



## **Final Report**

### **of the Committee of State Secretaries on legal issues and challenges in the field of social security claims by nationals of the EU Member States**

#### **I. Summary**

Immigration to Germany from other EU Member States has continually increased in recent years. This is made possible by the comprehensive freedom of movement within the European Union, which is one of the underlying fundamental freedoms and one of the most visible advantages that Europe offers its citizens. Recently, however, there have also been critical voices on immigration in Germany. Some of the cities and municipalities concerned report unacceptable living conditions and exploitative employment, children not attending school or problems in providing health care.

Immigration is a complex, multi-faceted phenomenon. The Federal Government is steadfast in its support of freedom of movement, and Germany benefits from it. At the same time, we must acknowledge that immigration may also entail considerable problems. The governing parties resolved in the Coalition Agreement to address this issue and established a Committee of State Secretaries on legal issues and challenges in the field of social security claims by nationals of the EU Member States for this purpose by Cabinet resolution of 8 January 2014. State secretaries from eleven federal ministries, the Commissioner for Migration, Refugees and Integration and the Press and Information Office of the Federal Government, jointly led by the Federal Ministry of Labour and Social Affairs and the Federal Ministry of the Interior, have worked together in this venture.

## Results of the Committee's Work

The Committee's Interim Report, adopted by the Federal Cabinet on 26 March 2014, provided facts, figures and information about the legal situation. In this way, the Interim Report helped make the debate about the immigration of Union citizens and the freedom of movement in the EU more objective.

For its analysis and the resulting recommendations, the Committee has explored the situation in those municipalities which are particularly affected by immigration from other EU Member States. In order to obtain a comprehensive picture of the actual challenges and problems at local level, representatives of the particularly affected municipalities and the associations of local authorities were included in the Committee's work.

The Committee has concluded its work. This Final Report provides information on the overall results of its activities and the implementation of the Interim Report's recommendations for national legislation to fight abuse and support particularly affected municipalities.

In addition to the assistance recommended in the Interim Report, especially from the programmes of the European Social Fund, the Fund for European Aid to the Most Deprived and the urban reconstruction and development assistance programme "Socially Minded City" (*Soziale Stadt*), the Committee has examined further ways to support the municipalities concerned and, as a result, proposes additional relief measures. Taking the further development of immigration into account, the Federation will evaluate at the end of this year whether the planned measures provide sufficient relief for the particularly affected municipalities or whether other support measures will be necessary in 2015.

To implement the recommendations which require changes to the law, the Federal Government will present draft legislation to amend the Freedom of Movement Act/EU and other legislation which comprises amendments to the following laws:

- On account of the particular challenges in connection with increasing immigration from other EU Member States, the Federation will provide additional relief to municipalities amounting to €25 million this year. To this end, the Federation will increase its contribution to the housing and heating costs under Book II of the Social Code.
- Book V of the Social Code will be amended to provide further relief for municipalities: The statutory health insurance will pay for vaccinations for children

and young people from EU Member States and for vaccines if their insurance status in the statutory health insurance has not been determined at the time of vaccination.

- In cases of abuse of law or fraud relating to the right to free movement, the Freedom of Movement Act/EU will be amended in order to allow the issuing of temporary re-entry bans. Moreover, the residence right of Union citizens for the purpose of seeking employment will be limited in line with the existing EU legal framework. Finally, fraudulently obtaining residence permits under the Freedom of Movement Act/EU will be criminalised.
- In order to prevent abuse, child benefit will only be paid to persons and children entitled to child benefit after they have supplied their tax identification numbers. The Income Tax Act will be amended to enable the family benefits offices to prevent multiple payment of child benefit for one child by cross-checking data.
- To improve the fight against fictitious self-employment and illegal employment, the Act to Combat Illegal Employment will be amended to strengthen cooperation between the authorities and the Federal Customs Administration units responsible for enforcing the law on illegal employment and benefit fraud.

The legislative steps proposed by the Committee are intended to provide relief for the municipalities concerned and help prevent cases of abuse. These measures are related to each other and will take full effect through coordinated and simultaneous implementation. That is why they are to be implemented as a package.

Moreover, the new Business Registration Ordinance requires future applications for business registrations to be systematically checked for indications of fictitious self-employment. In addition to legal steps, the Committee proposes further measures to help the municipalities concerned and to prevent abuse; these measures are explained in detail in the following.

### **Guaranteeing the legal framework**

#### *Right to free movement*

Freedom of movement for Union citizens makes it possible to come to Germany as an employee, apprentice or student, as a self-employed person or job-seeker, to bring one's family members, and to stay here and work here. These people are welcome in our country. The comprehensive right to freedom of movement is based on the European

Treaties and is not in question as such. The point is to prevent cases of fraudulent or abusive claims of freedom of movement. For this purpose, the Freedom of Movement Act/EU will be amended.

