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Change and Continuity in Welfare States

A qualitative approach to examine the German cash-benefit
“Kosten der Heizung und Unterkunft“ from the perspective
of Incremental Institutional Change

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Abstract

What drives change and continuity in welfare states? This master thesis contributes to the debate by examining the German cash-benefit “Kosten der Unterkunft und Heizung”. This cash-benefit is a component of the means-tested unemployment benefit II in Germany which was introduced by the Hartz-IV-Reform in 2005. 16 years later the case “Kosten der Unterkunft und Heizung” has undergone no major reforms. But is the cash-benefit really standing still?

With the help of the theory of incremental institutional change and 10 expert interviews at the local level with the so called “rule takers”, two factors (“Institutions as Regimes” and “Third Parties”) driving change and continuity are examined in-depth in the case of the cash-benefit. The single-case study demonstrates shifts in the characteristics of the institution “Kosten der Heizung und Unterkunft”. These developments contribute to gradual change but at the same time to the continuity of the institution. In addition to this dual consideration of change and continuity, the study results challenge the dichotomy of endogenous and exogenous factors driving change in welfare states.

Key words: incremental institutional change, Kosten der Unterkunft und Heizung, Unemployment Benefit II, Change and Continuity, Welfare State

Preface

The year 2021 was anything but easy for me, but also for many people all over the world. So, I'm even more thankful that this master's thesis can be presented despite the circumstances. Even more, I would like to thank all the people who supported me.

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List of Abbreviations

BMAS	<i>Bundesministerium für Arbeit und Soziales</i>
BSG.....	<i>Bundessozialgericht - Federal Social Court</i>
KdU.....	<i>Kosten der Unterkunft und Heizung</i>
MIP	<i>Minimum Income Protection</i>
SGB.....	<i>Sozialgesetzbuch, Sozialgesetzbuch</i>

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1. Introduction

What drives change and continuity in welfare states? This master's thesis is intended to make a qualitative contribution to this debate by examining one component of the German unemployment benefit II (“Arbeitslosengeld II”), the so called **“Kosten der Unterkunft und Heizung”** (hereafter KdU). This chapter will introduce the research topic and problem of change and continuity in welfare states and then present the following structure of this master thesis.

The scientific research on the development and change of welfare states became an important part of social policy research. The roots of the analysis of welfare states go back to a functionalist approach in the 1960s (e.g. Peacock & Wiseman, 1961). In these theories, the expansion of social security systems in the western world is seen as a response to the industrialization (Häusermann, 2018). These first research approaches which tried to explain the development and, above all, the differences between welfare states, became insufficient and further explanation was needed.

Gøsta Esping-Andersen’s work “The Three Worlds of Welfare Capitalism” in 1990 is seen as a “modern classic” in welfare state research (Emmenegger, Kvist, Marx, & Petersen, 2015). But also, here, his findings give insights to introduce the topic of change and welfare state research. Esping-Andersen's approach to examine the welfare state by different variables is particularly significant regarding the question of what constitutes “change” in welfare states (Esping-Andersen, 1990). By using new dependent variables, he questioned the dominating welfare state research at this time, which was focusing mainly on the expansion of welfare states (van Kersbergen, 2019). The so-called regime theories have been criticized and further developed by several scholars, but they are still relevant in the comparative welfare state research today and were the orientation for new theoretical perspectives (e.g. Arts & Gelissen, 2002; Wood & Gough, 2006).

Besides the development of theories that focused more on the significance of different political landscapes in the welfare states, such as the power-resource (Korpi, 2006) and partisan theory approach (Zohlnhöfer, Wolf, & Wenzelburger, 2013), different scholars observe in the 1990s and the beginning of the 2000s that European welfare states were resistant to change. Several authors describe them as inert (Pierson, 2002; Fleckenstein, 2008) and “frozen landscapes”

(Esping-Andersen, 1996, p. 24). Paul Pierson argued that “**policy feedback**”¹ and “**path dependencies**” are responsible for a welfare state which is resistant towards benefit cuts and major reforms (Jensen, Wenzelburger, & Zohlnhöfer, 2019, p. 685).

This assumption is regarded rather critically today. Especially the German Hartz-IV-reform in 2005 introduced under the Social Democratic Chancellor Gerhard Schröder gave reasons to question Germany as a “frozen landscape”. The reform is seen as a turning point from the conservative path, where social insurances preserve the social status and living standard of the population, towards a more liberal path with means-tested and flat rate benefits (Fleckenstein, 2008). For scientists and the welfare state research, this radical and far-reaching reform came as a surprise as no major shocks such as wars or financial crisis, could be made responsible (Hassel & Schiller, 2010).

This phenomenon raised the question of how such radical reforms respectively change can happen in the absence of exogenous shocks? The theoretical approach of “incremental institutional change” (Mahoney & Thelen, 2012; Streeck & Thelen, 2005) offers a promising explanation. The scientists criticize the prevailing dichotomy of either inertia or change in welfare state research. They consider that change in welfare states can also develop “gradually” in phases of stability (Streeck & Thelen, 2005). Different characteristics of institutions can lead to different gradual modes of change. This master thesis applies parts of this theoretical approach to examine change and continuity in the case of the “**Kosten der Heizung und Unterkunft**”.

The following chapter deals with the research aim and the research questions. Then the theoretical framework is explained, while this research work follows a theory driven approach. Since the KdU has not yet been examined regarding incremental change, the literature review is divided into two parts. In the chapter "Theoretical Framework" the theoretical approach is explained but also relevant research literature on “incremental institutional change” is presented. In the following chapter, the case KdU is presented, but here, too, relevant research is added. The thesis continues by a chapter on the methodological approach, which is then followed by the chapter with the empirical analysis. This master's thesis will accomplish with a conclusion.

¹ Policy feedback means here that, that voters tend to react more strongly to losses compared to gains, the so-called negativity bias. Therefore, politicians are afraid to be punished through not being reelected when cutting back benefits. Accordingly, policy makers use blame-avoidance strategies to disguise retrenchment of public spending. (Pierson, Dismantling the Welfare State? Reagan, Thatcher, and the Politics of Retrenchment, 1994)

2. Research Aim & Research Question

This master thesis tries to contribute to the debate about change and continuity in welfare states. The cash-benefit “Kosten der Heizung und Unterkunft” of the unemployment benefit II in Germany will be examined how certain factors contribute or prevent to the gradual transformation of the institution in the sense of the theory of “incremental institutional change” (Thelen & Streeck, 2005; Mahoney & Thelen, 2012). The KdU was selected as a suitable case for analysing gradual change as it is precisely in a phase of supposed stability. The cash-benefit KdU has not undergone major reforms since the introduction of the Hartz IV-Reform in 2005 (Garloff, 2021). Following two factors will be analysed:

- The dynamic in institutions as “regimes”
- The influence of “Third Parties”

This gives rise to the following research questions:

- A. How can the dynamic in the understanding of institutions as regimes drive or block changes in the KdU?*
- B. How do third parties drive or block change in the case of the KdU?*

3. Theoretical Framework

As already indicated in the introduction of this thesis, “change” and “continuity” in welfare states have been central in welfare state research. In this chapter, the development of the approach of “incremental institutional change” will be described. Then the theoretical framework, which will be used for the empirical analysis will be further explained in *chapter 3.1*. In the end relevant research concerning “incremental institutional change” in Germany will be presented in chapter 3.2.

The concept of “path-dependency” further developed by Paul Pierson is seen as a basis for the new-institutionalist theories and became widespread in social sciences and economics (Ebbinghaus, 2005). Explained in a simple way, “path-dependency” resembles the lock-in effect in technology.² The core idea of path dependency is that history shapes the future, meaning that events or decisions in institutions can actuate a “non-linear self-reinforcing process” (Ebbinghaus, 2005, p. 5). The concept can be separated into two different understandings. Bernhard Ebbinghaus divides path dependency into a metaphor that either resembles a “trodden path” or a “branching pathway”. He explains it as followed:

“One common image is the unplanned “*trodden trail*” that emerges through the subsequent repeated use by others of a path spontaneously chosen by an individual. A different illustration is the “*road juncture*,” the branching point at which a person needs to choose -one of the available pathways in order to continue the journey.“ (Ebbinghaus, 2005, p. 5)

The concept of path dependency and the paradigm of welfare states as “frozen” objects has been debated in various scholars (Busemeyer & Trampusch, 2013). The study by Kitschelt & Streeck (2003) describes Germany as a welfare state, whose welfare institutions did not change since 1980. Whereas several years later Seeleib-Kaiser finds significant changes in the German welfare state since 1980. According to his analysis Germany left the “path” from conservative towards a liberal welfare regime (Seeleib-Kaiser, 2016, p. 227). These different results represent the fundamental debate in welfare state research of how to conceptualize change. Depending on the dependent variable different research results concerning welfare state change can be obtained. “The dependent variable problem” has been discussed in research has not been fully solved yet (Green-Pedersen, 2004). According to the researcher Green-Pedersen the

² An example is the QWERTY keyboard which established all over the world, although there have been more effective suggestions for a keyboard design.

solution does not lay in the “right” choice of the dependent variable, but in the researcher’s definition and reflection on the use of different theoretical concepts (Green-Pedersen, 2004).

“The question about the most appropriate data can only be answered once one knows exactly what to measure, and that is a theoretical question. By way of example, expenditure data are much more appropriate, though still highly problematic, when retrenchment is conceptualized as cuts in entitlements than when conceptualized as institutional changes.” (Green-Pedersen, 2004, p. 12)

The question remains: “How can one analyse change in welfare states?” Different scholars distinguish by analysing change through exogenous factors as major reforms or crisis and gradual change driven by endogenous factors (van der Heijden & Kuhlmann, 2017; Guiraudon & Martin, 2019). Kathleen Thelen in cooperation with Wolfgang Streeck and James Mahoney question the theory of path dependency:

“In the absence of analytic tools to characterize and explain modes of gradual change, much of the institutionalist literature relies explicitly or implicitly on a strong punctuated equilibrium model that draws an overly sharp distinction between long periods of institutional stasis periodically interrupted by some sort of exogenous shock that opens things up, allowing for more or less radical reorganization.” (Streeck & Thelen, 2005, p. 1)

The authors Streeck and Thelen argue that observing only exogenous factors which cause a breakdown of institutions or a focus only on the stability of institutions, one misses to recognize other changes which they define as “Gradual change” (Streeck & Thelen, 2005). Their argument supports the theory, that institutional change can happen gradually without external phenomena as financial crisis, wars, or other dramatic disruptions (ibid; Hacker, 2005). The researcher joins the theoretical concept by Streeck & Thelen as she is interested in change processes that take place within an institution in times of apparent stability. As described here the researcher is aware of other theoretical approaches which are able conceptualize change.

3.1. Incremental Institutional Change

To answer the research questions, aspects of the theory were selected that are intended to help to investigate the data material regarding incremental change. These will be presented in the next subsections. First, a model of the “institution” will be explained here. Afterwards the role of third parties from the theoretical perspective will be discussed and finally different types of gradual transformation will be presented.

3.1.1. Institutions as Regimes

What constitutes an institution? Streeck & Thelen define institutions as “building blocks of social order” which they call “regimes” (Streeck & Thelen, 2005, p. 9). An institution as a regime consists of an interplay between “Rule Makers”, “Rules” and “Rule Takers” which is embedded in a society and legitimized by third parties (Streeck & Thelen, 2005). *Figure 1* shows the model “Institutions as regimes”. Streeck & Thelen state that this model is not applicable to every form of institutions. Informal institutions as for example conventions are excluded in their model (Streeck & Thelen, 2005, p. 10) .

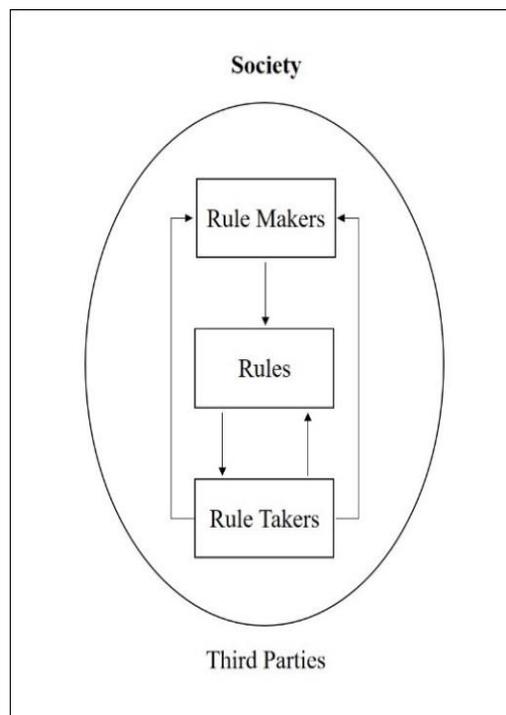


Figure 1 - Institutions as Regimes (Streeck & Thelen, 2005, p. 13)

The interplay of “Rules” is centred in their understanding of institutions and exclude as well informal rules. The focus on rules in their model can be explained by the fact that according to Streeck & Thelen the relations of authority, obligation and enforcement of rules are important factors when analysing change processes. They assume that institutions were created in a specific way by the Rule Makers and then implemented by the Rule Takers.

