Employment and Posting of Union Citizens

50 questions and answers on 1 May 2011
Introduction ............................................................................................................................................

Contents and structure of booklet ........................................................................................................

50 questions and answers ......................................................................................................................

Chapter A: States concerned ...................................................................................................................

Chapter B: Free movement of workers – employment of
Union citizens in Germany .....................................................................................................................

I. General remarks ..............................................................................................................................
II. Changes as of 1 May 2011 ..............................................................................................................
III. Ongoing legal provisions on Union citizens
working for national employers ........................................................................................................
III.1 Residence and registration law ............................................................................................... 17
III.2. Labour law ............................................................................................................................ 19
III.3. Social security regulations for employment in Germany .................................................... 24
III.4. Jobseeking in Germany ........................................................................................................... 30

Chapter C: Posting of workers to Germany ..........................................................................................

I. General remarks ..............................................................................................................................
II. Changes as of 1 May 2011 ..............................................................................................................
III. Ongoing legal provisions on the posting of Union citizens under the freedom to provide services
......................................................................................................................................................
III.1. Residence law ............................................................................................................................
III.2. Labour law ............................................................................................................................... 35
III.3. Social security in posting to Germany .................................................................................... 43
Annex: Information sources and agencies .................................................................

A. Information and booklets .......................................................................................
   Information from the European Commission .........................................................
   Information from the Federal Ministry of Labour and Social Affairs .................
   Information from the Federal Employment Agency .............................................
   Information from the Federal Customs Administration ......................................
   Information from the German statutory pension insurance scheme ...............
   German Liaison Agency Health Insurance – International (DVKA) ......................

B. Advice and contacts ............................................................................................
   European Commission .........................................................................................
   Federal Ministry of Labour and Social Affairs .....................................................
   Federal Employment Agency ...............................................................................
   German statutory pension insurance scheme .....................................................
   Federal Customs Administration ........................................................................

Imprint .......................................................................................................................
Introduction

1 May 2011 – Expiry of transitional arrangements on the free movement of Union citizens

As of 1 May 2011, the transitional arrangements on freedom of movement expire for the member states that acceded to the European Union in 2004. This applies for Poland, Hungary, the Czech Republic, Slovenia, Estonia, Latvia, Lithuania and Slovakia. Nationals of the eight listed states, the so-called EU-8, will be given extensive access to the German labour market as of 1 May 2011.

Full free movement thus afforded these workers means that they will no longer require a permit to work for a national employer in Germany.

The expiry of the transitional arrangements will also remove the last remaining barriers in certain industries to posting EU-8 nationals employed in other member states to Germany.

Full freedom of movement marks the beginning of European normality for EU-8 nationals. It means that Union citizens are able to move freely to other member states and live and work there. It is a fundamental freedom of the European internal market. The significance of freedom of movement as specifically embodied in Articles 21 and 45 of the Treaty on the Functioning of the European Union (TFEU), however, goes well beyond the internal market. Together with citizenship of the Union, it makes up a cornerstone of a European Union accepted and supported by its citizens. In keeping with its foremost importance, the freedom of movement of Union citizens has also been explicitly laid down in Article 45 of the Charter of Fundamental Rights of the European Union.

In the treaty of accession with EU-8, it was agreed that the old member states could restrict labour-market access of new European citizens during a three-phased transitional period lasting seven years in all (2-plus-3-plus-2 formula). Germany made full use of the permitted period to avail itself of the transitional arrangements of seven years. In 2008, the Federal Government decided on a final two-year prolong-
gation at the high point of the economic and financial crisis after consultation with the social partners. This proved to be effective.

Today, the situation is quite different from two years ago. The economy and labour market in Germany have coped far better with the economic crisis than initially forecast, also thanks to the alleviating measures taken at national and European level. This is also evident from the labour immigration debate, which is no longer confined to preventing possible adverse impacts on the national labour market, increasingly focussing instead on the greater need for skilled labour as anticipated by companies, industrial associations and scientists in response to demographic change also facing Germany.

Since accession, wage disparities compared with Germany have narrowed substantially thanks to economic recovery in the new member states. In addition, the German labour market has progressed towards full freedom of movement in the transitional period by gradually enlarging access for new Union citizens. These avenues already opened before 1 May 2011 include in particular the admission of qualified employees in all industries where preferentially treated national applicants were lacking, the extension of seasonal work as of 1 January 2009 and the lapse of placement precedence for national jobseekers among graduates.

