced plans to change the tenant security legislation. See C1.1.

B6.5 Mediation and conciliation of disputes

Tenant and landlord associations (see B6.7) play many roles in providing information to their members in the form of information on rent levels, legal advice, standard contracts, etc., but their role in dispute resolution is limited. “Tenancy law is generally judged to be a suitable field for alternative dispute settlement ... Nevertheless, few arbitration boards can be found. Private tenancy laws are generally enforced in ordinary courts.” (Wurmnest, 2010, p. 15). It is estimated that there are about 300,000 cases per year.
In some cities landlord and tenant organizations have set up so called mediation centers (Schlichtungsstellen) whose powers vary. Some are approved by the ministry responsible for justice in the federal states as a conciliation authority and thus have more power. Their decision can be executed according to the German civil procedure code (Zivilprozessordnung). Furthermore, there are practitioners that have started to offer mediation procedures in order to find a solution for both parties. Nowadays the federal states have the right to introduce mandatory dispute mediation based on the implementation law of the Civil Procedure Code (EGZPO) for financial matters that amount to less than 750 Euro. Also courts can start to work towards an out-of-court settlement at the beginning of the hearing, if a conciliation procedure has not been followed. These latter options were introduced or stimulated in order to reduce the workload of the courts. Many disputes are financial and they are about amounts less than 750 Euro.

According to Wurmnest (2010) the access to courts in Germany is “fair and effective”. For the lowest courts (Amtsgericht) only the relevant facts have to be submitted; no argument needs to be built. The judge can discuss the case with the parties to check whether all the relevant material is available. Legal representation is not necessary for the hearings; the judge might use that opportunity to aim for friendly settlement or a withdrawal of the case in that situation (see B7.3). If the value of the dispute exceeds 600 Euro or the lowest court accepts that an appeal to a higher court (Landgericht) is important, this will happen. An appeal on questions of law to the federal court of justice is also possible based on the latter argument or on the argument of securing uniform jurisprudence.

The costs of litigation are generally to be borne by the losing party. They would include the legal fees of the winning party and the court fees. If parties are not able to pay, they can apply for legal aid (Prozesskostenhilfe), if their claim or defense “has sufficient prospects of succeeding” (Wurmnest, 2010, p. 16). Insurance is another way to pay for litigation costs. It may encourage going to court as the costs of a lost trial will not have to be borne.

Tenancy law judgments have special rules for execution. The most important one according to Wurmnest, 2010, p. 17) is about the eviction of a tenant. The time limit to do so can be set between one month and one year. However, if eviction has homelessness of the tenant as a result, municipalities can interfere (see B2.2).

B6.6 Professionalization of rental management

One can imagine that firms that lease property will do that more or less professionally. As was stated elsewhere, GdW-members manage about 300,000 rental dwellings in the name of others (B6.7). Table 1 also contains a group of landlords that subcontract the management (one percent of stock). Private individuals may go differently about renting their property. On the one hand there may be amateurs managing one dwelling or property more or less informally, and on the other there will be the more professional individuals, possibly managing the property as a business. There may also be intermediaries managing dwellings, possibly in the form of apartment buildings where each or almost each apartment is owned by another owner (personal information).

B6.7 Umbrella organizations and their scale of operation

GdW Bundesverband deutscher Wohnungsbetriebe

The GdW Bundesverband deutscher Wohnungsbetriebe, translated with GdW federal union of German housing companies, is the national umbrella organization for the former non-profit landlords of the federal states (last accessed 8 November 2006: www.gdw.de; from Haffner et al., 2009). It changed its name in 1990, when the non-profit tax status was abolished (Van der Heijden et al., 2002). Its predecessor, which had been founded in 1949, was known as the Gesamtverband der Gemeinnützigen Wohnungsunternehmen, the organization of non-profit landlords.

As of 31 December 2004, fewer than 3200 housing companies (Wohnungsunternehmen) were represented by the umbrella organization (GdW Bundesverband deutscher Wohnungsbetriebe,
Most of them principally seek to engage in entrepreneurial housing management (unternehmerische Wohnungswirtschaft). This would include municipal, federal, state, church, cooperative and private housing companies.