“Defining institutions as regimes has the advantage for us that it directs attention to important sources of institutional change. They all have to do with the fact that the enactment of a social rule is never perfect and that there always is a gap between the ideal pattern of a rule and the real pattern of life under it.” (Streeck & Thelen, 2005, p. 14)

Accordingly, there might be a gap between the design and the implementation of an institution, which then sets free change processes (Streeck & Thelen, 2005). They describe four facets of relationships in this model, which are represented as arrows in *Figure 1* and in the next four subchapters.

3.1.1.1. Relation I - Rule Maker - Rules

Basically, this arrow represents that Rule Makers create rules. Besides this aspect, the authors Thelen & Streeck draw attention to the fact that Rule Makers also have “cognitive limits” when creating rules (Streeck & Thelen, 2005, p. 15). This means that the rule-maker can never foresee all circumstances, individual situations and thus all consequences of the rules. As a result, it might occur a situation where rules are being adapted over time which leads to a reproduction of the institution. The opposite can also happen, in the way that rules are not adapted to changing circumstances. In that case rules might be maladapted with regards to the changing environment. This is seen as a source for a gradual transformation of the institution (ibid).

3.1.1.2. Relation II - Rules - Rule Taker

According to Streeck & Thelen, rules are always determined by the interpretation of the Rule Taker, as rules are applied to individual circumstances. It is also recognized here that the meaning of rules can often only be clarified by legitimate authorities.

“Indeed often what a rule ‘really means’ can be established only by the rulings of a legitimate authority charged with adjudicating between different interpretations.”
(Streeck & Thelen, 2005, p. 14)

This quote states that in addition to the Rule Takers and Rule Makers in connection with rules there might be another authority which is involved in the interpretation of rules. Streeck & Thelen say vaguely which organization, party, person this could be. The researcher suspects that the authors could mean for example the judiciary respectively courts. It is also not clear to the researcher where this authority is placed within the model. Does it belong under the term „third parties”, or as an own component between Rules and Rule Takers?

3.1.1.3. Relation III - Rule Taker - Rules

As already described, rules are always interpreted by Rule Takers. Regarding the relationship Rule Taker and Rules, Thelen & Streeck add the aspect that Rule Takers might interpret the rules to their advantage. This aspect of so-called “agency” as a possible source for incremental

institutional change was further developed in the more recent book by Thelen & Mahoney (2012).

They identified four “Types of Change Agents” the so-called “Insurrectionaries”, “Symbionts”, “Subversives” and “Opportunists (Mahoney & Thelen, 2012, p. 23). These different types are distinguished by actors who follow or not follow the rules of an institution in combination with their willingness to change or preserve the institution. Each change agent is associated with a specific type of gradual transformation. Therefore, agency can be seen as source for institutional change. By speaking of “actors”, Thelen & Mahoney do not make it clear who could possibly be a “change agent” (Mahoney & Thelen, 2012).

The researcher here assumes that Thelen & Mahoney might think of Rule Takers or Rule Makers as possible change agents but not exclusively. It must be assumed that also third parties could be assigned to a specific type of change agent. This typology has also been criticized for being too immobile and not applicable in real cases (van der Heijden & Kuhlmann, 2017). Because of this lack of clarity, the data is not examined for different types of change agents. Nevertheless, this described relationship and the occurring matter of “agency” will be examined in the case of the KdU as this might be a possible driver for institutional change.

3.1.1.4. Relation IV - Rule Taker - Rule Maker

This aspect has been described very briefly by Thelen & Streeck. According to them, this relationship indicates the possibility that Rule Takers give Rule Makers feedback about how rules work in practice.

”Note that we provide for a direct feedback from the latter to the former, which we expect to be of relevance certainly in democratic societies.” (Streeck & Thelen, 2005, p. 14)

The quote shows that Streeck & Thelen see this feedback from Rule Takers to Rule Makers as a central and perhaps also a given component in a democracy. Unfortunately, they do not explain why this relationship is represented with the help of two arrows.

3.1.2. Third Parties

In the model of “institutions as regimes”, the relationships between third parties and the institution are not shown for the sake of simplicity (Streeck & Thelen, 2005). Later, Thelen &

Mahoney added another source that can be responsible for gradual transformation processes of institutions, the “political context” (Mahoney & Thelen, 2012, p. 18)

Under the aspect of political context, Thelen & Mahoney understand the strong or limited possibilities of actors to influence change or non-change of an institution, the so-called “veto-possibilities” (Mahoney & Thelen, 2012, p. 18). As in the case of the various types of change agents, Mahoney & Thelen write about “actors” (ibid). It is therefore not clear to the researcher here whether the actors are within or outside of the institution. Therefore it is assumed that both constellations are possible. In other words the veto-possibilities of third parties are seen here worthy to examine as their veto-possibilities might be a source for institutional change.

3.1.3. Types of Gradual Transformation

Thelen & Streeck distinguish between incremental or abrupt processes of change. These processes lead to different results of change. Incremental change can either lead to “institutional reproduction by adaptation” or to a “gradual transformation of the institution”. Whereas abrupt changes result in a “survival and return” or a “breakdown and replacement of an institution” (Streeck & Thelen, 2005, p. 9)

In the book “Beyond Continuity” five types of gradual transformation have been described: Displacement, Layering, Drift, Conversion and Exhaustion (Streeck & Thelen, 2005). These types are taken up again in the more recent book “Explaining Institutional Change. Ambiguity, Agency, and Power” (Mahoney & Thelen, 2012). In this version they neglect the fifth type “Exhaustion”. All five types will be described here.

The type Displacement is described as transformation where existing rules are replaced by new ones. Whereas Layering is explained by adding new rules or additions with a connection to the old ones. These new and sometimes small changes can develop an own dynamic which could lead to a great change of the institution. Drift is described as a type where often the institution itself seems stable although the environment in which the institution operates, experiences changes. Due to these circumstances and the non-adjustment of the institutions, the function of the institution changes. Conversion is described as a transformation when the enforcement of rules in an institution can generate new goals or functions of the institutions. According to the theory, this gap between the rules and the interpretation of these, is actively exploited by actors within the institution (Mahoney & Thelen, 2012). The last type Exhaustion is explained by a gradual change that leads to a breakdown of the institution (Streeck & Thelen, 2005).

3.1.4. Conclusion

The model “institution as regimes” impresses with its simple representation of relations and dynamics within an institution. When describing and starting to discuss this model, there are aspects that could indicate certain difficulties in the subsequent empirical analysis. Above all, the researcher here lacks more precise definitions in relation to the terms Rule Maker and Rule Taker and third parties. Additionally, the relationship between third parties and the institution has not been pictured (Streeck & Thelen, 2005).

Nevertheless, Thelen & Streeck acknowledge that third parties play a central role, since they are the ones who define an institution as a formal institution through legitimization (Streeck & Thelen, 2005). The chapter about “Third Parties” also makes it clear that various actors could promote or even block changes. Unfortunately, it is not apparent who these actors might be and where they could be visualized in the model “Institutions as Regimes”. The question arises here as to which roles are within the institution and which are external.

In addition to that, the typology of “gradual transformation” has also been criticized for not being clearly defined enough. The lack of a clear definition leads to blurred boundaries of the transformation types (van der Heijden & Kuhlmann, 2017). Nevertheless, the three theoretical

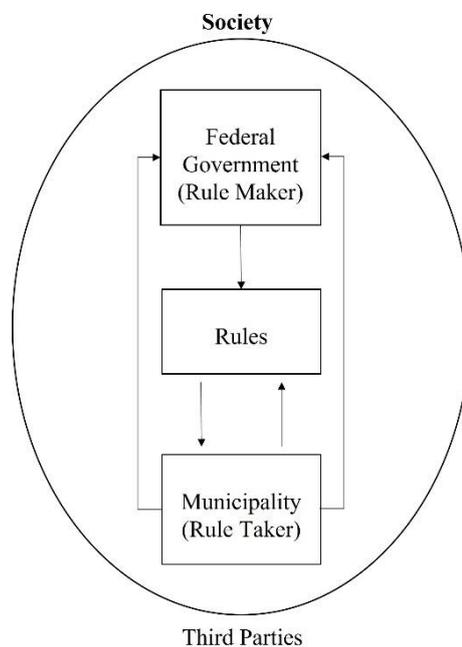


Figure 2 - The KdU-Institution as an ideal Regime

aspects “Institutions as Regimes”, veto-possibilities of third parties and “Types of Gradual Transformation” will be applied here to examine the case of the KdU. In this research work it

is assumed in the case of the KdU that the federal government is the Rule Maker and the municipalities respectively local authorities, the Rule Takers (*see Figure 2*).

3.2. Literature Review

This chapter focuses on presenting relevant research results related to gradual institutional change. In order to narrow down the topic, this is limited to research results relating to Germany. The study by Seeleib-Kaiser was briefly mentioned in the previous chapter and is described in more detail here. Seeleib-Kaiser recognized three modes of change in three different policy domains in Germany. His findings show a process of “policy drift” in the unemployment, “layering” in the pension and “recalibration” in the family policy domain (Seeleib-Kaiser, 2016, p. 235). With regard to this master's thesis, it is noticeable that the modes he found are based on a combination of Thelen and Mahoney (“Drift” and “Layering”) and Paul Pierson's (“Recalibration”) theoretical approach. His quantitative study gives explanation regarding the significant changes in these policy domains. Seeleib-Kaiser states that the unification of Germany is seen a “critical juncture” which led Germany into the direction of a liberal welfare regime. In addition to this aspect, the author attaches great importance to ideas and causal beliefs which drive changes and non-changes (*ibid*). According to his empirical analysis, employers' associations in particular promoted cuts in the unemployment insurance and advocated the creation of more incentives to take up work when unemployed (*ibid*).

Another study by Angelin, Johansson, & Koch in 2014 investigated and compared change and inertia of the minimum income protection scheme in Germany and Sweden. A document analysis was carried out as well as semi-structured interviews with "national level representatives involved in policies to combat poverty" (Angelin, Johansson, & Koch, 2014, p. 165). They too adapted the theoretical approach by Thelen & Mahoney and were able to identify different modes of change. In Germany, as in the case of Seeleib-Kaiser, they see Germany developing in the direction of a more liberal welfare regime. This happened at the beginning in the 90s until the 2000s in a process of layering and culminated in a process of displacement. In the Swedish case they mainly found the mode of change called drift. Additionally, their findings show, that both countries have experienced different modes of change, but, according to the authors, Sweden and Germany ended up with similar policy outcomes regarding the minimum income protection scheme (Angelin, Johansson, & Koch, 2014).

Both studies were able to proof a gradual transformation of the German welfare state. Seeleib-Kaiser (2016) examined inter alia unemployment policies, whereby he limited himself to the social-insurance based unemployment benefit. Whereas Angelin, Johansson, & Koch (2014), on the other hand, examined the minimum income protection (hereafter MIP) in Germany. Both were able to identify similar transformation processes in the direction of layering. The MIP-system then developed into a replacement. Both studies conclude that Germany has developed in the direction of a liberal welfare regime.

A more recent study analysed policy changes in the German higher education system between the mid-1990s until the mid-2010s. The researcher focused thereby by examining the role of Rule Maker and Rule Taker in these change processes. The theoretical concept used is similar to Thelen & Streeck's understanding of institutions but was further developed through own considerations (Durazzi, 2020). In the case of the higher education system, research universities, unlike universities of applied sciences, did not follow the rules of the reform initiated through the Bologna process. The research universities were criticized for this in public (Durazzi, 2020). As a result, in a new reform by the rule-makers, the obedient Rule Takers (universities of applied science) were given financial preference, and the non-obedient research universities were disadvantaged. On the one hand, this study made it clear that non-compliance of rules by Rule Takers can block intended policy reforms. Conclusively, the role of Rule Takers is necessary to examine when analysing policies. On the other hand, the study shows the Rule Makers' power to push through changes in different ways (Durazzi, 2020).

Compared to the literature, my research will combine aspects of the presented studies. It will not only concentrate on finding different types of gradual transformation, it concentrates as well on the interplay between various Rule Makers, Rules, Rule Takers and third parties which is seen here as a source of incremental institutional change. In the presented studies by Angelin, Johansson, & Koch (2014) and Seeleib-Kaiser (2016), "change" in welfare states has been mainly examined at the political level, for example by analysing veto possibilities of different political parties. Thus, the researcher follows Durazzi's approach by concentrating on the interplay between Rule Maker, Rule Taker and third parties.

4. The Case KdU

As already mentioned in the introduction of this thesis, the case KdU will be examined regarding change from the perspective of “incremental institutional change”. In the following chapter, the case KdU and relevant background information will be given. Afterwards, relevant research concerning the KdU will be presented. Finally, the case selection will be justified.

4.1. Background

In the 19th century “Reichskanzler” Otto v. Bismarck was a pioneer by establishing a social security system in Germany. His model of social insurances was copied by many other countries around the world (Wilke, 2009). The introduction of social security is now over 100 years ago, but it is still impossible to imagine the German welfare state without it.

In welfare state research, Germany has been considered with this system as the archetype of the conservative welfare state, as it preserved the social status and income of the population (Seeleib-Kaiser, 2002). The German state was assumed to be stable and resistant to reform. This development was also viewed with concern at the beginning of the 21st century. From the point of view of Kitschelt & Streeck (2003) Germany did not adapt sufficiently to its changing environment (i.e., over-aging population, globalisation, etc). Due to the federal structure, the veto possibilities of the federal states, various policy areas such as the labour market or pensions could not be reformed. Hence, the German welfare state has been considered as “sick” or “hyper-stable” (Kitschelt & Streeck, 2003, p. 28).