Extensive use has been made of the access already available in recent years.

According to the latest figures, for example, approx. 150,000 workers from EU-8 were engaged in socially-insured employment in Germany. This figure underlines that Germany has by no means sealed off its labour market to new Union citizens for seven years, preventing them from taking up employment in Germany until 1 May 2011. Rather, the phased easing of restrictions will run its intended course with the full freedom of movement now established for EU-8.
In other respects also, the Federal Government has been preparing for the end of the transitional arrangements. Besides the necessary technical legal amendments, there still is a need to ensure compliance with current national and European provisions. This applies, for example, to registration obligations for social insurance and minimum wages in sectors under the Posted Workers Act (AEntG), whose compliance is monitored by the Federal Customs Administration. The sectoral minimum wages under AEntG apply in particular for construction and building cleaning, where final restrictions will expire for worker posting as of 1 May 2011. As an additional social flanking measure, the intention is to introduce an absolute minimum wage for temporary work in the Temporary Employment Act.

It is also very important for employees, employers and the public to be well informed about the end of the transitional arrangements. Their expiry raises many different questions on the ensuing legal amendments and the legal position for the employment and posting of (new) Union citizens in general. This booklet aims to provide some answers.
Contents and structure of booklet

In the main part of the booklet, we deal with 50 frequently asked questions about 1 May 2011. The German Federal Ministry of Labour and Social Affairs has prepared this list of questions from enquiries already made to the ministry in recent months and the replies of social partners with the relevant expertise consulted prior to preparing the booklet.

The list of questions in the main part is divided into three chapters

A: Questions on the member states concerned

B: Questions on Union citizens working for national employers

C: Questions on the temporary posting of workers employed in other member states to Germany

A clear distinction must be drawn between the two groups of employees discussed in B. and C. Quite different regulations apply in part, since the first case normally pertains to national and the second to foreign employment relationships. Of relevance under Union law for Union citizens working for national employers is the free movement of workers, whereas in posting it is the freedom to provide services (for the distinction, see in particular Questions 3, 38 and 39).

After explaining the notion of the free movement of workers (B.I), we shall first look in Chapter B at the relevant legal amendments entering force as of 1 May 2011 on EU-8 workers engaged by national employers in Germany (B.II).

These legal amendments entering force on the expiry of the transitional arrangements on the free movement of workers are solely concerned with legal provisions on work permits, primarily those previously required from the Federal Employment Agency.
The treaty of accession with EU-8 only allowed for restricting labour market access and hence special work permit regulations for new Union citizens during the transitional period. Regardless of the transitional arrangements, however, the rights of all new Union citizens already entailed in the free movement of workers apply since accession, particularly equal treatment rights in working conditions and social security.

The present discussions on the expiry of the transitional arrangements and the enquiries made to the German Federal Ministry of Labour and Social Affairs so far indicate information needs beyond the legal amendments to work permit regulations concurrently entering force. There is frequent uncertainty about the general legal framework that already applies for Union citizens from the old member states and partly also for new Union citizens working for national employers.

In Chapter B under III, we therefore deal with 50 frequently asked questions on provisions that already apply today for all Union citizens employed in Germany and will simply take on greater practical relevance due to the full freedom of movement for workers from EU-8 states. The questions on this are subdivided by theme: residence and registration law (B.III.1), labour law (B.III.2) and social security (B.III.3).

Finally, Chapter B deals with questions concerning jobseeking by Union citizens in Germany (B.III.4). The relevant provisions also already apply today and will not be affected by the expiry of the transitional arrangements but will take on greater actual relevance due to the full free movement of workers from EU-8 states.

Information will also be provided in particular on how Union citizens seeking work can inform themselves about available job opportunities in Germany.

In Chapter C, we deal with questions on posting workers employed in other member states to Germany and concern the relevant transitional arrangements expiring as of 1 May 2011 for EU-8 citizens. While actually performing activities here, workers posted to Germany are not currently working for an employer located on national
territory, engaged instead in providing temporary services for their employer domiciled abroad.

Transitional arrangements on worker posting to Germany are only specified in the accession treaty for individual, explicitly cited service sectors. These are construction, building cleaning and interior design. The transitional arrangements on the free movement of workers also affect the cross-border posting of temporary workers. In all other industries, it has already been fully permissible to post new Union citizens to Germany since accession, in keeping with the generally applicable provisions.

As in Chapter B on work for national employers, Chapter C will first look at the legal amendments coming into effect for worker posting with the expiry of the transitional arrangements (C.I). In worker posting also, the legal changes only concern work permit regulations.