In 2004, 93% of the members of the GdW Bundesverband deutscher Wohnungsunternehmen took part in the annual survey (2004a), which showed that on 31 December 2004 these members were running over six million dwellings: 5.4 million rented dwellings owned by themselves and about 625,000 dwellings managed for third parties. Almost half of these latter dwellings, 308,000, were owner-occupied flats. When the stock of the members that did not take part in the survey was included, the total number of dwellings reached almost 6.5 million; this amounted to about 66% of the commercial stock and represented almost 30% of the occupied rented stock.

**Arbeitsgemeinschaft großer Wohnungsunternehmen e.V.**

The umbrella organization for 60 large landlords (2.2 million managed dwellings) is called Arbeitsgemeinschaft großer Wohnungsunternehmen e.V. (AGW), translated with working group of large housing companies, registered association ([http://www.agw-online.com/](http://www.agw-online.com/); last accessed on 28 February 2011; see also Haffner et al., 2009).

**Bundesverband Freier Immobilien- und Wohnungsunternehmen e.V.**

There is also the umbrella organization called Bundesverband Freier Immobilien- und Wohnungsunternehmen e.V. (BFW), translated with federal union of free real estate and housing companies, registered association ([http://www.bfw-bund.de/](http://www.bfw-bund.de/); last accessed on 28 February, 2011). About 1,600 medium-sized landlords manage about 3.2 million dwellings.

**Deutscher Mieterbund e.V.**

The Deutscher Mieterbund e.V. (DMB), translated with German tenant union, registered association, represents 320 local tenant unions ([http://www.mieterbund.de/](http://www.mieterbund.de/); last accessed on 22 February 2011). As one has to pay to be a member, Busch-Geertsema (2000, p. 8) informs us that “[m]arginalized and socially excluded persons are commonly not members of a [local] tenant association not least because they cannot pay membership fees.”

**Haus und Grund Eigentümer-Schutzgemeinschaft**

The Haus und Grund Eigentümer-Schutzgemeinschaft, translated with dwelling and land owner protection community ([http://www.haus-und-grund.net/index.html](http://www.haus-und-grund.net/index.html); last accessed on 28 February 2011) is the umbrella organization of local Haus und Grund associations. The main aim is to protect ownership. It is organized into 22 federal state organizations and 900 local organizations. It has about 850,000 members.

**Bundesarbeitsgemeinschaft Wohnungslosenhilfe e.V.**

The Bundesarbeitsgemeinschaft Wohnungslosenhilfe e.V., translated with federal working group on homelessness help, registered association, ([http://www.bag-wohnungslosenhilfe.de/index2.html](http://www.bag-wohnungslosenhilfe.de/index2.html); last accessed on 28 February 2011). It is a working group of the social private and public organizations that care for the homeless. Its members are mainly from the voluntary sector, but include some municipalities (Busch-Geertsema, 2000).
Verbraucherzentrale Bundesverband

The federal association for consumer protection is called Verbraucherzentrale Bundesverband (vzbv; http://www.vzbv.de/go/; last accessed on 28 February 2011). It consists of 16 associations in the federals states and 26 political oriented associations. It is also concerned with construction, housing, housing finance and insurance topics. It financed a research project into the changes in housing supply and their effects (Hallenberg, 2008).
B7 Specific provisions to improve secure occupancy for lower income and vulnerable households

B7.1 Programs for low income and vulnerable tenancies

Housing bricks-and-mortar policy

According to Busch-Geertsema (2000; see also Kirchner, 2006) about 40% of households could income wise access rental housing that is subsidized with bricks-and-mortar subsidies. This share no longer is the 70% of households that was eligible in the 1960 and 1970s. Nonetheless, in relation to the size of the subsidized sector it seemed to be still aimed at more than only the bottom of the housing market. Nowadays Whitehead & Scanlon (2007, p. 18) estimate that about 20% of the population are eligible for a dwelling subsidized with bricks-and-mortar subsidy. This must be the result of the new federal act, the bricks-and-mortar subsidies law, the Wohnraumförderungsgesetz 2001 (WoFG), that overhauled the existing subsidy system for rented and owner-occupied housing (Bundesministerium für Verkehr, Bau und Wohnungswesen, 2001). It gave the federal states the right to determine the details of the subsidization, before they got the whole responsibility of making the rules themselves in 2006 (see A1 and B1.1).