This view has been corrected, mainly due to the Hartz IV reform in 2005 (Fleckenstein, 2008; Eichhorst, Grienberger-Zingerle, & Konle-Seidl, 2010). The Hartz-IV reform in 2005 restructured the social-insurance based “Unemployment Benefit” and the minimum income protection system (Walwei, 2019). The Hartz-IV reform reduced the duration of receiving the social-insurance based unemployment benefit from 18 to 12 months and was henceforth called “Unemployment Benefit I”.

Furthermore, the former "Arbeitslosenhilfe"³ and "Sozialhilfe"⁴ were replaced by the minimum income protection "Unemployment Benefit II" and "Sozialgeld" (Walwei, 2019). The German labour market policy also changed in the sense, that a new main principle "Fördern und Fordern" (Eng. Support and Demand) was included in every part of the legislation. New activation instruments and the possibility to shorten benefits for recipients who are acting "lazy" should improve the integration of the unemployed into the labour market (Eichhorst, Grienberger-Zingerle, & Konle-Seidl, 2010, p. 16). With the introduction of Hartz-IV and the resulting reduction in the protection of the standard of living, Germany developed away from the conservative towards a liberal welfare regime.

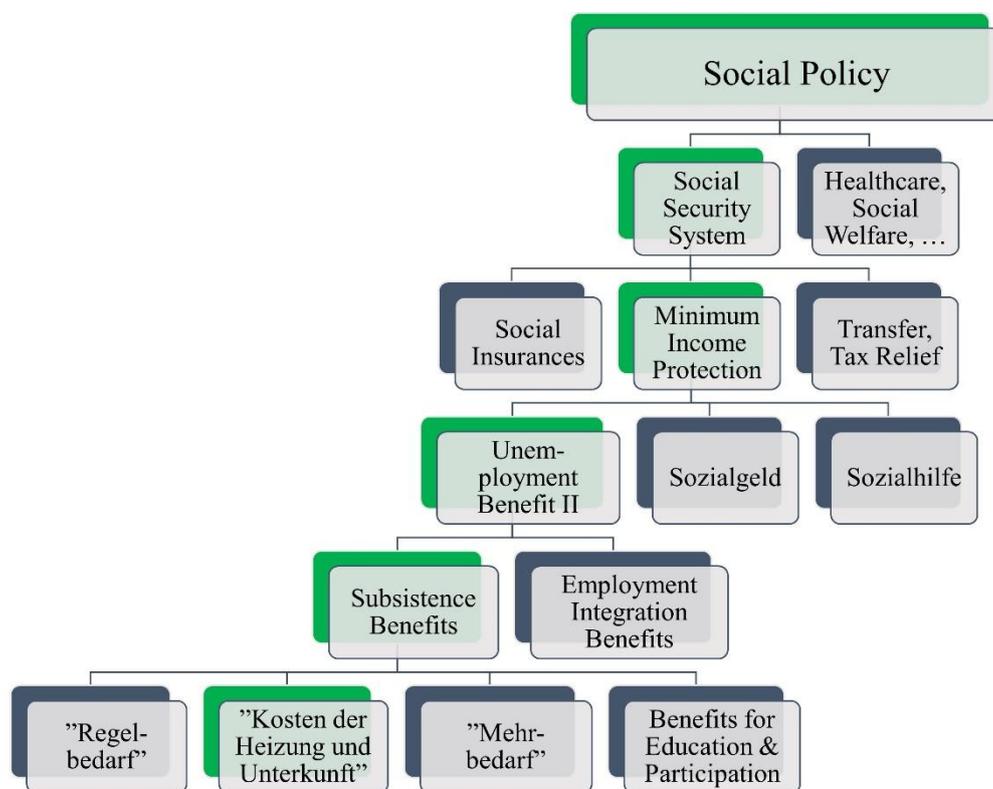


Figure 3 - The German Social Security System (Institut Arbeit und Qualifikation der Universität Duisburg-Essen, n.d.)

Figure 3 shows the today's structure of the German social security system. The German social policy can be divided into different areas, such as social security system, health care, social welfare (Institut Arbeit und Qualifikation der Universität Duisburg-Essen, n.d.). The case KdU is a component of the tax-based minimum income protection Unemployment Benefit II which already explained, was introduced through the Hartz-IV reform.

³ "Arbeitslosenhilfe" is the former unemployment assistance which an unemployed person received after the social-insurance based unemployment benefit expired. The level of this social benefit is linked to the former income of the unemployed person but is less generous than the unemployment benefit (Fleckenstein, 2008).

⁴ "Sozialhilfe" is the former social assistance programme (MIP) (Bundeszentrale für politische Bildung, 2016).

Beneficiaries of unemployment benefit II can receive benefits which improve or help them to **integrate into employment** and **subsistence benefits** to secure their livelihood (*see Figure 3*). According to §19 of the Social Security Code II (hereafter SGB II), recipients of “Arbeitslosengeld II” can, if they are entitled to it, receive the following substance benefits:

- §20 SGBII “Regelbedarf”: a cash benefit which the recipient receives to purchase groceries, electricity, clothing, hygiene, and household items, as well as to participate in social and cultural life.
- §21 SGB II “Mehrbedarfe”: a cash benefit which includes needs that are not covered by the “Regelbedarf”, i.e., during pregnancy, single parents, beneficiaries with a disability.
- §22 SGB II „Bedarfe für Unterkunft und Heizung“ (KdU): a cash benefit to pay for “adequate” rent and heating for housing.
- § 28 SGB II Benefits for education and participation: Additional benefits for children, adolescents and young adults for education and participation in social and cultural life in the society.

Which amount of KdU an unemployed person receives for paying his accommodation and heating costs cannot be easily answered. §22 SGB II stipulates that the requirements for accommodation and heating are recognized in the amount of the actual expenses, insofar as these are “adequate”. The legislator has not defined the term “adequacy” of the costs for accommodation and heating in more detail. Thus, it uses an indefinite legal term. The legislature has delegated its determination to the local authorities⁵. The decision is justified by the belief that these, can best assess their local characteristics i.e., the local housing market. (v. Malottki, et al., 2017)

4.2. Literature Review

The KdU has been examined in research from different angles. Relevant scholars will be presented here in more detail. Especially, the consequences of the Hartz-IV reform have been in the interest of studies due to the severe structural changes in Germany. Before the

⁵ The term local authorities means here, the local institution which is responsible for the assurance of “Arbeitslosengeld II”. These can be unemployment centers as a joint facility of the Federal Employment Agency and the district or municipality, or so-called “Optionskommunen” (engl. option municipalities) with sole responsibility for the benefits according to the Second Book of the Social Code.

introduction of the unemployment benefit II, the municipalities had, among other things, heavy financial burdens due to the costs of the “Sozialhilfe”. Hassel & Schiller see the heavily burdened municipal financial budgets as a significant factor which led to the change of the German welfare system through the Hartz-IV reform in 2005. By merging “Sozialhilfe” and “Arbeitslosenhilfe” to the Unemployment Benefit II and shifting the costs to the federal level (except for the KdU), the municipalities should have been financially relieved.

“Focusing on the reform of unemployment benefits we show that the crisis of the widespread cost-shifting practice between the federal budget, the social insurance and local authority budgets contributed to fiscal problems which could ultimately only be resolved by engaging in a fundamental restructuring of the financing architecture of welfare provisions for the long-term unemployed.” (Hassel & Schiller, 2010, p. 95)

The federal government promised the municipalities a relief of around 5 billion Euros each for the years 2006 and 2007 (Hassel & Schiller, 2010). Despite this financial support, there is repeated discussion of financial burdens in connection with the KdU (Garloff, 2021). While the municipal budgets have generally been able to run in surpluses in recent years, the main difficulty in financing the KdU is the heterogeneity of the financial situations of municipalities and rural districts (Arnold, Boettcher, Freier, Geißler, & Holler, 2015). According to the study “Kommunaler Finanzreport 2015”, the relative number of expenditures for the KdU are different when looking at the 16 federal states in Germany. In 2013 the smallest expenses were incurred in Bavaria with 78 euros per inhabitant, the highest in the municipalities of Mecklenburg-Western Pomerania with 244 euros per inhabitant. The regional differences become even greater when one looks at the costs of the KdU at the local level. The economically weak municipalities Offenbach (State Hessen) and Gelsenkirchen (State North Rhine-Westphalia) have spent almost 400 euros per inhabitant in 2013. Whereas the Bavarian rural districts of Eichstätt and Unterallgäu spent less than 20 euros per inhabitant (Arnold, Boettcher, Freier, Geißler, & Holler, 2015).

Another more recent study was able to show that there is a connection between the expenditure of the KdU and the amount of debt of municipalities and rural districts. Higher costs of KdU are associated with higher indebtedness of the local authorities. One euro more per capita expenditure for the KdU is linked with a 1.47 higher per capita debt related (Grohs & Zabler, 2021). In conclusion, it can be assumed that shifting the costs to the local level only partly relieved the financial situation of the municipalities and rural districts depending on the local circumstances.

In addition to studies concerning the various financial burdens on municipalities, the implementation practice of the KdU was also examined in a Germany-wide study. In 2015, an examination was commissioned for the first time on behalf of the Federal Ministry of Labour and Social Affairs (hereafter BMAS). The study focused on the question with which empirical methods from the available data considering the constitutional requirements a realistic illustration of the living requirements of the KdU is possible. One part of the study was an online-survey where all 416 local authorities in all German 402 rural districts and district-free cities have been asked in relation to various aspects of the current KdU implementation practice. One result was that the interpretation of the indefinite legal term "adequate" and the resulting calculation of a reasonable amount of KdU occurs to be vastly different between the local authorities. They were so different that rarely patterns or typologies of implementation paths could be determined. (v. Malottki, et al., 2017, p. 17) It is noticeable that these differences are also present in municipalities with similar housing markets and prices. According to the study, these differences can only be explained by normative decisions of the local authorities' interpretation of basic requirements for housing and heating. (v. Malottki, et al., 2017, p. 3) While the study largely examines the Germany-wide implementation of the determination of the KdU, it does not provide any answers as to which normative principles are responsible for the different implementation processes.

4.3. Why the KdU?

The unemployment benefit II has now been in existence for over 16 years. Except of some small changes, as the addition of § 22a Social Code Book II in 2011, one thinks to ascertain that the component of the unemployment benefit II, the KdU, has hardly changed (Garloff, 2021). Thus, in the dichotomy of either change or stability one could argue that the KdU is resistant to exogenous shocks and seems in a phasis of apparent stability. This perception is challenged here. The background and literature review give three indications that it is seething under the cover of the cash component KdU in the absence of major reforms.

Firstly, not only the beneficiaries of the benefit were affected through the Hartz-IV-Reform. Systematic modifications in the cost distribution were made. With the introduction of SGB II, most of the costs caused by the KdU were shifted to the municipalities. This created different financial burdens on the local level (Garloff, 2021).

Furthermore, the legislature uses various indefinite legal terms in relation to the KdU in the SGB II. These terms challenge the local authorities but also the social courts to interpret them according to the intention of the legislature. In particular, the interpretation of the indefinite legal term “Angemessenheit” (in Eng. “adequacy”) from the Social Security Code II leads to objections, lawsuits, and several supreme court judgments over the years. As a result, the topic of the KdU, for which has become a relevant and contentious topic in Germany (Rixen, 2015).

Lastly, according to a study on behalf of the Federal Ministry of Labour and Social Affairs (hereafter BMAS) in 2018, it is also particularly noticeable that the implementation of the KdU on municipality level is very heterogeneous. So heterogeneous that rarely patterns or typologies of implementation paths could be determined (v. Malottki, et al., 2017). This leads to my research interest to examine the KdU from the perspective of incremental institutional change.

5. Methodology

The following chapter will explain the study design, the sampling population and strategy, the process of data generation and data analysis, the associated ethical considerations as well as the limits of this research work.

5.1. Methodological Considerations

Different research designs are possible to study change and continuity in welfare states. Since this research interest is driven by theory, the researcher's understanding of "institutions as regimes" (see *chapter 3.1.1*) determines the methodological approach in this master's thesis. The case selection has been explained (see *chapter 4*) but why a **single case study** has been chosen as a suitable research design, will be explained here.

A small-N research design will not lead to a generalizable outcome but will lead to a further insight into how social processes determine the change and continuity of the institution KdU (della Porta, 2008). Small-N research differs from large-N studies in several aspects. Inter alia they are particularly suitable when the empirical material is examined in relation with abstract theoretical concepts (Blatter & Haverland, 2012). This applies to this theoretically driven work and the strong focus on the "Institutions as Regimes" model. The question arises if a single case is "enough" to contribute to the research problem. According to Bryman (2012) a single-case study is a common method to generate intensive empirical material. In the following chapter the difficulty of data saturation will be explained further.

To examine the dynamic within an institution as it might be a possible source for a gradual transformation, the researcher is interested in the individual components within the institution: Rule Maker; Rules and Rule Taker. Through this tactic, the German federal government, the rules, and the local decision-makers automatically move into the research interest.

Albeit an examination of the "rules" could offer knowledge of change and stability, the researcher assumes that it would not answer the research questions fully. The analysis would provide less information about possible sources of change and stability regarding interactions between the individual actors. As a result, only the component Rule Maker or Rule Taker come into question for the research project.

Generally, qualitative research offers valuable in-depth, situational, and nuanced data (Bryman, 2012). In particular, the fact that a qualitative approach is capable to explore interactions between different actors is suitable for answering the research questions (Mason, 2018). The researcher here sees the conduction of **expert interviews** as a feasible way to answer the research questions. This choice will be justified here in more detail.

