



Improving the Provision of Active Labour Market Policies in Estonia

Contract number SRSS/S2019/036

Institutional and regulatory set-up of active labour market policy provision in Germany

Research note

June 2021

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Introduction

This note provides a short overview of the institutional and regulatory framework of labour market policy (ALMP) provision in Germany. The note was drafted in the framework of the technical support project [“Improving the Provision of Active Labour Market Policies in Estonia”](#).¹ The project was funded by the European Union via the Structural Reform Support Programme and conducted by the OECD in co-operation with the European Commission’s Directorate-General for Structural Reform Support (DG-Reform).

German law distinguishes between contribution-based ALMPs, which are mostly targeted to the unemployed and are regulated in social code III (Sozialgesetzbuch III, SGB III), and tax-financed ALMPs, which are targeted to social assistance beneficiaries and regulated in social code II (Sozialgesetzbuch II). For the purpose of comparability with the Estonian framework, this note focuses on ALMPs provided according to SGB III and the term “ALMP” is used in the sense of “ALMP according to SGB III”, unless specified otherwise. As of July 2020, 6.3% of Germany’s labour force were unemployed (i.e. potential clients of ALMPs according to SGB III), corresponding to 2.9 million people.

The main actors of the ALMP system in Germany are the Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales, BMAS) and the Public Employment Service Agency (Bundesagentur für Arbeit, BA). BMAS is in charge of labour market policies in general and contributes to legislative changes, including in the field of ALMPs. It has several divisions specifically dedicated to ALMPs. BA implements ALMPs and plays an important role in designing ALMPs. It is set up as a self-governing public body with a tripartite Board of Governors and has a comparatively high degree of independence in providing ALMPs.

The law prescribes various channels of co-operation between BMAS and BA. BMAS and BA set broad labour market policy objectives to guide BA’s work, which are revised on a regular basis. Furthermore, BMAS is responsible for supervising that BA’s proceedings do not counteract legal requirements. In addition to the co-operation between BMAS and BA on the national level, BA co-operates with state governments at the regional level to ensure the coherence between labour market policies and broader economic and structural policies.

The regulatory set-up of ALMP provision allows Germany to respond quickly to changes in the labour market. The main act regulating contribution-based ALMPs in Germany, social code III, lists all ALMPs and defines them up to some level of detail, but attributes an important role in designing ALMPs to BA. This independence in deciding the ALMP design in combination with a high degree of budgetary independence ensure that BA can flexibly adjust ALMPs to labour market needs.

The current note is based on the legal acts and regulations of ALMP provision in Germany, input provided by Germany’s public employment service BA, and their presentation in the webinar [“Institutional and regulatory set-up of providing active labour market policies in Estonia: possibilities for improvement?”](#) in September 2020. The note was prepared by Anne Lauringson, Marius Lüske and Theodora Xenogiani in the OECD’s Directorate for Employment, Labour and Social Affairs. A dashboard of key indicators of organisational and regulatory set-ups of ALMP systems and their capacity enabling to compare Germany with other OECD and EU countries is presented in Lauringson and Lüske (forthcoming^[1]).

¹ See the final report: OECD (2021^[2]).

1 Institutional setup

This section provides an overview of the general context of ALMP provision in Germany and of the two most important stakeholders in the system of ALMP provision – the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Soziales, BMAS) and Germany's public employment service (Bundesagentur für Arbeit, BA)

1.1. General context

The German system of ALMP provision distinguishes between contribution-based measures and services, which are largely targeted to unemployed people and regulated in social code III (Sozialgesetzbuch III, SGB III) and tax-financed measures and services for social assistance recipients, regulated in social code II (Sozialgesetzbuch II, SGB II). The list of ALMPs targeted to the unemployed and provided based on SGB III is much larger than the list of ALMPs provided on the basis of SGB II.