From 2002 onwards, bricks-and-mortar subsidies were to be targeted at those households in need of support, such as low-income groups, households with children, single parents, pregnant women, the elderly, the disabled, the homeless and people in need of assistance in other ways (see also Bundesregierung, 2006; Busch-Geertsema, 2004). A strong emphasis was accordingly placed on upward mobility, with fewer new dwellings being built for households on the lowest incomes (Brech, 2004). Policy is thus based on the filtering or trickle-down principle of dwellings. Subsidies for home refurbishment were also introduced. To strengthen neighborhood social structures, the 2001 WoFG enabled the purchase of existing dwellings to be subsidized. Another aim was to allow the acquisition of allocation rights from existing dwellings to compensate for the decline in the social housing stock (Kirchner, 2006).

Furthermore, more generally, urban policy and housing policy were expected to reinforce each other (Brech, 2004) and housing cooperatives were to be developed into the third pillar of the housing market next to owning and renting (see A1.4).

Cooperatives as third pillar next to renting and owning

The government of 2002 saw cooperative housing as the third type of ownership, alongside the rented and owner-occupied sectors (Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004; see A1.4). It wanted to ensure that social conditions would not deteriorate in cooperative housing and believed it necessary to encourage private individuals to take more responsibility, help themselves and become more engaged. Based on the work of the expert commission on cooperatives, it launched a subsidy scheme as part of the experiment program (ExWoSt; see C1.3) program) to support innovative experiments with cooperative housing (last accessed 9 November 2006: http://www.bbr.bund.de/ci_006/nn_21288/DE/Forschungsprogramme/ExperimentellerWohnungsstaedtebau/experimentellerwohnungsstaedtebau_node.html_nnn=true). These were mainly pilot schemes to provide affordable and secure housing for the elderly (including care), households on low incomes and households that have problems entering the housing market; there were also schemes to enhance the social stability of neighborhoods. The experiments showed that cooperative housing has positive effects on the social development of a neighborhood and housing according to need (last accessed 20 November 2006: http://www.bmvbs.de/dokumente/302.977583/Pressemitteilung/dokument.htm). The experiments showed that cooperative housing is attractive to single parent and

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10 Homeless as a priority group was new in the WoFG 2001 (Busch-Geertsema, 2004).
families with children. Also cooperative housing forms an alternative for housing for the elderly with lower housing costs.

Another research entitled Activation of potential of cooperative housing started in December of 2007 (Aktivierung von Potenzialen genossenschaftlichen Wohnens; http://www.bbr.bund.de/eln_015/nn_21888/BBSR/DE/FP/ExWoSt/Forschungsfelder/Evaluatio nWohnungsgenossenschaften/01_Start.html; last accessed on 28 February 2011). The central focus is the integration of cooperative housing into urban regeneration. Also an evaluation is being done on how the advice of the expert commission on cooperatives (Bundesministerium für Verkehr, Bau- und Wohnungswesen, 2004) has been put into practice. No results have been published yet on the website. The project started in December of 2007.

**Housing and urban redevelopment**

The focus of urban policy including housing policy can be found in programs as city redevelopment East and West (Stadtumbau Ost and Stadtumbau West). They are to subsidize integrated urban redevelopment in cities with a structural downturn (see A1).

The program city redevelopment East started in 2002 and was to tear down about 350,000 of the about million empty dwellings in former East Germany (http://www.stadtumbau-ost.info/; last accessed on 28 February 2011). At the same time city improvement measures were taken. Between 2002 and 2005 342 municipalities (including Berlin) had received a subsidy.

The program city redevelopment West started in 2004 (http://www.stadtumbauwest.de/; last accessed on 28 February 2011). It aims to find solutions to the structural downturn that many regions of former West Germany are undergoing. Until 2008 323 cities and municipalities, of which 87 cooperated with other municipalities (see A1) had received a subsidy.

Between 2002 and 2007 Stadtumbau West was a program with the federal experimental program (ExWoSt, see C1.3) in which 16 pilot cities were subsidized (http://www.stadtumbauwest.de/exwost/index.html; last accessed on 28 February 2011). One of the conclusions was that it is a complex matter and that it is difficult to interest private money for such projects even if a lot of effort from the municipalities has been put into such projects. Different points of study were chosen: process management, investor management, financing models, social infrastructure, instruments of city redevelopment, etc. Starting with a development concept about what to do, also with vacant buildings and the target groups of policy, turned out to be useful strategy. Owners of real estate need to be involved to build support for the city redevelopment.