- In cases of abuse of law or fraud relating to the right to free movement, temporary re-entry bans will be possible. At the same time, all re-entry bans will have to be for a limited time and not only upon request as before.
- Obtaining residence cards or other residence permits under the Freedom of Movement Act/EU by making wrong or incomplete statements will be criminalised.
- The residence right for the purpose of seeking employment will in future be limited in accordance with the requirements of Union law.

#### *Gainfully employed persons*

The vast majority of immigrants are in work. They are able to support themselves and at the same time contribute to prosperity in our country. They are entitled to be treated equally. The definition of who is gainfully employed is based on the European Treaties as interpreted by the European Court of Justice. The abuse of the freedom of movement under cover of gainful employment is to be effectively prevented. At the same time, it must be ensured that immigrants do not have to work in exploitative employment, and firm steps must be taken to counter fictitious self-employment. To this end,

- additional authorities and bodies responsible for fighting undeclared work and illegal employment at federal and state levels will be included in the catalogue of cooperating authorities and bodies, thus establishing support rights and obligations by law. The Act to Combat Illegal Employment will be amended accordingly;
- an obligation will be introduced for trade offices to check applications for business registrations for indications of fictitious self-employment (mandatory checks) and to report such cases to the Federal Customs Administration units responsible for enforcing the law on illegal employment and benefit fraud in a suitable form (mandatory reports). The new regulation has already been included in the new Business Registration Ordinance;
- other statutory measures have been planned or are being explored to optimise the fight against undeclared work and illegal employment.

#### *Family benefits*

Although job-seekers whose purpose of residence is solely to look for work are excluded from basic security benefits for job-seekers in accordance with Book II of the Social Code and from social assistance benefits to cover basic living expenses in accordance with Book XII of the Social Code, they can receive family benefits. Child benefit is frequently the only benefit which Union citizens who are not in gainful employment receive. Every person who is entitled to freedom of movement and whose place of residence or habitual residence is in Germany, or who is fully liable to income tax in Germany for other reasons, is generally entitled to child benefit. Children receiving child benefit do not have to live in Germany. Under European coordination law, it is sufficient for them to have a place of residence in another Member State of the European Union. The children then have to be treated as if they lived in Germany. Amendments to adjust the receipt of child benefit to the living costs at the child's place of residence are being examined. To prevent abuse,

- a new statutory provision is being added to the new Income Tax Act which will make the entitlement to child benefit depend on the clear identification of applicants and their children entitled to child benefit and require them to provide their identification numbers;
- the administrative instructions in the field of family benefits will be made more specific and in some cases stricter. This applies to the examination of the entitlement to free movement, the limitation of the period in which entitled persons from other EU countries who are not gainfully employed may receive benefits and the requirement to provide proof of the child's existence. The new administrative instructions were published in July 2014 (see *Dienstanweisung zum Kindergeld nach dem Einkommenssteuergesetz (DA-KG)* as of 2014, especially Chapter A 3.5, "Staatsangehörige aus einem anderen EU-, EWR- oder Abkommensstaat").

### **Initiatives at the European level**

In addition to the above-mentioned legislative measures within the framework of European law, the Committee examined whether and to what extent further steps at the European level or in connection with European law might be needed. In discussing various proposals for possible amendments to European Union law originating in the public debate in Germany, the Committee made clear that such amendments of European law have to be assessed on the basis of European primary law and the fundamental freedoms regulated by it (Art. 21 TFEU "Freedom of movement", Art. 45 TFEU "Freedom of movement for workers") and must comply with the principle of proportionality.

The European Court of Justice is considering questions concerning the relationship between the provisions of Directive 2004/38/EC on the freedom of movement and Regulation (EC) No. 883/2004 on the coordination of social security systems as well as questions concerning in particular exemptions from the principle of equal treatment regarding access to social benefits for its preliminary rulings in the Dano and Alimanovic cases; these rulings are expected starting in autumn 2014. Depending on how the court decides, it will be necessary to determine to what extent the law may have to be changed at the national level and possibly also at the European level, i.e. secondary EU law. In this context Germany is interested in an exchange of views with other Member States.

### **Support for particularly affected municipalities**

Municipalities which are particularly affected by immigration from other EU Member States face significant problems in areas such as schools, integration services, housing and health care. These are vital local services. The responsibility for providing these services, and hence also for funding, lies with the *Länder*, of which the municipalities are a part under the law related to the organisation of the state. The Constitution bars the Federation from becoming directly involved in these areas or paying direct financial aid to the municipalities. This however does not mean that the cities and municipalities in question are left to deal with the problems by themselves. The Federation will provide real support with the possibilities at its disposal.