In the following, we shall then discuss the provisions that already apply today for all workers posted to Germany that could acquire greater relevance due to the end of the transitional arrangements for EU-8 nationals in the sectors concerned. The questions are subdivided by theme: residence and registration law (C.II.1), labour law (C.II.2) and social security (C.II.3).

An information booklet on frequently asked questions cannot of course clarify all individual and special questions on the employment and posting of new Union citizens, nor can it replace specialist literature or legal advice. In the annex, we therefore list further information sources on the individual themes and the available advisory facilities and contact addresses.

The booklet concentrates on areas affected by the transitional arrangements, that is, questions that pertain to Union citizens working for national employers and their posting as workers to Germany. Not or only marginally addressed are the general rights and duties of Union citizens regardless of employment relationships and job-
seeking, such as political rights connected with citizenship of the Union. Nor do we deal with questions concerning the activities of enterprises on the internal market in general and not related to the employment and posting of workers. General corporate regulations are not affected by the expiry of the transitional arrangements. Extensive information for citizens and companies on the above mentioned themes is provided by the European Commission. Its internet portal, Your Europe, is, for example, being expanded (http://ec.europa.eu/youreurope/) and offers comprehensive information, on living, working, travelling and business opportunities in the EU. Union citizens can also directly approach the general information services, Europe Direct, and discuss their questions personally by phone (free phone number from the EU: 00800-67891011), by email (http://europa.eu/europedirect/write_to_us/index_en.htm) or in one of the information centres (http://europa.eu/europedirect/meet_us/index_en.htm).

Business information for firms from other member states seeking to do business in Germany is available, for example, from the Federal Ministry of Economics and Technology and the single points of contact established with the implementation of the Services Directive. More information on this and on other contact points for business questions is available via the following link: http://www.dienstleisten-leichtgemacht.de
1. Which member states of the European Union are affected by the expiry of the transitional arrangements?

1 May 2011 marks the end of the transitional arrangements on freedom of movement agreed with the member states of the European Union that acceded in 2004 and specified in the treaty of accession with them. Affected are nationals from the Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia. These eight states are often grouped under the name EU-8. For nationals from the member states that also acceded in 2004, Malta and Cyprus, full freedom of movement has already applied since accession.

2. What applies for Union citizens from Bulgaria and Romania?

For Bulgarian and Romanian nationals, transitional arrangements on the freedom of movement still apply after 1 May 2011. Romania and Bulgaria first joined the EU on 1 January 2007. As with the states that joined in 2004, the treaty of accession with these two states permits transitional arrangements on freedom of movement for a period of up to seven years. Germany presently avails itself of this, as do many other member states. By 31 December 2011, the Federal Government will decide whether the conditions have been met for a final two-year prolongation as provided for in the treaty of accession and whether to opt for this. It will consult beforehand on this with the social partners in the usual way.

Making use of the transitional arrangements does not mean sealing off the German labour market from Bulgaria and Romania; it is about controlling labour market access under German law, which still provides for diverse and privileged opportunities for Union citizens from these countries.

Information on access for Bulgarian and Romanian nationals is available at the website of the Federal Employment Agency, particularly in its published leaflet, Emplo-
CHAPTER B: Free movement of workers – employment of Union citizens in Germany

I. General remarks

The transitional arrangements on freedom of movement expiring as of 1 May 2011 concern the free movement of workers as Union citizens from other member states that acceded in 2004. In a seven-year transitional period, this could in part be restricted.

3. What does the free movement of workers mean?

Freedom of movement of workers is embodied in Article 45 of the Treaty on the Functioning of the European Union (TFEU). It is a fundamental freedom of the European internal market, but its significance goes far beyond this.

Together with citizenship of the Union, freedom of movement makes up a cornerstone of a European Union accepted and supported by the citizens. Free movement of workers means in particular that as workers Union citizens are able to move freely in the European Union, can look for and perform work and are to be treated in the same way as national employees.

A worker under Article 45 of TFEU is defined by Union law and not according to the definitions applying in the individual member states. Union law proceeds from a broad notion of a worker. Workers under Article 45 of TFEU is any person, who undertakes genuine and effective work for which he is paid and under the direction of...
the employer. Short duration of employment, limited working hours or restricted remuneration are without prejudice to his classification as a worker. Worker status always requires an overall assessment of the individual case. Excluded are solely activities on such a small scale as to be regarded as purely marginal and accessory.