BA is in charge of providing ALMPs foreseen in SGB III. It has a comparatively high degree of independence in carrying out labour market policies regulated in SGB III, both in terms of budgetary considerations and ALMP design. Labour market policies foreseen in SGB II are provided by so-called jobcentres, which are organised either by municipalities alone (in 104 cases) or, more commonly, jointly by municipalities and local BA agencies (in 302 cases). Contrary to what is the case for labour market policies regulated in SGB III, BA does not have much independence in providing measures and services defined in SGB II. The remainder of this document focuses on contribution-financed ALMPs regulated in SGB III to take account of the fact that the framework in SGB III (with the public employment service being in charge of implementing ALMPs) is much closer to the Estonian framework than the one in SGB II, thereby permitting a more meaningful direct comparison.

1.2. Federal Ministry of Labour and Social Affairs

The Federal Ministry of Labour and Social Affairs, Bundesministerium für Arbeit und Soziales (BMAS), is the main institution in the government involved in the provision of ALMPs. BMAS is in charge of a range of different policy areas, most importantly labour market policies, social policy and pensions. The ministry is divided into directorate-general, which correspond to its main responsibilities:

- DG I Basic Issues of the Social State, the World of Work and the Social Market Economy
- DG II Labour Market Policy, Employment of Foreign Workers, Unemployment Insurance and Basic Income Support for Jobseekers
- DG III Labour Law and Occupational Safety and Health
- DG IV Social Insurance and Old-Age Security
- DG V Participation, Matters concerning Persons with Disabilities, Social Compensation and Social Assistance
- DG VI European and International Employment and Social Policy ESF.

In the directorate-general that is responsible for employment policy, DG II, several divisions focus on ALMPs. For instance, there are specific divisions responsible for counselling and placement, and for

vocational guidance and training. Furthermore, DG II has a separate division dealing with activation and integrational measures under Social Code II, e.g. targeted to social assistance beneficiaries.²

1.3. Public Employment Service

The German public employment service agency, Bundesagentur für Arbeit (BA), implements and provides LMPs specified in SGB III. BA's tasks include processing and paying out unemployment benefits and providing ALMPs to unemployed people, people desiring to start an apprenticeship and employed workers at risk of unemployment. In addition, SGB III assigns further tasks to BA, such as producing labour market statistics and statistics on activation measures and defining labour market research priorities.

BA is set up as a self-governing public body. Self-governance is a characteristic feature of BA and appears at all levels of its organisational structure: BA has so-called "self-governing organs", which are in charge of supervising BA's administrative processes, not only at the central, but also at the regional and local level. "Self-governing organs" are tripartite boards composed of employer representatives, employee representatives and representatives of public bodies, all in equal proportion to ensure an equitable balance of power. Membership of "self-governing organs" is an honorary activity, i.e. the approximately 2800 members of such bodies do not receive remuneration.

BA's highest-level self-governing organ is its strategic board, the so-called Board of Governors. The Board of Governors is a tripartite board composed of 7 employer representatives, 7 employee representatives and 7 representatives of public bodies. More precisely, 7 members of the Board of Governors are proposed by unions, 7 by employers, 3 by the Federal Government (including 1 by BMAS, the head of Directorate-General II), 3 by the Federal Council and 1 by the head association of self-governing institutions. All members of the Board of Governors are appointed for a 6-year term by BMAS. The position of the Chairman of the Board rotates between employers' and employees' representatives.

The Board of Governors holds decision-making authority. It proposes BA's CEO for appointment, proposes the members of BA's executive board, takes budgetary and strategic decisions, and supervises the executive board. BA has a statute defining the details of its activities, which requires the approval of BMAS to become valid.

Tripartite self-governing organs on lower levels are advisory boards to BA's regional directorates at the regional level and administrative boards in local BA agencies at the local level. Regional advisory boards are composed of 9 members while local administrative boards have 12 members.