The program on the social city (Soziale Stadt) subsidizes since its inception in 1999 neighborhoods that are developing from bad to worse (Bundesregierung, 2009; last accessed on 28 January 2010: http://www.sozialestadt.de/programm/handlungsfelder/wohnungsmarkt-difuveroeffentlichungen. phtml; see also last accessed on 28 January 2010: http://www.difu.de/index.shtml?/publikationen/). It includes so-called activating neighborhood management which combines social aspects (such as creating gardens for tenants, putting caretakers to work, helping tenants with debts and active allocation of dwellings) combined with improvement of dwellings and mixing types of dwellings such as dwellings for different generations or dwellings for families. In broad lines it aims for improvement of the local economy in combination with housing, integration, health and education.

Via the experiment program ExWoSt (see C1.3) municipal housing concepts (Kommunale Konzepte) are being developed to solve housing problems by incorporating all actors on the local level, the municipal housing companies, the cooperatives and private owners (Bundesregierung, 2009; http://www.bbr.bund.de/eln_016/nn_21888/BBSR/DE/FP/ExWoSt/Forschungsfelder/Kommen naleKonzepte/01_Start.html; last accessed 28 February 2011). First results show that this is a complex task and difficult to steer for local authorities as many private partners need to be involved. Concepts like working groups, workshops, round tables and steering groups are being tested to study which actors in which phase best can be involved via which concept.
Relatively strong tenancy rights do not prevent some people from falling out of the system. This mainly happens because people are expected to inform authorities if they need help (personal information. If they do not do that, they can become homeless.

The dominance of private landlords in combination with the voluntary organizations in the provision of social welfare and support services by the federal welfare act (Bundessozialhilfegesetz) makes that in principle there is mostly insecure supported housing (Edgar et al., 2000). In two out of four identified forms the homeless have no tenancy rights.

The Bundesarbeitsgemeinschaft Wohnungslosehilfe e.V., the federal umbrella organization for homelessness estimates that the number of homeless has gone down to less than 250,000 in 2008 from more than 500,000 in 1999 (http://www.bag-wohnungslosenhilfe.de/index2.html; last accessed on 28 February 2011). Busch-Geertsema (2000) confirms that the number over homeless has fallen since 1995; one of the reasons being the decline of immigrants; another the relaxation of housing markets.

A special program has been run by the federal ministry via the experiment program called ExWoSt (see C1.3). The program for the homeless was called permanent housing provision for the homeless (http://www.bbr.bund.de/nn_23486/BBSR/DE/Veroeffentlichungen/BMVBS/WP/1998__2006/2003__Heft3.html; last accessed 28 February 2011) and aimed at testing innovative solutions to specific problems. According to Busch-Geertsema (2000) was the starting point of the program that for the integration of the homeless to be successful, the homeless should be allocated normal and cheap housing at normal building standards with usual tenancy agreements situated in non-stigmatized surroundings. These assumptions showed to be true, although an integration on the labor market was not necessarily the result. Also, long-term social support (if needed) was a crucial factor. Busch-Geertsema (2004, p. 315) concludes about these studies: “The results of these studies for policy changes were limited. Almost all studies included a list of recommendations and many of these were ignored.”

**B7.2 Policies and programs to identify at risk tenancies**

*Support packages for tenants*

In principle there do not seem to be any instruments to identify at risk tenancies. It does seem to be a matter of an active tenant contacting the municipality, if there are problems. This pertains to e.g. financing a dwelling and complaining about deficiencies of the dwelling (http://www.stadt-koeln.de/buergerservice/themen/wohnen/; last accessed 28 February 2011; see B2.3 and B7.3).

The author was told by a colleague that the municipal housing companies used to have personnel for social tasks, tasks going beyond providing a roof above the head. With the increasing sale of these companies to market investors (Hallenberg, 2008; Veser et al., 2007; see A1.4), this function linked to housing will be lost, is the expectation.

The author was told informally that self-initiative is the basis of the local system of help. Tenants first need to indicate that they need help and are willing to accept help, until they are threatened to become homeless. Municipalities are responsible for the homeless, although there are also other organizations that help (see B6.7).