The free movement of workers applies both for workers who live and work in a different member state to that of their origin and for so-called frontier workers. These are employees who commute across borders, that is, are employed in one member state, but live in another and return there at least once a week.

Freedom of movement for workers must be distinguished from posting workers under the freedom to provide services. Established in Article 56 of TFEU, this ensures in particular that companies can temporarily operate in other member states and can render their services there. Here, the firms may bring their employees with them to provide a service, that is, they can temporarily post them across borders to another member state. Unlike under the right to free movement of workers, the employees concerned carry out actual activities in another member state but do not do so on behalf of a local employer. Questions on posting workers and the relevant expired transitional arrangements are dealt with in this booklet in Chapter C.

II. Changes as of 1 May 2011

With the expiry of the transitional arrangements on the free movement of workers, legal amendments will only affect German work permit regulations.

The restrictions on the free movement of workers as provided for in the treaty of accession with the states that joined in 2004 pertain solely to labour market access. Regardless of transitional arrangements, the other rights entailed in the free movement of workers have already applied since accession, particularly equal treatment in working conditions and social security. This means that new Union citizens admitted to the German labour market already enjoy these rights today.
Accordingly, special provisions have only applied for new Union citizens in German work permit regulations, which expire for EU-8 as of 1 May 2011. Questions on this will be dealt with in the following. In III, we deal with questions on provisions that already apply today for all Union citizens employed in Germany from old and new member states and will take on greater actual relevance for EU-8 nationals due to the full freedom of movement for workers.

4. What will change in German work permit law as of 1 May 2011?

As of 1 May 2011, EU-8 nationals will no longer need authorisation from the Federal Employment Agency to work for a national employer in Germany. Employment no longer requires Union citizens from EU-8 to be issued with a temporary EU work permit or a permanent EU right to work under Section 284 of Social Security Code III. This applies for all persons working for national employers regardless of qualification, length of employment and industry.

5. Does this also apply to trainees?

Yes. As of 1 May 2011, EU-8 nationals will no longer need a work permit from the Federal Employment Agency for on-the-job training in Germany.

6. Does this access also include temporary workers?

Yes. As of 1 May 2011, EU-8 nationals can be employed by national temporary employment agencies. Also as of this date, they can be assigned by temporary employment agencies from the EU to Germany and deployed at national user enterprises. Both are still impermissible up to 1 May 2011 (Section 6(1) no. 2 of the Work Permit Regulation).
7. **Does this new access also apply for employment in the public service?**

Yes. A work permit is also no longer required for EU-8 nationals for employment in the public service as of 1 May 2011. However, account must be taken of restrictions for certain activities in public services that continue to apply for all new Union citizens regardless of the expiry of the current transitional arrangements. Within narrow limits, Union law allows member states to reserve access for their own nationals to certain posts. This applies for employment where sovereign powers are exercised on a regular basis and not just to a minor extent. In Germany, this only applies for very few activities, such as the appointment to a judicial position.

8. **What will change in the employment of seasonal workers?**

Seasonal workers from EU-8 will also no longer need a work permit for employment in Germany. The previous mandatory work permit for seasonal jobs in agroforestry, the hotel and catering trade, in fruit and vegetable processing as well as in sawmills is already redundant as of 1 January 2011. Setting a date in the middle of the harvest period would have caused unnecessary bureaucracy and distorted competition.

With exemption from the mandatory work permit, the employment of seasonal workers from EU-8 is also no longer subject to the previous restrictions of the so-called benchmark regulation, the basic maximum employment period of six months and the special admissions procedure via the Federal Employment Agency and the relevant forms (employment authorisation/contract of employment). The Federal Employment Agency will, however, continue to provide placement services to recruit seasonal workers from EU-8 via the International Placement Services (ZAV). More information on this is available at the homepage of the Federal Employment Agency ([http://www.arbeitsagentur.de/nn_205414/Navigation/zentral/Unternehmen/Arbeits-kraeftebedarf/Beschaeftigung/Auslaender/Saison/Saison-Nav.html](http://www.arbeitsagentur.de/nn_205414/Navigation/zentral/Unternehmen/Arbeits-kraeftebedarf/Beschaeftigung/Auslaender/Saison/Saison-Nav.html)).
III. Ongoing legal provisions on Union citizens working for national employers

Chapter III deals with the main questions on the legal position that already applies today for all Union citizens employed in Germany, regardless of whether they are from old or new member states. For EU-8 nationals, these questions will acquire greater actual relevance in future due to the full freedom of movement for workers.