Since the KdU-institution does not show any major reforms which can be studied from the outside, the researcher is interested in processes and changes within the institution of the KdU. To examine the institution from within, the choice of the research method depended on the possibility to gain access in the institution KdU. Experts are often seen as an opportunity to explore a research field, as they might share “practical insider knowledge” (Bogner, Littig, & Menz, 2009, p. 3). This advantage is one of the reasons why the researchers opted for this method.

Furthermore, experts might be highly motivated to participate in research projects as they have often a scientific background and wish to contribute to relevant research. Additionally, expert interviews are common in social science because they seem promising in generating relevant data in a short period of time (Bogner, Littig, & Menz, 2009).

Besides all these possible advantages, expert interviews are sometimes questioned in methodological debates. What constitutes an expert? How can one distinguish between expert or non-expert knowledge? From a “voluntaristic” point of view, one could argue that every person is an “expert of her or his own life” (Meuser & Nagel, 2009). The researcher does not agree with this view, but rather agrees with the approach by Meuser & Nagel. Neither everybody can be defined as an expert, nor can experts be defined only by their professional knowledge. From their point of view the demarcation between experts and laypeople depends on the active participation in “community affairs” (Meuser & Nagel, 2009, p. 24).

What ultimately makes an expert depends on the researcher and the research field (Bogner & Menz, 2009). If one considers the research interest in this master thesis, the researcher is interested in change processes within the institution KdU and thus in interviewees who actively participate in the institution.

5.1.1. Sampling Population

In order to find eligible experts, one had to consider the possible sample population beforehand. Which people can be seen as potential experts for interviews? The researcher decided to focus

on the Rule Taker component for two reasons. Firstly, the researcher had to limit his research due to the given time frame. Secondly, the choice is justified by the literature on incremental change in Germany as it has either concentrated on the analysis of reforms or national representatives, respectively the rule-makers or the rule-takers in a different policy area (higher education system). As already explained in the previous chapters, the municipalities and districts in Germany are seen as rule-takers. Which people are now considered as experts from these municipalities and rural districts? For the researcher here, it is important that the people actively take on the role of rule takers in the institution. Thus, all persons who implement the rules of the KdU in the organizations on local level are to be seen as possible experts.

There are a total of 402 rural districts and municipalities in Germany to choose from. (v. Malottki, et al., 2017) Due to capacity limits, the selection of experts focused on the most populous state in Germany, North Rhine-Westphalia. This reduced the number of possible local authorities that could be considered for an interview to 54. (Ministerium für Heimat, Kommunales, Bau und Gleichstellung des Landes Nordrhein-Westfalen, 2021).

5.1.2. Sampling Strategy

In qualitative research different sampling strategies exist to select relevant data from a wider population. The choice of a strategy is depending on several circumstances such as access, time frame or ethical considerations (Moser & Korstjens, 2018). Generally, there exist two levels of sampling: “contexts”, and “participants” (Bryman, 2012). In *chapter 4* I already stated why I selected the KdU as a case respectively context in this research. This chapter is mainly about how the participants were selected for the interviews. Both levels were selected based on a purposive sampling strategy (Bryman, 2012).

The researcher’s main concern in this regard was to be able to access the research field. Getting access into the research field is often an obstacle regarding qualitative interviews (Mason, 2018, p. 79). The difficulty of entering the relevant research field started from the very beginning in this thesis. After downsizing the possible sample by concentrating on one federal state, the difficulty to establish direct contact to relevant experts occurred. In most cases, no contact data or contact persons could be found on the institutions’ homepages through own research. This meant that the researcher had to use the general contact forms or e-mail addresses of the municipalities or districts. As a result, the researcher relied on the organisations motivation to forward the message internally to the people who might be considered as the

experts for the interviews. Because of this circumstance the researcher decided not to use a further preselection beforehand, for example by choosing specific municipalities. All cities and municipalities were written to, to keep the chance of an answer as high as possible.

In the e-mails and messages to the 54 rural districts and municipalities, the research project was outlined, and a question was asked beforehand about a specific aspect, the indexation of the KdU. Based on the study by v. Malottki, et al. (2017) the researcher knew in advance that in relation to this aspect that there are different approaches to determine the KdU all over Germany. The aim here was that ideally one half of the sample would index the KdU and the other half not. The difference “indexation” can then serve in the interviews as a point of reference for the questions in the interviews and can be examined more closely later in the empirical analysis.

In the end, 26 cities or districts of the 54 local decision-makers responded. This corresponds to a response rate of 48,15%. Of these 26, 10 experts agreed to take part in a research interview. At this point, the question must be asked whether 10 interviews are sufficient to answer the research questions. This question is linked to the scientific discussion about theoretical saturation. In science there is disagreement about the number of interviews that represent a minimum or maximum in a qualitative research (Bryman, 2012). The sample size depends on the research questions and the research aim. In addition, the qualitative data itself steers the sample size, as it can occur of poor quality or be very heterogeneous (Guest, Bunce, & Johnson, 2006). In the best case, one can achieve a theoretical saturation already with six interviews (ibid) which justifies the sample size in this research design.

It has proven to be effective that a subject-specific question was asked in the e-mails beforehand, so that the e-mail was in most cases forwarded to employees who are thematically familiar with the topic of KdU who have then be considered as experts for the interviews. Fortunately, it turned out that exactly 5 of the 10 experts indexed the KdU.

The sample is presented in more detail below. Since the interviews are treated anonymously, each expert was assigned a number (E1; E2; ...) *Table 5* shows in which organization they work, what kind of job position they hold in which department. As well as if they make use of the indexation possibility. In summary it can be said that 7 out of 10 experts have a management position in their institution. In addition, five experts work in an unemployment centre, three experts who work for the municipality and two for the rural district.

Table 1- The Sample

Number	Organization	Position	Department	Indexation
E1	Unemployment Centre	Deputy Head of Department	Legal Department	No
E2	Municipality	Head of Department	Basic Security	Yes
E3	Rural District	Head of Department	Social assistance in institutions and social administration	No
E4	Municipality	Policy Advisor for the head of social affairs	Education, Youth, Social Affairs, Health and Sport	Yes
E5	Unemployment Centre	Supervisor	Department of cash benefits	No
E6	Rural district	Professional supervision of legal matters	Department social welfare	Yes
E7	Unemployment Centre	Supervisor	Department of cash benefits	No
E8	Unemployment Centre	Head of department	Department of cash benefits	No
E9	Municipality	Civil servant	Department of social welfare and housing	Yes
E10	Unemployment Centre	Civil Servant	Department of Objections	Yes

5.1.3. Data Generation

The data will be generated through 10 semi-structured interviews with different local actors. Qualitative interviews can be conducted in various formats (e.g., focus groups, face-to-face, loosely structured, ...) (Mason, 2018, p. 109).

Due to the worldwide ongoing Covid-19-pandemic and the priority to avert the spread of infections, none of the interviews were conducted personally. Which interview medium was used, depended on the preferences and technical possibilities of the interview partner.

Accordingly, three interviews were conducted through video conference software programs while the others were conducted over the telephone. All the interviews were conducted in the national language of German, as this is also the researcher's mother language. This prevented misunderstandings caused by language barriers.

The interview was organized by using a semi-structured interview guide. This allows the researcher to respond to the interview partners sensitively and situationally. A semi-structured interview guide gives the opportunity to orientate oneself, but also to take up unexpected topics. (Mason, 2018, p. 110) The researcher reserved the right to adapt the questions during the interview, as every interview has its own relational dynamic. When preparing the interview guide, care was taken to formulate the question as openly as possible. This should induce the interviewee to answer dissolute and nuanced.

Several interviewees felt the need to receive the interview guidelines beforehand to be able to prepare. The researcher decided that this request had to be considered to keep the willingness to interview high. However, to create the same conditions, all participants received the interview guidelines in advance. With the consent of all participants (ethical issues will be further discussed in chapter 5.2.), the interviews were audio recorded. The interviewer was aware of possible power asymmetrical dynamics in the research interviews and tried to avoid a manipulative style of interviewing (Kvale, 2006). The interviews lasted between 40 and 80 minutes.

All audio files were transcribed. The process of transcribing can already be seen as a step in interpreting the interviews. Through the way in which the oral language is translated into the written language, the researcher already makes decisions about which knowledge is relevant for answering the own research question (Kvale, 2011, pp. 2-4). Already the researcher's decision here to transcribe based on audio files neglects the possibility of interpreting the body language of the interviewees. This decision is justified by the researcher's interest in the meaning of the interviewees' answers. The audio files were accordingly transcribed verbatim into German. The intonation, emotional expressions and small pauses in speaking were not marked. After completing the transcripts, the experts received their transcripts to correct their statements if necessary.

5.1.4. Coding

“Coding” is a helpful tool by sorting the empirical data (here: the transcripts) into codes, themes, topics, or ideas. (Castleberry & Nolen, 2018) The process facilitates the subsequent data analysis. The researcher in this thesis followed a combination of a deductive and inductive technique, which is also called the “blended approach”. (Linneberg & Korsgaard, 2019) On the one hand, the data material was examined for codes which related to themes of the theory “incremental institutional change”. In the process, a small number of topics were defined beforehand, according to which the material should be examined. Following themes have been drawn from the theory:

- Institution as Regimes: (Relation I, Relation II, Relation III, Relation IV)
- Third Parties
- Gradual Transformation

On the other hand, openness was also left for other themes which were relevant to the research question. This combination of the two approaches allowed the researcher to retain flexibility and proximity to the empirical data material on the one hand, but also not to lose the theoretical focus. (Linneberg & Korsgaard, 2019) The process of coding took place in several cycles. The transcripts were not coded line by line, rather than one code represented one thought. The first cycle started deductive, and the second one inductive. In the next cycle the various codes were assigned to overarching themes. The coding was assisted by the software “NVIVO”.

5.2. Ethical Considerations

Every research work is accompanied by ethical aspects that contain preliminary considerations and challenges. Above all, it is crucial that the research participants understand the research project and voluntarily agree to participate in their role (Israel, 2015). Also, the so-called “informed consent” was considered here. During the sampling process, the researcher tried to be as transparent as possible regarding the research project and process for all possible participants. The research project and process were outlined directly in the initial contact with the organizations via email. This way of contacting allowed the organizations respectively local decision-makers to voluntarily decide whether they would be eligible to participate. Attention was also drawn in the e-mails to the fact that they can withdraw their participation at any time. The participants were informed in advance that the interviews will be recorded for the purpose of a later transcription. All participants received their respective transcripts by email after the

interviews. This gave the interviewees also the opportunity to reflect again on their consent to participate at a later stage of the research process (Israel, 2015).

Furthermore, the researcher paid attention to the aspect of confidentiality and anonymity. Even if the KdU case does not appear to be a sensitive topic at first glance, the researcher was concerned that critical statements made by the participants about their employer or their work in the interviews could harm their own job position. For this reason, the researcher decided and informed in advance that personal data and data concerning the organizations are treated anonymously and confidential. Thus, all references to personal data or job in the transcripts and in the thesis were made unrecognizable. According to Israel (2015) the purpose of the research should include to do much good as possible for the research participants. For this reason, the researcher assured to contact interested participants to give direct access to the final master thesis.

5.3. Study Limitations

This research work also has limits in its own design and due to various circumstances. First, it must be made clear that the global Covid-19-pandemic made various research designs impossible, due to the risk of spreading infections. Face-to-face interviews, which would certainly have developed a completely different conversation dynamic (Mason, 2018), were not possible at that time. Also, observations which could have enriched the data material were out of question.

Secondly, it must be stated that all interviews have been conducted and transcribed in German. In the empirical analysis, however, the quotations are translated verbatim into English. The translation from the original language into English can result in unintended interpretations of the original text. To avoid this, the quotations were translated as a first step by using a translation software. As a second step, the researcher corrected any content-related inconsistencies. Furthermore, each quotation in the empirical analysis can be traced back to the transcripts by using the specified source information.

Thirdly, by doing a single-case study and expert interviews on the local level, the KdU and its Rule Takers' perspective is centred in this research approach. Therefore, this research approach provides neither a full understanding of the KdU- Institution, nor a definite answer how welfare states change or maintain their continuity.

6. Empirical Analysis

This chapter presents the empirical results from the collected data from the expert interviews. In *chapter 6.1.* the dynamic of the four facets of an institution as regime (Streeck & Thelen, 2005) in the case of the KdU and *6.2.* the role of the third parties will be analysed. Thus, in both chapters, an attempt is made to respond to the respective research questions *A* and *B* (see chapter 2).

6.1. The Institution KdU as a Regime

This chapter deals with the first research question (research question “A”): „How can the dynamic in the understanding of institutions as regimes drive or block changes in the KdU?“ Therefore, the results from the research interviews in connection with the four different relations of Rule Maker, Rules and Rule Taker are examined individually.

6.1.1. Relation I – Rule Maker -Rules

In *chapter 3* it was described that Rule Makers create the rules. Overall, the experts talked little about the government in connection with the rule creation for the KdU. One reason for this is the limitation of the chosen research design, as it takes only into account the experiences of the Rule Takers. Nevertheless, *E2* provides an additional explanation:

“In other words, the legislature only provides an indefinite legal term and the municipality then has to use the interpretation help of the BSG to ensure that it is filled with life, and that it is legally valid.” (E2: 62-65)

E2 states that the determination of the KdU is mainly determined by one rule, the indefinite legal term “adequacy”. Thus, one could assume that from the perspective of the Rule Takers, the Rule Makers play a subordinate role in creating rules for the KdU.