- The Federation will provide appropriate funding for programmes from the European Funds ESF and FEAD as well as for the urban reconstruction and development assistance programme "Socially Minded City" (*Soziale Stadt*) and tailor them to the local problems as needed. The different orientations of the individual programmes address a large number of the challenges described above. The European funds promote integration and help combat poverty. The "Socially Minded City" programme provides additional support for neighbourhoods facing problems and for local coordination of efforts. The municipalities can develop solutions from these offerings which best fit their specific situations. The Federation will provide funds in the coming years totalling more than €200 million for this purpose and expects contributions from the *Länder* and institutions concerned.

As the measures of the package are meant to reinforce each other, the Federation will ensure coordinated implementation.

- In addition to the €200 million for the cities and municipalities affected in the coming years, the Federal Government will provide another €25 million in 2014 by increasing the federal contribution to the costs for accommodation and heating under Book II of the Social Code. As part of reforming the Asylum Seeker Benefits Act the municipalities will receive additional relief also in the subsequent years.
- The Federal Government will adapt its integration courses to meet the special needs of the target group. Those attending integration courses will not only receive instruction from a teacher, but will also be assigned a social worker. This approach is being implemented as a project in Duisburg, Dortmund, Berlin and Munich because the need for basic language tuition is especially great there at the moment. In this context, the requirements to prove hardship will be eased in order to reduce obstacles to attending an integration course.
- Projects which concentrate on providing services for groups of immigrants in special need of integration are to receive preference for federal funding in the 2014 funding year.
- At the request of the Federal Ministry of Health the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband) published a circular letter to inform the statutory health insurance funds about the criteria that Union citizens have to fulfil to be covered by the statutory health insurance. This is an important element of a uniform application of the law and improves the possibilities of Union citizens entitled to freedom of movement to make use of their right to coverage in the event of sickness without placing a burden on the municipalities.
- The statutory health insurance funds will also be obliged to assume the costs for vaccines of children from other EU Member States if it has not been verified whether that child is covered by the statutory health insurance at the time of the vaccination. The necessary legal basis will be created by amending Book V of the Social Code in the framework of the bill to amend the Freedom of Movement Act/EU and further legislation.  
All in all these measures in the health sector will reduce the burden on the municipalities by an estimated €10 million every year.

## Annex to the summary

Amount of relief provided by federal measures for the particularly affected municipalities (cf. also Chapter IV)

Field of activity	Expenditure
Urban development/housing environment	<p><b>“Socially Minded City” urban reconstruction and development assistance programme:</b> approx. €10 million in 2014<sup>1</sup></p>
Comprehensive advice centres (orientation/clearing), outreach counselling, integration pilots	<p><b>FEAD:</b> €79 million from the FEAD and €9.33 million in national co-funding from the Federal Ministry of Labour and Social Affairs</p>
Tutoring and enrolment of juveniles and immigrant children aged under 12 in day care and schools	<p><b>FEAD:</b> (see above)</p> <p><b>ESF/Promoting youth close to home:</b><sup>2</sup></p> <p>up to €28 million from the ESF and up to €28 million in national co-funding including from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth</p>
Tailored integration services	no specific figures yet available
Vocational integration measures	<p><b>ESF / BIWAQ:</b><sup>2</sup></p> <p>€20 million from the ESF and €20 million in national co-funding from the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety</p> <p><b>ESF/Federal integration guideline:</b><sup>2</sup></p> <p>€10 million from the ESF and €10 million in national co-funding from the Federal Ministry of Labour and Social Affairs</p>
Federal contribution to the costs for accommodation and heating	<p><b>Increase in the federal contribution:</b> €25 million for the year 2014</p>



Health care	<p style="text-align: center;"><b>Relief of the burden on the municipalities by improved implementation of the rules for admission of eligible persons into the statutory health insurance; assumption of the costs of vaccines for children and youth:</b></p> <p style="text-align: center;">totalling approx. €10 million</p>
-------------	--

<sup>1</sup> The figures are subject to the actual disbursement of funds. The federal budget for 2014 increased total federal funding for the “Socially Minded City” urban reconstruction and development assistance programme from €40 million in 2013 to €150 million in 2014. The share for the particularly affected municipalities cannot currently be specified. It can be presumed that it will account for a small share of the overall growth. A share of approx. €10 million is estimated for 2014.

<sup>2</sup>The figures are based on estimates and are subject to European Commission approval of the operational programmes of the European funds and the actual disbursement of funds in the individual programmes. It is expected that the *Länder* and municipalities concerned will contribute. The figures on the European funds refer to the entire 2014–2020 funding period.