BA's executive board is composed of 3 members: the chair of the executive board and 2 additional board members. All members of the executive board are proposed by the Board of Governors and appointed by the Federal Government for a 5-year term. The Federal Government can reject proposals and require new proposals. The executive board has a statute, which has to be approved by the Board of Governors. The executive board has the general responsibility of administrating BA. It directs BA's activities, makes budgetary propositions and represents BA for legal and other matters.

ALMP provision is one of BA's main tasks. BA is comparatively autonomous and has a high degree of independence in designing ALMPs and allocating its budget to different ALMPs, in the case of both advice (e.g. vocational advice and guidance, employer guidance and counselling) and case-based services (e.g. promotion of training, subsidies to self-employment, etc.). While BA can only provide ALMPs that are listed in the law, it can largely decide on the details of ALMP design, on the conditions for ALMP provision and on the share of its budget that is allocated to specific ALMPs. Most ALMPs are "discretionary measures"

² For an English organigram, see https://www.bmas.de/SharedDocs/Downloads/EN/organigramm-bmas-en.pdf?__blob=publicationFile&v=6

(Ermessensleistungen), meaning that it is left to BA's discretion and responsibility whether a client is entitled to a specific ALMP or not.

BA's budget is prepared by the executive board and subsequently submitted to the Board of Governors. The Government has to approve the budget for it to become valid. According to the law, the Government can refuse its approval for parts of the budget or its entirety under certain circumstances, e.g. in case the budget is incompatible with legal requirements or does not take sufficient account of the general principles of the Federal Government's social, economic or financial policy. The budget for ALMPs BA provides according to SGB III is financed through employer and employee contributions and does not rely on state financing. At least until the onset of the COVID-19 crisis, BA disposed of considerable financial reserves.

2 Co-operation practices and accountability framework

This section provides a short overview on the co-operation practices between the key institutions in charge of ALMP provision. In addition, it sketches the accountability framework of the German ALMP system.

2.1. Co-operation practices

BMAS and BA co-operate closely in the provision of ALMPs through regular exchanges at the executive and technical level. They have developed a common position regarding supervision and co-operation in the context of SGB II and SGB III (Supervision and Co-operation Paper). According to Social Code III, the government and BA are required to define broad objectives regarding labour market policies, which are referred to as “frame objectives”, to guide BA in implementing the law³. The goal of defining such “frame objectives” is to ensure that BA’s actions are in line with the general principles provided for in the law and correspond to political priorities.

BMAS plays an important role in this context and contributes to defining the “frame objectives” with the government. The law stipulates that the broad objectives shall be reviewed on a regular basis, at the least at the beginning of each legislative period. However, in practice, BMAS and BA have annual meetings to discuss “frame objectives” and adjust existing objectives according to policy priorities. Following these meetings, BA reports to BMAS on its activities, its progress with regard to the objectives and its achievements, i.e. there is target tracking. Defining such objectives in co-operation with BA allows the Government and BMAS to align BA’s activities with broader strategic policy goals while refraining from interfering with BA’s work and competences.

Beyond setting broad objectives, additional channels of co-operation exist between BMAS and BA. One channel of co-operation relates to BA’s responsibility to produce relevant data on labour market outcomes, ALMP provision and unemployment benefit pay-out. SGB III grants BMAS the right to define the details of the data that should be collected and the methodological approach BA should take when gathering the data. Furthermore, BA is in charge of defining the priorities of labour market and employment research, taking account of its own informational needs as well as BMAS’ needs. BA consults regularly (at least once a year) with BMAS to co-ordinate their respective research needs.⁴

In addition to the co-operation between BMAS and BA’s central office, BA’s regional directorates co-operate with federal state governments. There are 10 regional directorates for a total of 16 Länder, i.e. some regional directorates co-operate with more than one federal state government. The main objective of this co-operation is to ensure the coherence between labour market policies and structural and economic policies. As is the case for the co-operation between BMAS and BA, the co-operation at the regional level

³ SGB III § 1

⁴ SGB III, § 282

is not voluntary, but explicitly required by law.⁵ However, SGB III does not specify what exact form the co-operation between BA's regional directorates and federal governments should take.