“Yes, and then of course there must be, if the legislature does not see itself in a position to do it what I have good understanding for, then the jurisprudence must ensure that it is just defined more clearly.” (E2: 146-148)

This quote indicates that *E2* suspects that the federal government may not feel in a position to define the term of “adequacy” or to set more precise rules. *E2* has the opinion that the judiciary is then responsible for it.

“Or you sometimes even get the impression that BSG has the intention of teasing the federal legislature a little more than just this vague legal concept of adequacy.” (E2: 58-60)

E2 has observed that the judiciary is trying to encourage the government respectively the Rule Maker to create or adapt the rules. Conversely, one can assume that the rule-makers behaved cautiously or passive in the past. The role of the judiciary will be discussed in more detail in the next chapter 6.1.2. Another question that follows here and was also explained in the theoretical part is: Are the rules “well” adapted to their environment? A lack of change in a changing environment can be a source of gradual transformation of the institution (Streeck & Thelen, 2005). The data analysis reveals a development in Germany that poses major challenges for the Rule Takers. This is examined in the next chapter.

6.1.1.1. Changing Environment – The Housing Market

The housing market is mentioned in the interviews. This is not surprising, since German scientists such as Christopher Butterwegge also refers to “housing” as the central social issue for Germany. Rents have been rising for years, especially in metropolitan areas. Even so-called “Schrottimmobilien“ (Eng. "junk properties") are rented out at exorbitant prices (Butterwegge, 2021, pp. 295-206). This trend is also mentioned by the experts and viewed as critical (E7:203-208). For the KdU, this means that if rents in the municipality rise, so will the expenses for the KdU. Conclusively, this development leaves a further burden on the municipal budget. Some municipalities or districts from the interviews are affected by this development more than others. The next quote from E9 describes two further aspects regarding the KdU in relation to the housing market.

”Well, we have the problem in the city of XXX that we have a very tense housing market and that is why rents are increasing - no, not horrendous - but keep rising. And we, too, when we set the adequacy rates, keep coming up with the following attempts: "Can we make any flat-rate limits or can we grant trivial limits." Which we then always reject now as an internal audit or local authority, because we say: "We also have a responsibility for the entire housing market." Because it is very clear that when the social benefit limits are raised, the landlords will follow immediately. With their rent demands, they exhaust what the transfer recipients can get. That means as soon as we say: "We'll make it a little more generous so that, for example, processing becomes a little easier or people have even more leeway when looking for an apartment." In the end, this is how we are driving the housing market again.” (E9: 247-257)

From the point of view of the *E9*, not only the price development of the housing market influences the KdU, but the KdU also influences the rental prices respectively the housing market. As soon as the upper limit of this social benefit increases, the rents are also immediately raised by the landlords. This quote indicates that the KdU has a price-driving effect on the housing market and could be of interest for further studies from an economic perspective. Regarding the research question of this thesis, this aspect is relevant as it shows that *E9*'s concerns to influence the housing market, blocks changes as to simplify the determination of the KdU through a flat-rate KdU.

This relationship is also discussed in the interview with *E2*. A coherent concept for determining the KdU was introduced in their municipality in 2018. *E2* explains that the difficult financial situation of the municipality played a role to postpone the creation of a coherent concept (*E2*: 232-233), as well as the fear that new adequacy parameters will affect the housing market in that sense that rental prices will increase.

“And the rent level will adjust overall and that will adapt not only for transfer payments, but also for other recipients of relatively low incomes, so that either those of the poor who previously received social benefits will shrink, so to say, they simply have less money to spend normally available or they even slip into the receipt of benefits. Both are of course a very, very unpleasant side effect and that's why one wanted to think very intensively about the extent to which such a concept could be set up and say: "Now we want to do good and define the raw rent properly." That has to be balanced so that the rental housing market, as I said, is not ruined for other people when the housing markets are tight.” (*E2*: 243-252)

This quote illustrates a further aspect. In addition to the rising rents and thus the higher expenditure of the KdU, there is also the concern that more people consequently are eligible to social benefits when determining the KdU regularly. These feared problems led the municipality to the decision to create a coherent concept not until 2018. Conclusively, the interviewer asked *E2* what the actual trigger to change was.

“So in fact it is a mixture of more and more apartments that would actually have been above the appropriate level, which were then saved by exceptional facts, of course. So we had no interest at all in asking people to lower costs, but you can't always help yourself with exceptions. Well, at some point you also have to know colour and say: "Oh, you have to address the basic problem, in quotation marks, the principle." And as I said, the case law itself, because in the old concept we still had the net cold rent principle, because while the BSG is clearly based on a gross cold rent.” (*E2*: 224-232)

The turning point for *E2* was mainly related to the fact that more and more benefit recipients lived in apartments that were no longer adequate in terms of the rental price. The clients were

protected from moving due to the various exceptions created by the institution. In addition, their own method to determine the KdU was no longer corresponding to the current jurisprudence. In other words, change was suppressed until a point where the local authority did not feel legally secure enough due to the rental price development and the further developed jurisprudence.

EI also states that the price-driving effect plays a major role in determining the KdU. The price-driving effect implies that *EI* acts cautiously so as not to drive up rental prices. There seems to be a trade-off between making enough living space available for beneficiaries, but not accepting every rent as adequate.

“Yes, that's why we are always, for our part, at least I am a little careful not to let the prices rise directly. It should of course be adapted to the housing market, of course you should also be able to find apartments for it and also live adequately somewhere. Of course, we also make sure that ghettos do not form anywhere, so ghettoization is still one of the test features that you have to consider. But nonetheless, you don't have to be able to service every rent now.” (E1: 325-330)

In the next quote it becomes clear how *EI* can prevent the KdU from rising too “quickly”. As *EI* already mentioned, in order not to have to pay every rent, possible options such as offering a climate bonus for the recipients are postponed for the time being. (E1: 330-345) But also not every housing standard should be covered by the KdU according to *EI*.

“So you also have to make sure that, for example, Hartz IV-Recipients cannot now enter a new constructed housing, because that would no longer match the housing standard either. That is also a question that we then ask ourselves when building social housing. Is that compatible with the principles of reasonable accommodation costs in SGB II at all?” (E1: 346-349)

It can be assumed that the experts might use gaps or behave non-compliant in order not to adjust the costs of the KdU equally to the price developments in the housing market in their region by defining housing standards which suits their concept. Other experts as *E10* recognize this price driving effect but are less concerned due to a more relaxed housing market in their rural district or municipality. According to the *E10*, this less concerned perception is also linked to a regular exchange with the housing associations. In these meetings, the coherent concept is presented, and the results are also discussed. The exchange gives the expert the assurance that the coherent concept has determined values that correspond to the current housing market situation.

“But on the other hand, we also work with the housing associations. So, we have such a joint working group, where we then also discuss these results and basically want to get everyone on board. And then I already have the feeling that we have determined real numbers and that those who can understand the numbers. Sure, they orientate themselves on it, but that's the way it is. Yes, it is quite logical that they do it that way.“ (E10: 236-241)

Are the rules adapted to the changing environment? Do the current rules of the KdU consider the changing rental price development in recent years? The analysis of the data shows, on the one hand, that the Rule Takers, who are affected by particularly high rents, postpone, or change the implementation of the rules in order not to burden the financial budget. In other words, Rule Takers try to “protect” the institution from change caused by external shocks. Does this result in a gradual transformation of the institution? By not adapting rules to changing circumstances, the institution can experience a “drift” (Mahoney & Thelen, 2012).

To what extent this applies to the KdU cannot be conclusively clarified on the basis of this data material. Because some regions are not affected by this development either. In addition, one would have to examine the change in the function of the institution itself. In other words, what are the effects of this development on the recipients of the KdU? Nevertheless, one can assume that the Rule Makers could not foresee the different price developments in the different regions when creating the rules. This lack of correction of the rules can be seen as a source for a gradual transformation of the KdU institution.

6.1.2. Relation II – Rules - Rule Taker

From the theoretical perspective of incremental institutional change, “rules” are interpreted through the implementation in practice (*see 3.1.1.2*). In some cases, a legal authority clarifies the meaning of the rules (Streeck & Thelen, 2005). The interviews revealed that the German judiciary plays a decisive role in revising and controlling the “rules” of the KdU.

“Yes. So the scope for interpretation is actually not that great anymore. [...] the core is simply the term "adequacy" that comes up with accommodation costs, and that is a big problem. What is adequate? How is a reasonable rental value created? But actually all of that has been dealt with very clearly in the case law - yes, from 2008, 2009, 2010.” (E9: 102-108)

This quote illustrates that the institution KdU was influenced by various court rulings. These court judgments were mainly concerned with a clearer definition of the indefinite legal term of “adequacy”. *E9* states that the recent jurisprudence would clearly specify how the

determination of the adequate KdU should be conceived. The Rule Takers evaluate this development as a decrease of the gap in interpretation and enforcement of rules.

This development already indicates that changes concerning the KdU are being driven by legal authorities. Several experts report on experiences where their own concept has been in front of the social court.

“A few years ago, our coherent concept itself was also in court, and it actually is every now and then, because of course that too, I'll tell you, in recent years coherent concepts were often quashed by courts and then viewed as inoperative. Ours went up to, I'll say (...) You can even theoretically say before the Federal Social Court and was then confirmed at the point.” (E3: 102-107)

For many experts, the pressure to create a legally secure concept to determine the KdU is high. It is difficult for the experts to assess for themselves whether their concept is legally secure. They often feel that legal decisions are arbitrary and subjective.

“But then we come back to the subject where we say: "The case law is just too unpredictable." Because every judge is free in his decision. Everyone can make any decision for themselves. Then it just must withstand another test by the higher authority. But otherwise he can first decide everything when he is a judge. (E5: 1028-1032)

For some experts, this felt arbitrariness means that judgments by courts of the lowest instance are not always taken as given. Depending on whether the judgment fits with one's own concept, local authorities also appeal to obtain a decision from the higher judicial authority.

“So, if a social court criticizes something where we say: "Hey, we don't agree with that at all, then we would also go to the regional social court if there is a possibility. To have a higher instance checked. We would then too be accompanied by the company. As I said, if we already see on a first level: "Hey, that's understandable what the court said to us. Then we get involved." There's no point in simply going over the courts when you see: "Yes, the topic is understandable." Then we just change the structure of the coherent concept.” (E4: 175-182)

This fact that, as a local decision-maker, one is concerned that one could stand before a court with one's concept at any time, prevents some experts from changing the KdU according to their own ideas. This is shown, for example, by the quote from E5:

“We will always have issues where a judge will evaluate it differently in individual cases and say: "Watch out. That's good and good that you have flat rates. That may apply to 99.9% of your people, but the 0.1 % that we have in front of us right now. It just doesn't apply there. And now you have to make a decision on a case-by-case basis.”

And then a decision must be made on a case-by-case basis. Then it will be made public. And then maybe it will also establish itself in the regional social court, or federal social court. And then the decision on a case-by-case basis is no longer a case-by-case decision, but is a decision on a specific issue, in a specific case. And others recognize the design of the case for themselves and then we are again out of these boundaries, these generalized stories. Then there are a thousand other judges. And that's why it's not that easy. You can always just suggest something, but then implement it afterwards and then apply it sustainably. This is then no longer as easy as the actual proposal.” (E5: 876-888)

In summary, three aspects with regards to change can be stated. Firstly, a legal authority shapes the rules for local decision-makers respectively the Rule Taker. Changed rules also change the KdU itself. One could interpret this circumstance as that the judiciary directly changes the KdU institution. Thus, it raises the question of which role do have courts in an institution? In the case of the KdU one could argue that the judiciary took on the role as a rule-maker.

Secondly, the term “adequacy” has been defined more precisely over the years. That means that more and more rules were added in the last years. This could be interpreted as a gradual transformation of the institution KdU in the direction of “layering” (Streeck & Thelen, 2005).

Thirdly, for the experts the KdU developed in a direction which became complex for the practical work. Thus, some experts feel legally insecure with their own coherent concept. In consequence, the Rule Takers feel not free to initiate changes. This already indicates that the room for agency might be limited. This will be examined further in the next chapter.

6.1.3. Relation III - Rule Taker - Rules

The previous chapter already indicated that new rules through various case laws reduced the room for interpretation. Nevertheless, the research results of Krapp & von Malottki (2021) show that this is not necessarily the case.

The local authorities have a respective freedom of choosing different empirical methods to determine the amount of the benefit KdU. This freedom is shown significantly in the study by v. Malottki et al (2017). Regarding the procedure for determining an “adequate” level of the benefit, there is great heterogeneity between the individual local authorities. Conclusively, the authors assume that normative decisions by the actors causes these differences (v. Malottki, et al., 2017). This initial situation leads to the hypothesis that the KdU institution, viewed from the outside, is characterized by room for manoeuvre respectively agency for the Rule Takers. This has been examined deeper in the expert interviews.

Several experts mention that there is the possibility at the local level to make individual decisions which then go beyond the determined amount of the KdU. This is seen as room for interpretation by the experts.