*Mediation around neighbor disputes*

There is a mediation function for the landlord, but it is not very strong (see B4.2 and B4.3).
If there are disputes about noise, the municipality (Ordnungsamt) can be asked for help or the policy, the moment the harassment is taking place (informal information).

The normal way would be going to court (see B6.5). As is explained, courts increasingly will try to solve the cases via intermediation.

The website of the city of Cologne informs about this intermediation (intermediation via Schiedsamt); [http://www.stadt-koeln.de/2/ehrenamt/schlichtung/](http://www.stadt-koeln.de/2/ehrenamt/schlichtung/); last accessed on 28 February 2011). The advice is to try this first as courts may decide to have the parties try intermediation first. It is suggested to try this option for trespassing, insulting, opened letters, threatening, breaking things and hurting someone. Intermediation must take place when the parties live in the area of the same court (Landgerichtsbezirk) when

- a value of up to 600 Euro is involve,
- the topic is noise, dust or smell,
- the topic is plants or trees that cause nuisance,
- etc.

There is also a list when intermediation is not possible; these topics seem to be unrelated to neighbor relationships or tenant-landlord relationships.

**B7.3 Financial and legal assistance for tenants**

The website of the city of Cologne offers loans to households if financial problems prevent them from getting rental housing (last accessed on 21 January 2010: [http://www.stadt-koeln.de/buergerservice/themen/wohnen/hilfen-zur-beschaffung-einer-wohnung/](http://www.stadt-koeln.de/buergerservice/themen/wohnen/hilfen-zur-beschaffung-einer-wohnung/); see B2.3). This help can be received when a dwelling is on offer and the rent level is reasonable and can be used for deposits, guarantees, shares in rental cooperatives and real estate agent costs. This help can be provided based on the federal social support law (Bundessozialhilfegesetz).

There was (or still is) the possibility for local authorities to provide credit in the cases of rent arrears of long-term unemployed tenants, an option that in the case of Cologne possibly is not exercises (unless it is within an integrated approach towards homelessness (see C2.1). Busch-Geertsema (2004) reports this new regulation that is rooted in the federal social support law II (Bundessozialhilfegesetz II).
Part C Policy context and innovations

C1 Policy context

Even if there is a strong tenant security (which may become a little less), there will always be tenants that loose out. As tenants have a large responsibility in that they need to act and inform the municipality if they think they are in problems and need help, it will come as no surprise that in such a situation there will always be vulnerable households who lose their housing. Efforts of German governments have been found to try to focus in integrated approaches on the homeless and households with problems of entering and staying in the housing market.

C1.1 Secure Occupancy – A policy issue?

The new government of Christian Democrats (Union) and Liberal Democrats (FDP) which came into office in 2009 announced plans in their coalition agreement to make the position of tenants and landlords more equal in the case of contract termination ([http://www.focus.de/immobilien/mieten/mietrecht-koalition-kippt-sonderrechte-fuer-mieter_aid_444866.html](http://www.focus.de/immobilien/mieten/mietrecht-koalition-kippt-sonderrechte-fuer-mieter_aid_444866.html); [http://www.focus.de/immobilien/mieten/tid-15781/mietrecht-initiative-pro-vermieter_aid_442799.html](http://www.focus.de/immobilien/mieten/tid-15781/mietrecht-initiative-pro-vermieter_aid_442799.html); both last accessed on 28 February 2011). As far as the plans can be evaluated, they actually will lead to a stronger position of the landlord on a number of counts. The following information comes from articles on internet. It is not always clear whether the plans are contained in the coalition agreement or whether they are aimed for by the FDP alone. And it seems that since the plans were published, the minister of consumer protection has announced that shorter periods of notice for landlords would not be desirable ([http://www.mieterbund.de/pressemitteilung+M5a30d76220c.html](http://www.mieterbund.de/pressemitteilung+M5a30d76220c.html); last accessed on 28 February 2011).

