



Bundesministerium
des Innern



Bundesministerium
für Arbeit und Soziales

Interim 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**

- Summary -

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 that exists within the European Union. It 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 towns 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 the topic 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, as well as 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, are working together in this venture.

The Committee has met six times so far, and has the pleasure of informing the Cabinet about the figures, facts and the legal situation with this interim report. It would furthermore like to make proposals for assisting communities which are particularly affected, as well as for activities to fight abuse. The Committee has explored the situation in these communities in depth. In order to obtain a comprehensive picture of the actual challenges and problems faced on the ground, representatives of the particularly affected local authorities, and of the local authority associations, were included in the work of the Committee.

Guaranteeing the legal framework for immigrants

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 stipulated in the European Treaties and is not in question. The only issue can be to prevent cases of fraudulent or abusive claims of freedom of movement. The following measures are proposed in order to achieve this:

- enabling temporary re-entry bans within the territory covered by European law in cases where the right to freedom of movement is abused,
- criminalising the fraudulent obtaining of residence cards or other residence permits in accordance with the Freedom of Movement Act/EU (*Freizügigkeitsgesetz/EU*).

Gainfully employed persons

The vast majority of immigrants are in work. They make their own living, and hence at the same time contribute to prosperity in our country. They are entitled to be treated equally. Who is gainfully active is directly defined in the European Treaties and cannot be altered either by secondary European law or by national law. It is hence important to prevent the rights of freedom of movement being abused under cover of gainful employment. At the same time, we will ensure that immigrants do not have to work in employment relationships in which they are exploited, and will take firm steps to counter fictitious self-employment. The following measures are proposed:

- stepping up cooperation between authorities and the Federal Customs Administration units responsible for enforcing the law on illegal employment and benefit fraud by expanding section 2 (2) of the Act to Combat Illegal Employment (*Schwarzarbeitsbekämpfungsgesetz*) to include the labour inspectorates, the job centres and the Federal Police;
- in order to improve the fight against fictitious self-employment, amending trade law to oblige the trade offices to check applications for business registrations for indications of fictitious self-employment (mandatory checks) and to report such cases of suspicion to the Customs units responsible for enforcing the law on illegal employment and benefit fraud in a suitable form (mandatory reports). This is to be regulated in agreement with the *Länder* within a legislative proposal requiring the consent of the Bundesrat;
- in order to optimise the fight against organised crime in this field, examining the need to amend criminal provisions and powers to investigate
 - in connection with bringing into circulation documents containing incorrect information on works or services supplied (bogus or cover-up invoices), as well as
 - withholding amounts and stating incorrect facts or holding back information committed on a gang basis;
- in the context of the intention to create a legal foundation for the establishment code number, examining whether to allow the Customs units responsible for enforcing the law on illegal employment and benefit fraud to have automatic access to the file of the employing establishments stored at the Federal Employment Agency;

- to make it easier to identify individuals, examining whether to introduce an obligation in the Act to Combat Illegal Employment to carry personal documents and to show them when supplying work or services.

Job-seekers

Union citizens are entitled to come to Germany to look for work. This right however does not apply without restrictions. The question arises after a certain time as to whether the job search is likely to be successful. Even if job-seekers whose purpose of residence is solely to look for work are excluded from basic security benefits for job-seekers and from social assistance benefits to cover basic living expenses in accordance with Book Twelve of the Social Code (*Zwölftes Buch Sozialgesetzbuch - SGB XII*), they can receive family benefits. The right to reside in order to look for work is to be specified in accord with the case law of the European Court of Justice:

- introduction of a time limit for the residence right for job-seeking by amending the law accordingly.

Family benefits

Child benefit is frequently the only benefit which Union citizens who are not in gainful employment can receive. Any 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, is entitled to child benefit. The children for whom child benefit is paid do not themselves have to live in Germany. It is sufficient in accordance with European coordination law 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. The following measures are proposed:

- in order to avoid abuse and double payments, introducing a statutory obligation to state the tax identification numbers of child benefit beneficiaries and children when applying for child benefit;
- specifying the administrative instructions regarding family benefits in relation to the examination of the freedom of movement (in particular detailing the cases in which the family benefits office should consult the foreigners authority);
- in cases of child benefit with an international element, making the administrative instructions stricter with regard to examining the eligibility criteria and evidence.

Support for particularly affected local authorities

Local authorities which are particularly affected by immigration from other EU Member States face considerable 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 local authorities 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 local authorities. This however does not mean that the local authorities in question are left to deal with the problems alone. The Federation will provide real support with the possibilities at its disposal.

The Federation will tailor the “Socially Minded City” (*Soziale Stadt*) programme and programmes from the European Social Fund (ESF) and Fund for European Aid to the Most Deprived (FEAD) to help solve the problems faced by the local authorities and will provide them with the appropriate funding. 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 in neighbourhoods facing problems. The local authorities can develop solutions from these offerings which best fit their specific situations. Provided that the federal budget is passed by the German Bundestag, the Federation will provide funds in the coming years totalling more than €200 million (cf. Annex), and expects contributions from the *Länder* and institutions concerned.

Moreover, the Federal Government will adapt its integration courses in line with 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 particularly 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.

Furthermore, 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.

In order to alleviate the difficulties described by the local authorities in providing health care, the Federal Government will take action to clarify health insurance status more quickly and efficiently. This will relieve the burden on the local authorities in this area. Comprehensive information will be provided on the eligibility criteria of Union citizens for statutory health insurance coverage, making it possible to apply the law uniformly. Additionally, the Federal Government will support the local players in their practical work.

Annex to the summary

Total expenditure on federal measures for the particularly affected local authorities
(cf. also Chapter 3)

Field of activity	Expenditure
Urban development/housing environment	“Socially Minded City” urban reconstruction and development assistance programme: approx. €10 million in 2014 ¹
Comprehensive advice centres (orientation/clearing), outreach counselling, integration pilots	FEAD: €79 million from the FEAD and €9.33 million in national co-funding from the Federal Ministry of Labour and Social Affairs
Tutoring and school enrolment of juveniles and immigrant children aged under 12 in day care and schools	FEAD: (see above) ESF/Promoting youth close to home²: up to €28 million from the ESF and up to €28 million in national co-funding from the Federal Ministry of Labour and Social Affairs
Tailored integration services	no specific figures yet available
Vocational integration measures	ESF/Education, industry and work close to home (BIWAQ)²: €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 ESF/Federal integration guideline²: €10 million from the ESF and €10 million in national co-funding from the Federal Ministry of Labour and Social Affairs

¹ The figures are subject to the resolutions of the body legislating the budget and of the actual disbursement of funds. The Federal Government’s draft federal budget for 2014 provides for the federal funds for the “Socially Minded City” urban reconstruction and development assistance

programme as a whole to be topped up from €40 million in 2013 to €150 million in 2014. The share for the particularly affected local authorities and the associated measures to accelerate and simplify the procedure within the “Socially Minded City” programme 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.

² The figures are based on estimates and are subject to European Commission approval of the operational programmes of the European funds, the resolutions of the body legislating the budget and the actual disbursement of funds in the individual programmes. It is expected that the *Länder* and local authorities concerned will contribute. The figures on the European funds relate to the entire 2014–2020 funding period.