”We may sometimes have a bit of scope to recognize exceptions. So one recognizes higher rents than what is basically adequate. Of course we already have options, for example with families with many children.” (E4: 75-78)

E1 recognizes a current freedom of method choice in determining the level of KdU:

„Yes, so the room for interpretation has become a little smaller because the BSG has given us the side-lines here, but within these side-lines we still have a certain freedom of method, so the court always says at the point in which we are at least as authority still yes, I say we can choose which empirical method we use here as a basis in order to get at these reasonable accommodation costs.“ (E1: 89-94)

Later during the interviews, the experts talk about peculiarities regarding the KdU in comparison with the other experts. One half of the interviewees carries out a full data collection every two years to recalculate the level of the KdU (E1; E3; E5; E7; E8). Whereas the other half of the local authorities alternate between indexing and data collection every two years (E2; E4; E6; E9; E10). In three cases where indexing is not used, the experts state that they have not explicitly decided for or against it (E3; E5; E7). For *E7* (353-356) the possibility of indexing the KdU was unknown and was taken from the interview by the expert as a possibility for the determination of the KdU in future.

The interviews show further differences between the local authorities regarding the regulations on the KdU, which go beyond individual decisions and have not been mentioned explicitly when asking about their room for manoeuvre. *E10* (285- 291) mentions that they make use of the possibility of applying an “overall adequacy limit” the so called “Gesamtangemessenheitsgrenze” for the beneficiaries. This means that, in comparison to other local authorities, there is no distinction made between adequate rent and adequate heating costs. *E4* mentions an on-top benefit they use, a so called “climate bonus”.

“Perhaps that is something that leaves room for interpretation. We have introduced a climate bonus. And then also said when we invited for tenders: "Please present us a pragmatic way for a climate bonus, where people who live in better insulated houses and apartments are allowed to have a slightly higher rent because the heating costs are lower.”” (E4: 202-206)

This quote by *E4* shows, that the interviewee realizes during the interview, that the introduction of the climate bonus is an aspect in relation to the gap of law and practices which he has not seen before.

At first glance, most experts estimate the current gap for interpretation to be relatively small. They only recognize room for interpretation in individual cases. However, during the interviews, various aspects are mentioned by the experts, which point to differences in their practical implementation which go beyond individual cases. The example of indexing, where only half of the experts use this option, indicates that implementation practices result not always by conscious decision-making. This further raises the question of how these differences arise between the local authorities. The next chapter presents a further explanation.

6.1.3.1. Cognitive limits

The previous chapter already indicates that the local experts face challenges in implementing the rules through the jurisprudence and the legislation. From a theoretical perspective, the “cognitive limits” aspect is only mentioned in connection with the Rule Makers (Streeck & Thelen, 2005, p. 15). Since the coding was also inductive, a new factor in connection with the changes and stability of the KdU could be found.

The topic of challenges or respectively cognitive limitations in practice has been mentioned by various experts and will be examined in more detail here. In the context of these interviews, it is noticeable experts report that they commission an external institute to create a coherent concept for determining the amount of the KdU. Some experts mentioned explicitly how complicated it is to determine the social benefit KdU in practice and that they do not have the “know-how” and the resources to do so. (E1; E6; E8; E10)

“Because we don't have the know-how. If you see this elaboration there (...) I think it's 40 pages. You have to be statistically mathematical, there are formulas in it that nobody can understand. You have to have studied that. So that's really, it can be - I don't know about a municipality now - that there is such knowledge to represent something like that. (E6: 280-284)

Although almost all interviewees outsource the task to determine the KdU, the interviews reveal differences concerning in which way the experts are cooperating with the external institutes. When asked whether the expert looks at the various court rulings concerning the KdU, *E7* replies:

“No. Because with my own conclusive concept I am not able to get through. So if you read it page by page. I look at the court rulings and most of the time the tenor is why the conclusive concept was overturned. But I couldn't even say whether that applies to my concept. I couldn't even say that.” (E7: 157-160)

Because of the complexity it becomes apparent that it is seen as a difficulty for local decision makers to comprehend their own conclusive concepts created by external institutes. In addition to that, *E3*, for example, does not see it as its task to question the results of the evaluation of the external institute.

“This is actually created by the appraiser. That is not questioned in the result either, because we are not entitled to it. Because then I believe that our (...) yes, our possibilities would simply be misused. Because these are numbers that are determined on the basis of available data, also mathematically and analytically.” (E3: 284-287)

The quote from *E3* shows that the results evaluated by the external institution are in the end not questioned by the expert. According to *E3*, the review would exceed one's own competence. A similar reflection was made in the interview with *E7*.

„But I have no influence on the adequacy limit itself. This is put in front of me. This is a scientific study with a statistical normal distribution and what they didn't take into account is amazing. 45 pages concept. The most important is on the last page, namely (...) the price per square meter. But as I said, I have no influence on the adequacy. Only on the application.” (E7: 84-89)

E7 does not see any possibilities to influence the level of the KdU and relies on the result of the service provider. He then sees himself in the role of dealing with the result afterwards. In contrast to that, *E10* sees one's own area of competence differently. When asked whether one controls the created concept by the external institute, *E10* replies:

“No, we're already looking very closely. That has always been an exchange. In the corona year it was of course a bit unusual, so a lot of Zoom was also possible and then the corresponding presentations were simply imported. Which we then discussed because we then had a new appraiser who did things a little differently. But we are very much involved in this and see that it really fits the rural district.” (E10: 101-106)

When asked to what extent it is possible to review the created concept by the external appraiser, *E10* replies:

“Yes, I was glad that I still had a boss at my side at the time who had an advanced math course. Who actually then also covered this percentile history, which then went into mathematics very much, so to speak. That he could then ask exactly: "Why have you now come to this or that result with the individual municipalities?"

There is always a bit of leeway. A little up or down. And yeah, that's very complex, yes.”⁶ (E10: 131–136)

This quote makes it clear that *E10* benefited from the mathematical skill of her former supervisor. This knowledge made it possible to question, comprehend and influence the results of the external institute. She does not say it explicitly, but it could be suspected that her supervisor passed his knowledge on to her which makes her able to steer the cooperation with the external institute.

With regard to the cooperation with the external institutes, *E4* mentions that he and his colleague take a lot of time to check the offers of the various institutes in advance.

„In terms of quality, my colleague and I, who are making the guidelines here, are very well positioned thematically. If several offers are received, that has always been the case up to now. Then let's look at it relatively closely and in detail. Is what a provider states in its offer, is it comprehensive, is it well explained, is the system in order? So we can test very well in terms of quality. (E4: 192-196)

E9 is noticeable in connection with the determination of the KdU. This municipality is the only one in this sample which creates a coherent concept in-house. The expert cites a nationwide structural change as the main reason for this, the establishment of the so-called “Jobcenter”.⁷ The employees of the municipality and the federal employment agency, the former “ARGE” were merged into the “Jobcenters”. In order to bring all employees to the same level of knowledge and to accompany the change process, a working group was set up for several years.

“And we set up this working group at the beginning because we said: "We have to exchange ideas somehow and we are now getting a lot of new colleagues from the Federal Agency who are not at all familiar with benefit law. We have to do that from the start to accompany." And it somehow developed in such a way that it was our turn and followed the jurisprudence. I can't explain why other municipalities didn't do it that way. But we don't have a lively exchange either, because we already notice, we're standing a little bit alone.” (E9: 160-166)

To design the structure of these new “Jobcenters”, according to *E9*, they oriented very much towards guidelines and the law. *E9* thinks that their approach also differs from the other municipalities, which is why the exchange with others is kept to a minimum.

⁶ The term “advanced math course” refers to the math course regarding school education. In German secondary schools, students have to choose certain major subjects “Leistungskurse” in order to achieve the highest school degree “Abitur” (brit. A-Level).

⁷ This change not only affected *E9*, other interviewees also experienced it, but not mentioned it during the interviews in connection with the KdU.

”We also had a regular working group for a long time, which was supervised in our area. Where there were representatives from the jobcenter and the social welfare service area and also the legal and objection bodies of the two authorities to simply clarify regular questions there. And in the process I got to know a lot of case law, especially in relation to the KdU, and tried to implement it again and again. And that's why I've become your contact. (E9: 26-31)

The quote demonstrates that *E9* acquired and implemented knowledge regarding the KdU through these working groups. But not only *E9* is involved with the KdU topic, in the interview she speaks of “active” colleagues from the department “Housing” who have put a lot of effort into creating a coherent concept. (E9: 171-172) These structural changes and the need to accompany these new processes led to a dynamic which made the KdU become the main part of *E9*'s work but also an indispensable aspect for the municipality.

„For us, the issue of KdU is an essential one, because it simply also (...) yes, it takes up a lot of space in processing. We jumped on the bandwagon once and now somehow can't get out of the situation.“ (E9: 234-237)

The analysis of the interviews on the topic of “cognitive limitations” shows first and foremost that determining the KdU through a coherent concept poses a challenge for the experts. The interviews indicate that many of the rural districts or municipalities have “outsourced” the task which the government has delegated to them to external experts. The experts justify this decision with the aim of saving human resources on the one hand, but also with their own lack of knowledge in relation to mathematics, scientific methods, or statistic.

Another aspect that stands out in connection with this topic, is the own perceived role regarding the cooperation with the external company. Due to the limitation of specific knowledge, some experts do not see themselves in a position to comprehend the concepts of the institutes. In other words, that the work content of the contracted institutes cannot be controlled in some cases.

Other interview partners see their role differently in relation to the determination of the KdU and the cooperation with external institutes. *E4* and *E10* are examples that the determination of the KdU can be influenced in their favour by involving within the determination process with the external institutes. *E10*'s statement indicates that one's own previous knowledge is linked to room for agency and the ability of steering external institutes.

Compared to the other interviewees, the municipality of *E9* took a different path. With the nationwide formation of jobcenters as a result of the Hartz IV reform, a working group was

formed there to accompany the change process. As a result, the topic of KdU was dealt with intensively from the beginning and became a major aspect in their municipality. The knowledge was inevitably acquired.

This chapter shows that the analysis of cognitive limitations gives further insights regarding the aspect of agency. Some local decision-makers find the KdU topic too complex, in the sense that the topic requires specific knowledge which is not available in the own institution. Due to the different level of knowledge, it can be assumed that the involvement in the determination process and using the freedom of method choice in their favour, varies between the experts. In conclusion, it can be interpreted that the use of a gap between rules and practices is intertwined with cognitive limitations. If actors do not have the personal ability or resources to understand and foresee the rules, one cannot use the room for manoeuvre within the institution of KdU.

6.1.4. Relation IV - Rule Taker - Rule Maker

In the following chapter I will analyse the veto- and feedback possibilities of the local authority on the federal government, the Rule Maker. When the experts were asked how they could influence the legislation or initiate changes regarding the KdU the experts see no (E7: 300-301) or only few possibilities to initiate change of the KdU.

“But that from our side, from a municipality somewhere, the big leap upwards is pierced. No, then we would be in the ministry. Then we would be paid much better. This does not happen in this respect.” (E6: 334-336)

E6, for example, is of the opinion that it is not his task to initiate change in the legislation. This task would be reserved for the ministries. *E4*, on the other hand, sees things a little differently.

“Yes, you know I am somewhat resigned to that. As I said, I have been in the administration for over 40 years and I believe that there is an enormous potential for improvement on the subject of accommodation costs and many other topics, which is noticed and discovered in the municipalities and among the practitioners. And there are even working groups in the state where you can also talk about the cost of accommodation or the education and participation package, there is something there too. Where to meet and the practitioners on site tell the state ministry: "Here: This and that and that could be done better. Everything is too time-consuming, and nobody can see through that and so on." Then you hand that in. None of this is implemented afterwards. The state passes this on to the federal government. The federal legislature looks at it and nothing happens. I've already seen this on many topics. And so I am of the opinion that we basically have no particular influence.” (E4: 535-547)

The quote reveals several aspects. Firstly, one could assume that *E4* wants to change things in relation to the KdU and has accordingly given feedback in various working groups. But nevertheless, *E4* made the experience that nothing has really changed in connection with his participation in several working groups. Conclusively he has given up in this regard.

E8 made similar experience:

“Yeah well. In one of these working groups, I myself worked out the area manager for North Rhine-Westphalia with suggestions as to where in the future (...) Where things are going in exactly the same direction that we have already had, flat rate amounts. So the suggestions were actually made, but they weren't implemented in practice.” (E8: 342-345)

E9 also recognizes that there are committees in which one could participate and also make suggestions for improvement regarding the KdU. From her perspective, however, there are other barriers as the heavy workload that keep her and other employees from interfering in terms of change (E9: 418-424). In contrast to the other experts *E5* sees a different way how to initiate change:

“Triggered, several times. So we are lucky when we say a blessing or a curse. It's a piece of both. So I think it is more of a blessing that our managing director is Mr.(Name) (...) So for him it will be more of a curse. But the managing director Mr. (Name) is active or is heard in very many, on very many levels. So he is the federal spokesman for the job centre as far as I know, so the state spokesman as far as I know, or at least he was once. And I know that he also has a lot of contacts and short distances to Berlin and that he has always placed things there.” (E5: 847-853)

Because *E5*'s supervisor has an important position on a committee, changes can be initiated more easily. It can be assumed that this can shorten the path to the federal government.

The quotations make it clear that the municipalities and districts have the opportunity to promote ideas and suggestions through interest groups such as the German Association of Cities or the District Association. Some use this possibility but have also made the experience that nothing much has been implemented in connection to these working groups. It can be an advantage if supervisors also hold positions that make it possible to directly disseminate proposals on a nationwide level. Because this is usually not the case, the municipalities and districts are usually not in direct contact with the legislature and thus lose their ability to influence the KdU in this regard.