A first plan of the coalition seems to be that the notice periods of tenants and landlords should have the same lengths. Under the present legislation, this is only the case for a tenancy periods of five years or shorter, when the notice period for both parties is three months. For the landlord however, termination would only be allowed in special cases, such as own use of the dwelling, a contract breach or a barrier to making an ‘acceptable’ economic profit. After the five years, the notice periods differ between tenant and landlord: three months for the tenant; nine months for the landlord (see also B6.4). The plans probably mean that the notice period for landlords will be made shorter. Another change in favor of the landlord is the plan to directly pay the rents to the landlords for long-term unemployed and income support beneficiaries (both Hartz IV beneficiaries; see B3.1). This would affect almost four million households.

Another topic is related to renovation related rent decreases during the renovation process and rent increases after it is achieved. The tenant also generally has no right to stop such renovations, unless they are unreasonable (such as no heating in the winter). If the utility of living in the dwelling is lower as a result of the renovation of the heating system (nuisance), the rent may be set lower temporarily (see B4.3). And after the renovation rents can be increased with 11% of the renovation costs (see B3.1 and B3.2), but only under detailed verification. The plans aim to make the position of landlords stronger: tenants should be forced to accept any renovation that aims for environmental improvements; rent decreases during renovation should be abolished; there should be choices for rent increases, the 11% or a not verified rent increase, if the tenant is compensated by lower running costs. Last but not least, the position of the landlord towards a so-called ‘renting nomad’ (Mietnomade) is intended to be strengthened. As it is very difficult and it takes quite some time to evict tenants that are not paying their rents and additional cost (such as heating costs), renting nomads have come to profit from the system. It is unclear how many problems are caused by renting nomads. But the strong tenant protection apparently allows the phenomenon: the renting nomads appear to move from one dwelling to another without ever paying full rent. The procedure for eviction will be made easier for these cases, is the intention. Presently landlords can only work with information collection, such as
asking for name (check passport), address, present employer, and present or previous landlord. It is
advised to check with the latter whether the tenant is not a renting nomad and it is also advised to
have the tenant pay the first term of the deposit before the key transfer.
Thus tenant security appears to be a policy issue, but not in the sense of more protection for the
tenant, but in the sense of less protection for the tenant. There are differences of opinion, however,
and nothing as of yet has definitely been determined (http://www.netzeitung.de/politik/deutschland/
1507499.html; last accessed on 28 February 2011). According to the ministry responsible for justice
will the social character (see also Wurmnest, 2010) of the rent law be sustained and will only be
checked whether it is balanced between the interests of tenant and landlord. Another topic that seems
to worrying tenant representatives is the possibility that utilities will be taxed with a normal VAT-rate
of 19% increasing other housing costs with about 5%.

C1.2 Changing importance of secure occupancy

Generally, tenant security seems to be quite strong, with only some differences between the regime of
subsidization with bricks-and-mortar subsidies (WoFG 2001; see B1.1) and the private or market
regime. These are concerned with rent adjustment.

The fact that bricks-and-mortar subsidized housing is a temporary phenomenon, regularly moves
tenants from a subsidized/social regime to a market regime. They will not be in a disadvantaged
position because general rules on obligations and lease termination. The rent adjustment, however,
will be market-led instead of agreed upon in the bricks-and-mortar subsidy contracts between
municipality and landlord (see B3.1).

Another reason for possibly decreasing secure occupancy, or more accurately formulated, the
accessibility to housing with a social focus, is the fact that municipal housing companies have
increasingly been sold off. When housing markets are tight, vulnerable households will be the first
ones to loose out (Hallenberg, 2008; see A3.2 and B2.1).

C1.3 Source of ideas to promote innovation in secure occupancy

Innovations may come from different parties. From the above, it is clear that the tenant umbrella
organization (Deutscher Mieterbund, see B6.7) claims an important role. When the new coalition
government came with intentions of changing some aspects of tenant security which are interpreted as
achieving less tenant security by Deutscher Mieterbund (see C1.1), it launched its own proposals
(http://www.mieterbund.de/pressemitteilung+M584eace218c.html; last accessed on 28 February
2011). Deutscher Mieterbund asks for more tenant protection when the rental dwelling is changed to
an owner-occupied one, for limits of rent setting (new contracts), guaranteeing the repayment of the
rent deposit in the case of landlord bankruptcy and reference rent database including environmental
aspects.