2.2. Accountability framework

In light of BA's high degree of autonomy the accountability framework is of major importance in the German framework. A sufficient level of accountability is necessary to favour an efficient use of resources and ensure that ALMP provision is, to the extent possible, in line with labour market needs. In addition, sound accountability can help strengthen public trust in the ALMP provision system. In Germany, accountability is achieved through a combination of transparency requirements BA has to comply with and supervision through BMAS.

Regarding transparency, BA is required to publish its annual budget in a very detailed way. The budget includes projected resources by revenue source as well as projected spending by purpose for the upcoming budget year. Spending purposes are defined narrowly, i.e. the budget reports expected spending for every ALMP separately. In addition, the annual budget contains information on past years, covering both previous projections and actual values. This means that deviations from previous budget projections, both in terms of revenue and spending, are immediately visible in the budget. This feature is of particular importance to ensure trust in the system as BA's Board of Governors has the possibility to amend budgetary decisions during the budget year, for instance to account for changing labour market needs. It ensures that major deviations from the budget plan take only place if they justified.

SGB III contains a set of specific requirements regarding the type of information BA's annual budget needs to display. In addition, SGB III stipulates that the budget has to be published and defines time limits for its publication. It has become common practice that the annual budget is published online every year, thus becoming readily accessible to all citizens with an internet connection.

In addition to transparency, supervision contributes to ensuring accountability. SGB III stipulates that BMAS monitors that BA's proceedings are compatible with legal requirements. To this end, BA is required to submit an annual report to BMAS, summarising its activities and achievements. The annual report has to be validated by the Board of Governors.⁶ While the law explicitly states that this type of supervision has to take place and assigns the supervisory function to BMAS, it does not specify specific details regarding this supervision.

⁵ SGB III § 367

⁶ SGB III, § 393

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The regulation of key aspects of active labour market policy provision

This section gives an overview of the main legal framework regulating ALMP provision and displays the organisations in charge of adopting ALMP regulations.

3.1. Main legal documents

Contribution-based ALMPs are regulated in social code III (SGB III). SGB III covers several aspects of ALMP provision. First, it defines general principles of ALMP provision, such as the requirement that BA provides ALMPs in an economically efficient way, i.e. that it chooses the most appropriate ALMP or set of ALMPs for every individual, taking account of their professional abilities and labour market conditions. Second, SGB III defines potential beneficiaries of ALMPs such as unemployed people or employed people at risk of unemployment. Third, SGB III contains a comprehensive list of ALMPs covering all ALMPs that BA can provide. BA is not allowed to provide any measure or service that is not defined by law. Except a few specifically enumerated ALMPs, all ALMPs are “discretionary”, meaning that BA can decide on a discretionary basis whether and to what extent they are granted to specific jobseekers. That is, jobseekers cannot claim their legal right to have access to such measures but are required to rely on BA’s assessment. While SGB III provides some level of detail on the ALMPs it lists, such as the maximum payment available per individual for some ALMPs, it leaves a large degree of flexibility in designing ALMPs to BA. However, in order to introduce an entirely new ALMP, it is necessary to amend SGB III through the usual legislative process.

Overall, the regulatory framework leaves sufficient flexibility to react quickly to labour market changes and adjust ALMPs to take account of new employment needs. Although SGB III provides guidelines on each ALMP, BA can set the details and conditions for ALMP provision to calibrate them to labour market conditions. This obviates the need to amend the law constantly to keep up with evolving labour market conditions. If needed, BA can also implement temporary labour market programmes based on an administrative agreement between BMAS and BA. In addition, when sudden employment challenges occur, BA has the possibility to shift the allocation of its resources across different ALMPs in order to re-prioritise some measures or services over others. For instance, in times of a sudden crisis, ALMPs targeted at preventing workers at risk of unemployment from losing their job may be of particular importance. Lastly, while the law has to be changed to introduce entirely new ALMPs, experience has shown that the legislative process can be very quick when there is political consensus and there is need for a quick reaction. In response to the COVID-19 crisis, for instance, Parliament introduced legal changes to short-term allowances in SGB III very swiftly.