6.2. Third Parties

From a theoretical point of view, the analysis of different actors is important, as these can initiate but also block change. Strong or weak veto possibilities are seen as a source of institutional change (Mahoney & Thelen, 2012). This chapter examines the various actors named in the interviews and their influence on the KdU institution.

6.2.1. Local Politics

As already described, all experts work either in a municipality or in a rural district respectively in the public service. They are therefore also subordinate to local or district politics. This influence of local politics was also discussed in the interviews and is analysed in more detail in this chapter. What contribution do local politicians make regarding changing the KdU?

When analysing the interviews, one aspect stands out in particular. There are differences between the experts in how the topic of KdU is viewed and structurally located in their own authority. The structure of the municipal and district authorities differs between the experts, which can also be seen from the job title of the experts. But the difference between whether the KdU is defined by the authorities as a “Geschäft der laufenden Verwaltung” (Eng.: business of day-to-day administration) or not has an impact on the municipal council's right of involvement in the KdU. According to § 41 of the municipal code of North Rhine-Westphalia, administrative tasks can be delegated to the mayor by the municipality or correspondingly district administrator. In practical work this means that the experts on behalf of the mayor or district administrator take responsibility for the task and conclusively the vote of the municipal council is no longer required. This possibility is being used by some authorities in the interview sample.

“In other job centres this is partly the case, so that it must be decided by politicians, so to speak. We don't do that here in our rural district. We say it's a day-to-day administration business. The data are non-negotiable, I say and are only passed on to politicians for information. So there isn't much of an impact.” (E10: 384-388)

In the case of *E10*, it becomes clear that this option is used in their rural district. So that the coherent concept is only presented to inform the local politicians. This means that politicians are not given the opportunity to vote or to veto it. When asked what influence local politicians have, *E6* gives a similar answer to *E10*.

“That's quick to answer: none. Because we have this coherent concept, when we have it in our hands, we will have it to the political representatives, that is to say in the Social Committee, it was presented there. So not in such a way that it has to be voted on. Rather, I'll just say that a message has come out: "We have had the conclusive concept determined. So and so and so. The rental values are so and so high.” (E6: 290-294)

In the further course of the interview with *E6* it becomes evident which advantage this circumstance has for the practical work of the experts.

Yeah, exactly. There are municipalities that do it differently. I know that. There will be a vote on it. But there in such committees or in these bodies, of course, there are also people who have little or no idea of the subject matter. And yes, they then ask questions or, of course, don't understand because they aren't that deep into the subject. And then they vote against it or it doesn't come through because there are unqualified comments. Or unjustified objections that cannot be dispelled at the moment. That is too vague, as these bodies still have to be involved in deciding on it.” (E6: 301-307)

E6 has the opinion that voting on the KdU in the local council makes no sense, as the politicians have too little knowledge in this specific field. They claim that political participation would block changes through veto possibilities regarding the KdU for example the regular determination of the KdU.

The municipality of *E2* handles it differently. There the determination of the KdU is not a business of day-to-day administration. When creating a coherent concept, the council members must agree to this change.

„Everything else, even with conclusive concepts, is of course also subject to political influence. Of course we pass that on to the political bodies. Nobody decides on the increase in accommodation costs or a new coherent concept without significant involvement or approval of the political bodies. This is not a day-to-day administration business. Instead, politics is significantly involved. Nonetheless, when it comes to updating, it is easier to inform politicians of this than to have to completely reorganize everything every time and have it passed by a council decision, because it is simply more effort.“ (E2: 369-376)

The quote shows that *E2* also sees the involvement of politics as an additional effort. With the option of indexing every four years, this situation can be simplified, because then politics does not have to be included. In conclusion the interviews indicate that Rule Takers favour a situation where local politicians do not have an impact on the KdU through veto possibilities. They claim that otherwise change processes will be delayed or blocked.

6.2.2. External Institutes

The previous chapters have already described that external institutes play a major role in determining the KdU. The role of the experts in cooperation with the institutes has also been examined in detail. This chapter will now consider the role of the institutes furthermore. What possibilities do these actors have to influence change or no-change of the KdU as an institution? In the previous chapter it was already explained that some of the interviewees passed the determination of the level of the KdU on to external institutes. In the interviews, the experts reported that the service providers influence the KdU by proposing new methods to determine the KdU, such as the quote of *E10* reveals:

“Yes, the new provider has now used a new method for us. From the data that was collected and the needs that exist for people who need cheap living space, he thought of an iterative process.” (E10: 111-113)

When asked whether she was familiar with the method before, she replies that the method was new to her. (E10: 121-122). *E4* also reports that, in cooperation with the institute, the municipality has developed its own approach of indexing the KdU regularly.

“The Federal Social Court said you could use the consumer index for the cost of living as a guide. After consultation with our company XXX, we did it a little differently. We take for our municipality, if you use the price indices, we take two different ones. For the so-called basic rent, we use the consumer price index for apartment rents, which are then without additional costs. And there is a separate index for the ancillary housing costs in North Rhine-Westphalia.” (E4: 153-160)

In addition, *E4* mentions in the interview that they purchased a software from their external institute. This enables them to regularly monitor the housing market independently.

“Exactly, this is a software and it specifically maps the housing supply market for our city. That means all housing offers that are offered via newspapers and the Internet, the company filters them for Germany (...) our city, in Germany. And brings them all together, separately according to ancillary costs, basic rent and heating costs. And then we can still see how many apartments there are in a certain period of time, for example for one-person households, where we have certain rent ceilings, for example € 350. The procedure then tells us how many apartments are actually offered for one-person households.” (E4: 96-103)

In addition to the possibility of using certain methods to determine the KdU, or of receiving a software for the practical work, some rural districts and municipalities also have the institutes create a rent index for their region. This is often the basis for creating a coherent concept respectively the determination of the KdU.

”So a big advantage is that company XXX also creates the rent index for our city. And so you could then of course use the information that the company collected, for the creation of the rent index, as it were, for the coherent concept, precisely this 2 information or data sheet. That also makes it a little cheaper for us.” (E8: 24–28)

Additionally, the difficulty of determining the KdU with legal certainty is mentioned in the interviews. In this regard, the institutes take on an advisory role and inform their customers about legal changes and possible solutions concerning the concepts. An example is given by *E4*. After the judgments from different social courts about coherent concepts from municipalities, *E6* and *E4* changes correspondingly their concept in agreement with the external institutes.

„And so we sat down here and spoke to company XXX, who then informed us that several courts were already on their way and they said: "We have already calculated the weighting for our city. We can do that change immediately." Then we have already taken the advice of the court of first instance to adjust the reasonable costs of the accommodation. The change was not great, but in the end the system led to the social court, which then was accepted in the future.” (E4: 153-160)

These interview excerpts show that the institutes proactively approach the experts in order to initiate changes with regard to the determination of the KdU. The institutes create concepts for various cities and municipalities across Germany and accordingly have an overview of jurisprudence in connection with the KdU.

“And the company that created this coherent concept for us is one of the leading companies in this segment in Germany. They have created such concepts everywhere, of course also tailored to the local conditions there in the region and the parameters that were then applied according to the specifications of the social court of course or other jurisdictions. We then of course rely on it and apply it.” (E6: 97-102)

The interviews indicate that the institutes are shaping change within the KdU throughout Germany. The institutes propose new calculation methods, sell software applications for the practical work, observe and advise experts regarding the jurisprudence. This is also shown by the example that several experts create the rent index at the same time as the coherent concept or plan to do it in the future. Some experts rely on the specialist knowledge of the institutes, which ascribes them an important role in determining the indefinite legal appropriateness. To which extent changes are blocked by the institutes could not be inferred from the interviews.

6.2.3. Housing Associations

Housing associations seem to have an influence on the KdU in the rural district of *E10*. For example, the exchange with the housing associations was crucial for the local decision-makers to introduce an overall appropriateness limit. When asked what the ultimate trigger for the introduction of an overall adequacy limit was, *E10* answers:

“Yes, the trigger was ultimately that we also sat together with the housing cooperatives in this working group. And housing cooperatives, they have now actually made many apartments to the current energetic standard with modernization measures. And there we often had cases, then of course they also increased the basic rent. That single component would then have been inappropriate.” (E10: 329-334)

This quote shows that *E10*, in contrast to *E1*, provides new, modernized apartments by introducing an overall appropriateness limit for the benefit recipients. It is also clear that the housing associations have driven this change through their influence in the working groups. *E1* also exchanges with representatives of landlords and tenants. But when asked whether they can influence the KdU, he replies:

“No. Of course you can pick up the mood, of course. And you always have to say that it's not just stupid people sitting there, that's just the way it is. Maybe they also have good ideas or good suggestions or, whatever, that at least in certain constellations you can get the cow off the ice better. So you take people seriously. This is also an exchange in order to catch up with the mood in the practice a bit, to also see where the shoe is perhaps being pinched. Maybe we can do something with it. And the big housing companies in particular, as I said earlier, in some cases we are influencing the market. They take our adequacy parameters home with them immediately and then you can look at it on the Internet and then certain apartments become more expensive in a flash. That's just the way it is. (E1: 500-509)

This comparison between *E1* and *E10* indicates that there are differences in the extent to which suggestions or external influence on internal decision-making processes are allowed. Another quotation from *E10* offers a possible explanation for these differences.

”It is so. We as a municipality also have a certain share in these housing associations, as shareholders. Or our rural district supervisor, for example, is also a member of the board of some housing cooperatives. We have different ones here in our rural district. And we have always attached great importance to regulating the housing market in agreement with these various players.” (E10: 354-357)

This quote reveals why a cooperation with the housing associations is particularly important in the case of *E10*. The municipality is a shareholder in the housing associations and accordingly

has an interest in a constructive cooperation. It can also be assumed here that the increase in rental prices also has a positive effect on the municipal budget, so that an increase in KdU can probably be better cushioned. This benefit is also mentioned by *E3*:

“Especially when I think about it, as a municipality I am involved in a housing association that rents out the corresponding apartments and I have regulated in a partnership agreement that I will get surpluses from it. Then, of course, as a municipality, I have a relatively great interest in the fact that accommodation costs are possibly a few euros higher. Because that of course also means that at the end of the day I acquire higher surpluses from my subsidiary. Of course, in the background, some municipalities try to assert political interests.“ (E3: 296-303)

This connection between the municipal investment in housing and the KdU provision cannot be examined in detail here. It can only be assumed that the rental price development is not felt to be as burdensome if the municipality itself has invested in residential construction. This gives rise to the hypothesis that change which takes place outside the KdU institution, as in the case of the housing market, has more of an impact on the KdU if one is more closely networked and interwoven with the environment.

6.2.4. Welfare Organizations

In the course of the question of whether third parties can influence the determination of the KdU, actors such as welfare organizations respectively NGO's were named. The experts, however, see no significant impact on the KdU. In the following quote from *E4* it becomes clear that these organizations have no direct influence on the work of local decision-makers. However, it does happen that they ask about certain issues.

“It is the case, however, that the interest groups as well as the politicians have no direct intervention, hence no direct influence. But they can come up with the questions: "Listen, are the last rents that we have here for the circle of inquiring people?" (E4: 451-454)

E5 sees it similarly. In individual cases, social associations with regard to the KdU approach the authorities to support their clients.

“Yes, as well as. I'll start with the simpler, interest representant. A classic lobbyist, I'll take a lawyer, for example, or a support office, etc. We have a lot of cases where we (...) So maybe we don't take it like that at first (...) So they have an effect now initially not so on the cost of the accommodation as a whole, but very individually in each individual case.” (E5: 737-741)

The *E2* sees it differently. According to his experience, the welfare associations and the left-wing parties ensured that the municipality introduced a coherent concept for determining the KdU.

“Yes, they have an influence. So that shouldn't be overlooked. How big is the influence? Yes, in fact, it was certainly thanks to interest groups and the left-wing party spectrum that progress has actually been made, with the implementation of the previous, I shall say, individual case concept on the coherent concept.” (E2: 361-364)

It can be stated that the organisations tend to play a subordinate role with regards to the change of the institution KdU. In individual cases, these organizations approach the local authorities to inquire about certain circumstances. In principle, however, they are not involved in decision-making processes and rather take on a controlling function.

7. Concluding Discussion – Quo Vadis KdU?

Due to the empirical findings, I pictured the KdU- Institution in *Figure 4*. By comparing the ideal model (see *Figure 2*) with *Figure 4* one can see that the institution KdU is more complex than the ideal model. For further understanding it must be repeated that the *Figure 4* is created based on the results of the empirical material. This means that the figure reflects **the Rule Takers’ perception** of the KdU-institution as a “regime” (Streeck & Thelen, 2005) . A different research design, which, for example, illuminates the perspective of the Rule Maker, could arrive at a different figure.