Other umbrella or voluntary organizations such as the consumer protection agency
(Verbraucherzentrale Bundesverband; see B6.7) and a religious welfare agency (the Diözesan
Caritasverband für das Erzamt Köln e.V.; see Ruiz et al., 2006) have sponsored research. Generally,
the research is broader than focusing on how to increase tenant security. In the latter project the
researchers study good practices in how to help Hartz IV recipients with housing problems in North-
Rhine Westphalia. Researchers thus also play a big role in analyzing the problems and coming up with
solutions.

This also applies to the experiment program housing and urban construction (Experimenteller
Wohnungs- und Städtebau, ExWoSt; last accessed on 28 January 2010: http://www.bbr.bund.de/cln_015/nn_21268/BBSR/DE/FP/ExWoSt/exwost_nodc.html?__nnn=
true), where researchers and politicians have big role to play. As is referred to above, many new initiatives are tried out via an ExWoSt program, such as on cooperative housing, the combination of housing and urban redevelopment and the policy target groups (e.g. the homeless, the elderly, etc.; see B7.1).
C2 Innovations

Innovations are along the lines of putting housing and planning at the service of urban redevelopment (see A1). The current projects of the ExWoSt experiment program are focused on (see also B7.1): cooperative housing, developing family- and elderly friendly neighborhoods to keep them or to have them return to cities, developing municipal housing concepts, owner associations in urban redevelopment, strategies for municipalities for their municipal housing companies. Generally the line of innovation is, as far as can be determined, usually not focused on secure tenancy alone, which will not come as a surprise in a country where tenant security seems to relatively strong.

C2.1 Innovations to improve secure occupancy

Typical measures to improve tenant security can be considered market reference rents and tenant cooperatives. Both of those however are not innovations, as they have been around for a long time. However, they have become stronger instruments more recently. The instrument of reference rents has gotten a stronger position by allowing scientific techniques to determine reference rents (B3.1). The tenant cooperatives are regarded as an instrument to improve neighborhoods and the position of vulnerable households (A1.4).

The social welfare Hartz IV reforms have also put long-term unemployed back on the agenda, and how to get them back into a ‘regular life’ including a job. According to Busch-Geertsema (2007) the range of employment measure for those living in poverty did not increase since then, but rather decrease as the local efforts prior to the reform have not (yet) been reproduced by the new federal efforts.

C2.2 Illustrations to help the homeless

Different programs/best practices have been developed and evaluated in helping homeless get back to normal life (BAG, 2008). One of the initiatives was the cooperation of the federal office for work (employment office, Agentur für Arbeit) and the social welfare department of the city of Cologne in the working association (ArbeitsGemeinschaft Köln, ARGE). According to Busch-Geertsema (2007, p.13) however, the highest federal declared such a cooperation, which was started in many cities and municipalities after the Hartz IV reforms that started in 2005, unconstitutional as it would violate the principle of self-government of different levels of the state.

Ruiz et al., 2006) also studied good practices in how to help Hartz IV recipients with housing problems in North-Rhine Westphalia. The cases were about prevention of homelessness and the strengthening of the support agencies. Cologne was again one of the examples, as the city’s department for social and housing matters (Amt für Soziales und Wohnen) started a group within Reso Dienste Köln that focused in an integrated manner on Hartz IV recipients for homeless and persons with special social problems. All of the help needed by a client would be provided: financial support, information, advice, help with finding a dwelling, cooperation with the group on employment, help in reintegrating in work, etc.

North-Rhine Westphalia also started program for homelessness on 26 February 2009 (Aktionsprogramm Obdachlosigkeit verhindern – Weiterentwicklung der Hilfen in Wohnungsnotfällen; last accessed on 31 January 2010: http://www.mgffi.nrw.de/familie/Obdachlosigkeit_verhindern/index.php). It replaced a previous program helping the homeless. Its aim is to prevent homelessness by subsidizing model projects, transfer of knowledge, development of integrated help systems, etc. The second new aspect is that the prevention should take place by cooperation among municipalities.
C3 Important information in English


This publication provides general background information on the Germany tenancy law. That is the information that has been used in this text. Furthermore, it provides examples based on 30 case questions: if this, what happens in Germany? The questions are arranged according to the following six topics:

1. Conclusion of the tenancy contract
2. Duration and termination of the contract
3. Rent and rent increase
4. Obligations of the parties in the performance of the contract and the standard terms
5. Breach of the contract
6. Relationship between the tenant and third persons
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