III.1 Residence and registration law

9. Which residence and registration regulations apply for Union citizens taking up employment in Germany?

By virtue of freedom of movement, Union citizens may enter Germany if they have a valid passport or identity card. No visa is required. When they relocate their place of residence to Germany, Union citizens employed here - like nationals – must register at the registration authorities in their place of residence in Germany. The registration provisions applying are those of the federal state where they choose to reside. The registration authorities then transfer the requisite registration data to the foreigners authority, which issues a certificate to the Union citizens on their right of residence ex officio, that is, without application. This certificate is not a precondition for the residence of EU citizens in Germany, it simply documents right of residence.

The foreigners authority can, however, demand plausible evidence of meeting the requirements for the right to freedom of movement, e.g. through the submission of a certificate from the employer or the contract of employment. To obviate the need for an additional visit to the foreigners authority, it is therefore advisable to present a certificate from the employer and/or the contract of employment when reporting to the registration office, which then conveys this to the foreigners authority together with the requisite registration data.
10. **What applies for family members of Union citizens employed in Germany?**

Spouses and relatives in descending order (children, grandchildren, etc.) under 21 can accompany Union citizens working in Germany or join them later. They need not be employed, nor must the Union citizen prove that he can pay for their maintenance. Relatives in descending order over 21 and relatives in ascending order (parents, grandparents, etc.) can accompany the Union citizen or join him later, provided that the Union citizen or his/her spouse can support them. All other relatives can be granted right of residence, if this necessary to avoid exceptional hardship.

Depending on the country of origin, a visa may be required for the entry of family members of Union citizens employed in Germany who are not Union citizens themselves (so-called third-country nationals).

As evidence of their right of residence, family members of Union citizens who are third-country nationals receive a residence card within six months. For this, they must submit a valid passport or substitute passport and be able to prove that they are family members of Union citizens living in Germany or entering the country together with them. A certification that these credentials have been provided is issued without delay. No other requirements must be met.

Registered partners who are not Union citizens themselves can also join their partner later. For them, the same provisions of the Residents Act apply as for reuniting a partner with a German national. This thus makes it much easier for third-country family members and registered partners of Union citizens employed in Germany to enter and stay in the German Federal Republic in comparison with other third-country nationals.

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Family members of Union citizens employed in Germany with a right of residence may perform a gainful activity as employed or self-employed persons in Germany. This holds from the first day of their stay.
Besides their due rights as such, family members who are also Union citizens enjoy their own rights to freedom of movement under Union law.

### III.2. Labour law

#### 11. Do German labour law and wage agreements apply for Union citizens employed in Germany in the same way as for national employees?

When a Union citizen works for a national employer, the provisions of German labour law generally apply, such as sickness pay, holidays, protection against dismissal, working hours and workplace health and safety. German labour law does not distinguish between national and foreign employees. This also holds for the obligation of the employer to set down the main contractual terms and conditions in writing not later than a month after the beginning of the employment relationship and issue it in signed form to the employee. Detailed information about labour law as applied in Germany is provided by the booklet, Labour law - information for employees and employers, published by the Federal Ministry of Labour and Social Affairs. This can be downloaded from the Internet at: [http://www.bmas.de/portal/9800/arbeitsrecht_a_711.html](http://www.bmas.de/portal/9800/arbeitsrecht_a_711.html).

German wage agreements regulate the working conditions of employees, such as pay or holiday entitlements, beyond the statutory minimum. They apply under the same conditions for Union citizens as for German workers. National wage agreement provisions apply directly for Union citizens where the employer is bound by an agreement with a trade union of which the Union citizen is a member. Collectively agreed provisions also hold where agreement has been reached on their application in the contract of employment. By virtue of the obligation under Union law to non-discrimination on grounds of nationality and the general principle of equal treatment under labour law, where such reference is made, employers may not put Union citizens at a disadvantage. They may not therefore refuse to apply this for Union citizens when they have included it in contracts of employment with national personnel. Finally, collectively agreed provisions are obligatory, if the employment relationship falls under the scope of a generally binding wage agreement.
The equal treatment of Union citizens and national employees can be directly inferred from Union legal provisions on the free movement of workers (Article 45 of TFEU; Article 7 of Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community). Added to this, general labour law in Germany requires compliance with the principle of equal treatment, which prohibits the discrimination of foreign employees.