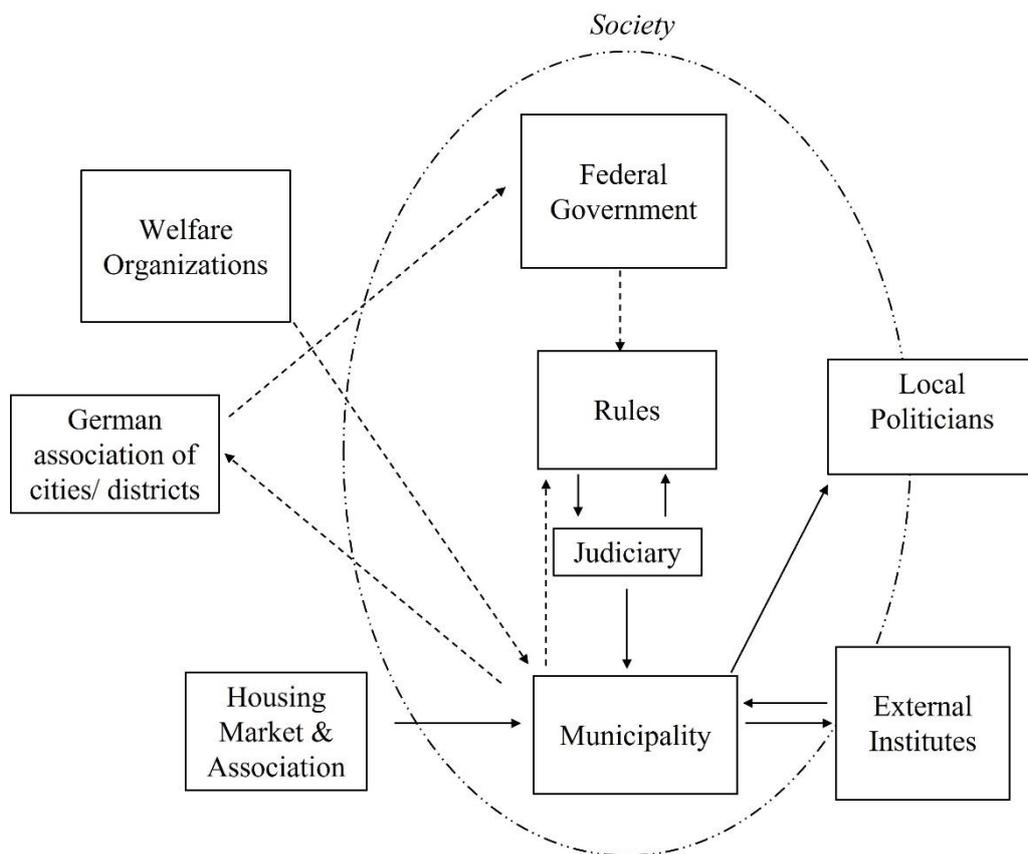


Figure 4 - The KdU-Institution as a Regime

It is also noticeable that some arrows and the “shell” of the institution are no longer visualized with a continuous line. In the case of the arrows, a dashed line shall highlight that some relations are less significant compared to the other arrows from the perspective of the Rule Takers. In the case of the “shell”, this means that it is permeable to its environment. Both decisions are explained in more detail below.

7.1. Research Question A

How can the dynamic in the understanding of institutions as regimes drive or block changes in the KdU?

Above all, the empirical analysis revealed that the roles Rule Maker and Rule Taker cannot be clearly assigned to the federal government and the local authorities in the case of the KdU. Because the government does not specify clear rules when determining the KdU, this task is indirectly transferred to the courts, since beneficiaries sue against the municipalities, the Rule Takers. Because of this reason the *Relation I Rule Makers - Rules* is presented by a dashed arrow.

This observed circumstance leads to the development that the judiciary is forced to lay down rules for determining the KdU when necessary. The judiciary thus became a “step-rule-maker” but also a “step-rule taker” for the local authorities as it interprets the rules of the Rule Maker. That is why the judiciary is visualized in *Figure 4* within the institution as an intermediate actor between Rule Takers and Rules. *Relation II - Rules – Rule Taker* is therefore no longer recognizable in *Figure 4* and has been replaced by the relations with the judiciary. Since the introduction of Hartz-IV and therefore the KdU, more and more rules were added by court judgments over the years. This can be described as a transformation of the KdU in the direction of “layering” (Streeck & Thelen, 2005).

With the increase in court rulings, the rules for Rule Takers have become complex. For the most part, the experts process the rules in cooperation with external institutes to then put them into practice. As a result, Rule Takers can only consciously use the existing scope for rules and implementation, respectively **agency** to a limited extent. On the one hand, they are dependent on their own knowledge in areas that do not belong to their own profession and, on the other hand, on the expertise of the external institutes. That is why the *Relation III- Rule Taker and Rules* is represented by a dashed arrow.

It can therefore be assumed that the Rule Takers cannot act in their interests in every case and thus drive a gradual transformation of the institution. Does this observation call into question the importance of “agency” in the context of the theory of incremental institutional change (Mahoney & Thelen, 2012)? The author is of the opinion that the examination of the gap of interpretation and enforcement of rules continues to provide relevant information about change

processes within the institution. In the case of the KdU, however, it appears that it also offers an explanation about why an institution maintains its continuity. In my opinion the factor “cognitive limits” should not only be examined in connection with Rule Makers (Streeck & Thelen, 2005), but is also decisive in connection with the Rule Taker’s ability to be an agent for change in practice.

In *Figure 4* the *Relation IV Rule Taker – Rule Maker* is illustrated differently compared to the ideal model (see *Figure 2*). The data analysis revealed that the Rule Takers do not have the possibility to give direct feedback to the Rule Makers. As shown in *Figure 4*, the Rule Takers try to reflect their daily work via the German Association of Towns and Municipalities or via the German District Association. This creates a detour, and the feedback is only partially received by the Rule Makers. Conclusively, it can be assumed that the Rule Maker does not know how the rules work in practice from the perspective of the Rule Takers. What does that mean from a theoretical perspective in connection with “incremental change”? This cannot be answered exactly according to the theory because it is assumed that direct feedback is available.

“In fact regimes capable of survival in a complex environment are likely to have built-in feedbacks that inform rule makers how their rules are working out in practice.” (Streeck & Thelen, 2005, p. 15)

The author here can only assume that a lack of direct feedback from the rule-takers does not create incentives for the rule-makers to adapt the rules to practice. Thus this can be seen as a factor for the continuity of the institution.

In the previous chapter it was already discussed whether the rules still function despite their continuity. The analysis has shown that the development of rental prices in Germany is a particular challenge for the Rule Takers” (see *Figure 4*). Here is further research needed which examines if the KdU has experienced a gradual transformation in the sense of a “drift” (Mahoney & Thelen, 2012) Can the KdU-Institution still carry out its actual function as a social benefit that serves to pay for the rent and heating for the recipients of the unemployment benefit II?

7.2. Research Question B

"How do third parties drive or block change in the case of the KdU?":

The empirical analysis makes it clear that the influence of third parties differs. It can be seen that welfare organizations⁸ and local politics have less influence on the KdU. In most cases, local politicians only take note of the practical work of the Rule Takers. This is pictured by an arrow from Rule Takers towards local politicians in *Figure 4*. Due to the passive role of local politics concerning the KdU, I positioned the local politics as actors within and without of the institution in *Figure 4*. It can be assumed here that this circumstance above all contributes to the continuity of the KdU as the local politics do not question the institution KdU. The author would also like to hypothesize that the lack of direct feedback from Rule Takers to the federal government could have a reinforcing effect due to the passive participation of local politics in the institution KdU. In other words, if local politics are not actively included in the KdU institution, local politicians giving feedback at higher levels (state or federal level) are probably less able to reflect on this topic. This would have to be examined more closely in further research.

According to the Rule Takers, other third parties are more relevant concerning change. Especially external institutes play a decisive role in the determination of the KdU. The question arises to what extent the external institutes drive changes in the institution and whether they also become Rule Takers and Rule Makers in a certain way? In *Figure 4* the external institutes are represented with a relation to the municipalities. The municipalities commission external institutes to determine the level of the KdU and the external institutes propose a solution. Is this development, that the determination of the KdU is outsourced to the private sector a gradual transformation of the KdU-Institution? According to the theory of Streeck & Thelen and Mahoney & Thelen it cannot be classified into a type of gradual transformation. The author assumes that the process of outsourcing ensures that the KdU institution remains functioning from and thus a change in the direction of "exhaustion" might be prevented.

The chapter on housing associations showed that its influence depends on the extent to which they are included in the determination of the KdU. For example, it can be assumed that there is a connection between whether a municipality is a shareholder in a housing association. In other words, whether the municipality itself is involved in the construction and rental of

⁸ Welfare Organizations are mainly supporting Hartz-IV- recipients and therefor influence the KdU in individual cases (dashed arrow in *Figure 4*).

apartments. If it is, rising rents also mean more income for the municipal budget and the rising costs of the KdU can thus be cushioned. This circumstance then also influences the municipalities' compliance rules and motivation to change by adapting to the changing environment.

7.3. Conclusion & Reflections

In this chapter, the already described results are assigned to the overarching topic “welfare states”. How can this master thesis contribute to the discussion about change and continuity of welfare states?

Incremental institutional change is an essential theory to explain change and continuity in welfare states (van der Heijden & Kuhlmann, 2017). Nevertheless, this study showed several aspects which could enrich the debate concerning the theory of incremental institutional change and thus welfare state research. The first aspect I will mention is also illustrated in *Figure 4*, the permeable “shell” of the KdU-institution. In the case of the KdU, it is challenging to define which actors are within the institution and which are outside. This difficulty has been already described when explaining the theoretical framework, as it lacks more precise definitions of the role Rule Taker and Rule Maker and Third Parties (Mahoney & Thelen, 2012). After analysing the data material, one could argue that institutions are more permeable than illustrated and assumed in the model of „Institutions as Regimes“ (Streeck & Thelen, 2005)

Conclusively, in my opinion by focusing either on endogenous or exogenous factors when examining change and continuity in welfare states (van der Heijden & Kuhlmann, 2017) one might miss important coherences between endogenous or exogenous factors or actors. This thesis demonstrates that exogenous factors or developments such as the housing market puts the KdU as an institution constantly under pressure to adapt to their environment. From my point of view, an institution cannot therefore be viewed independently of exogenous developments. This observation rekindles the theoretical discussion regarding change and continuity in welfare state research. Is it even possible or necessary to distinguish between endogenous or exogenous factors which drive change or continuity in welfare states?

Even if the model “Institution as Regimes” reached its limits, it was helpful to indicate developments regarding the KdU. What becomes clear in the end is that the roles Rule Maker and Rule Taker were shared between different actors. One can assume that this is a mechanism that contributes to the stability of the institution. Nonetheless, more research could be done here to investigate this more closely. First, the KdU could also be examined from the

perspective of the Rule Makers and Rules to complete the picture. Furthermore, the investigation and comparison of different policies with the help of this model could reveal further findings or patterns. For example, the question arises to what extent the use of indefinite legal terms effect social policies respectively welfare states?

In conclusion this research revealed that in the absence of major reforms the KdU as a component of the unemployment benefit II in Germany is in motion and it is worthy to examine policies in an in-depth qualitative approach to reveal “hidden” developments.

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Appendix

Interviewleitfaden – Masterarbeit/ Interview guide – Master Thesis

Thema 1: Einleitung/Introduction

1. *Zu Beginn, erzählen Sie gerne erstmal etwas über sich und Ihre Tätigkeit, sowie Ihre Einrichtung, in der Sie arbeiten. (Kreis/Stadt/Jobcenter).*

At the beginning, please tell us something about yourself and your job, as well as your institution in which you work. (District / Municipality / Job Center).

2. *Welche Aufgaben übernehmen Sie im Hinblick auf das Thema KdU?*

What tasks do you take on with regard to the topic of KdU?

Thema 2: Charakteristika der Institution “KdU“/ Characteristics of the Institution

1. *Wie würden Sie Ihren Interpretationsspielraum zwischen den festgelegten Gesetzen und der praktischen Umsetzung der KdU beschreiben?*

How would you describe the scope between the established laws and the practical implementation of the KdU?

2. *In den letzten Jahren gab es verschiedene gerichtliche Urteile zu der Erstellung eines „schlüssigen“ Konzeptes. Wie ging Ihre Einrichtung mit diesen Änderungen um?*

In recent years there have been various judgments by German courts that concerned the creation of a “conclusive” concept. How did your institution deal with these changes/reforms?

Thema 3: Eigene Wahrnehmung im Hinblick auf Veränderungen der KdU in den letzten Jahren/ Own perception regarding changes of the KdU in recent years

1. *Wie würden Sie die Entwicklung der KdU in den letzten Jahren in Deutschland beschreiben? Sehen Sie zum Beispiel Trends und nennenswerte Veränderungen?*

How would you describe the development of the KdU social benefit over the past few years in Germany? For example, do you see trends and changes worth mentioning?

2. *Was hat sich in Ihrer Einrichtung in den letzten Jahren in Bezug auf das Thema KdU verändert?*

What has changed in your institution in relation to the KdU topic in recent years?

Thema 4: Politischer Kontext/ Political Context

1. *Können Sie beschreiben, welchen Einfluss Dritte (Interessenvertretungen oder Politik) auf die praktische Umsetzung der KdU in Ihrer Einrichtung haben?*

Can you describe the influence of third parties (interest groups or politics) on the practical implementation of KdU in your institution?

2. *Wie können Sie Einfluss auf die Gesetzgebung nehmen oder Veränderungen zum Thema KdU anstoßen?*

How can you influence the legislation or initiate changes on the subject of KdU?

Thema 5: Indexierung/Indexation

1. *Wie kam es dazu, dass Sie sich für oder gegen eine Indexierung der KdU an zum Beispiel Verbraucherpreise entschieden haben?*

How did it come about that you decided for or against indexing the KdU to, for example, consumer prices?

2. *Wie würden Sie die Vor- oder Nachteile einer Indexierung der KdU beschreiben?*

How would you describe the advantages or disadvantages of indexing the KdU?