3.2. Stakeholders in charge of regulations

Table 1 summarises which of the key stakeholders (Parliament, Government, Ministry, etc.) adopts the regulation concerning the main aspects of ALMP provision (general aim of ALMP provision, general set-up of PES, etc.).

In Germany, the general framework of contribution-based ALMP provision is stipulated in SGB III, which is passed by Parliament. SGB III lists all ALMPs and provides some details, such as general aims of specific ALMPs or target groups. Exact details are fixed by BA's Board of Governors. The Board of Governors decides on BA's budget, how the budget is attributed to each ALMP and fixes details of specific ALMPs, such as their precise objectives and exact conditions. BA's Board of Governors can flexibly modify the budget attributed to a specific ALMP to account for changing labour market conditions.

Table 1. Regulation of ALMP provision in Germany

	Act (passed by the Parliament)	A decree or order implementing the act, by the Government	A decree or order implementing the act, by the Minister	A decision by the PES supervisory body	A decision by the PES executive management
General groups eligible for ALMPs	X				
General aim of ALMP provision	X				
Set-up and purpose of PES	X				
List of specific ALMPs	X				
Aim of specific ALMPs	X		X	X	
Conditions of specific ALMPs (duration, sums)	X			X	
Target groups of specific ALMPs	X			X	
(Annual) budget for ALMPs				X	
(Annual) budget for each ALMP				X	

Note: PES – public employment service.

Source: Legal texts and regulations of Germany and input from the BA.

4 Summary of good practices in the system

Germany's institutional and regulatory framework exhibits several good practices which favour good outcomes and could be an inspiration for other countries seeking to improve their system:

- 1) The design of ALMPs provided according to SGB III is flexible in Germany. BA's Board of Governors can take decisions regarding the details of ALMP design and the exact conditions for granting ALMPs without the approval of the Parliament. Furthermore, BA can change the budget it allocates to specific ALMPs (and, if necessary, may allow additional expenses) at any point in time, i.e. it can flexibly react to sudden labour market changes. Local agencies have a lot of scope for decentralised action, i.e. they have the possibility to take account of local and regional specificities.
- 2) Despite its flexibility in providing ALMPs, there are mechanisms in place ensuring that BA's efforts are in line with broader national strategies and priorities. First, BA can only provide ALMPs provided for in the law, i.e. there are clearly defined legal boundaries to BA's flexibility in providing ALMPs. Second, BA and the Ministry periodically set up broad objectives ("frame objectives") that steer BA's work. Third, at the regional level, federal state governments co-operate with regional BA directorates to ensure the coherence of labour market policies and structural economic policies.
- 3) The accountability systems favours an economically efficient use of resources. BA is required to publish its annual budget in detail. The publication, which is readily accessible online, includes planned and (for past years) actual spending on specific ALMPs. This ensures that BA's decisions and actions are highly transparent and aims at increasing trust in the system. Furthermore, BMAS supervises that BA's proceedings do not trespass legal requirements. The high level of financial reserves BA held prior to the COVID-19 outbreak testify of the system's ability to create resilience to sudden crises.

References

- Lauringson, A. and M. Lüske (forthcoming), *Institutional set-up of active labour market policy provision in OECD and EU countries: Organisational set-up, regulation and capacity*, OECD Publishing, Paris. [1]
- OECD (2021), *Connecting People with Jobs: Improving the Provision of Active Labour Market Policies in Estonia*, OECD Publishing, Paris, <https://doi.org/10.1787/31f72c5b-en>. [2]