12. **What minimum standards apply for remuneration in general and in industries affected by the Posted Workers Act?**

The Posted Workers Act (AEntG) provides a legal framework for the industries exhaustively listed in the law on extending fixed sectoral minimum wages to all employees of the industry in question.

Workers in an industry are entitled to a minimum wage, if the industry in question is included in the relevant list in AEntG, a related minimum wage agreement has been reached and this has been extended by means of a declaration of general applicability or statutory order to all employers and employees in the industry. A special provision applies for the care sector, where a minimum wage regulation can be issued on the basis of the recommendation of a care commission.

Currently, sectoral minimum wages apply particularly in the construction and ancillary building trades, building cleaning and the care sector. A full list of the current industry-wide minimum wages is available on the homepage of the Federal Ministry of Labour and Social Affairs (http://www.bmas.de/portal/37846/2010_11_01_mindestloehne_aentg_uebersicht.html) and on the homepage of the Federal Customs Administration (www.zoll.de).

Regardless of membership of an industry, all employment relationships are also subject to the prohibition of immoral pay. According to the ruling of the Federal Labour Court, pay is deemed immoral when it is more than a third less than that
Free movement of workers

provided for in a wage agreement of the relevant industry or – where this does not apply – the usual local rate of pay.

13. **What are the legal consequences of non-compliance with these minimum standards of remuneration?**

If an employer infringes his duty to ensure minimum working conditions as required under AEntG (minimum wage, minimum holiday entitlement), a fine can be imposed of up to EUR 500,000. Violating the duty to cooperate in inspections (e.g. failing to provide information or submit documents) or breaching the obligation to keep records is punishable with a fine of up to EUR 30,000. An employer charged with a fine of at least EUR 2,500 due to an administrative offence under AEntG can also be excluded from public contract awards. If the employer does not guarantee working conditions for the industry under AEntG, the employee can also duly demand these from his employer’s contracting entity, who is liable regardless of fault just like a joint and several guarantor.

Immoral pay can constitute the elements of the criminal offence of exploitative wages (Section 291 of StGB).

14. **Is compliance with these wage standards supervised?**

Compliance with standard working conditions for the industry under AEntG is supervised by the Federal Customs Administration (Financial Control Section). This is authorised in particular to examine documents, question persons (employers, contracting entities and employees) and enter business premises. To enable inspections to be made, employers obliged to pay minimum wages under AEntG must record the beginning, end and duration of daily working hours and retain these documents for at least two years. Like other documents required for inspection (regular contract of employment, time sheets and payslip), they must be kept on national territory. Further details are available on the homepage of the Federal Customs Administration (www.zoll.de).
15. **How can Union citizens claim rights if these have been withheld or they have been discriminated against?**

Under the same conditions as national employees, Union citizens can claim their rights under labour law from national employers by filing a suit with the competent labour court. They can also invoke their direct rights to equal treatment with national employees under Union law. Employees can take legal action before courts of the member state where the employer resides or the court where the employee normally carries out or last carried out his work. If a party in the labour court proceedings is unable to speak the German language, the court must assign an interpreter.

Under the Labour Court Act, there is no mandatory representation before labour courts in original proceedings of the first instance. Each party can decide whether to conduct the proceedings himself or be represented by legal counsel, particularly lawyers or trade unions. In the original proceedings, the prevailing party is not, however, entitled to a reimbursement of costs for legal counsel. If a party is unable to pay legal costs without detriment to the necessary maintenance for himself and his family, he can, however, apply to be assigned a lawyer, if one has also been assigned to the counterparty.

The labour court regularly charges court fees to the unsuccessful party in legal proceedings. In the case of partial legal success, the costs are shared pro rata. As a rule, interpreter and translation fees are not charged. If a party is unable to bear the costs of labour court proceedings in full or in part due to his economic and personal circumstances and has a reasonable prospect of success in the proceedings, he can apply for legal aid to the labour court or to the district court for cross-border legal aid under the EC Legal Aid Act. The legal aid granted can either provide for complete exemption from court and lawyer’s fees, where a lawyer has been assigned, or repayment of the due costs by instalments.

If he feels disadvantaged or unfairly treated by the employer or by another employee in the company, every employee can also lodge an initial complaint with the responsible in-company body. In companies with a works council, he can call on the assistance of a works council member for support or mediation.
Furthermore, in companies with a works council, all employees can safely approach it to obtain advice and possibly lodge a complaint with it. Besides this, the works council is also tasked with promoting the integration of foreign employees in the enterprise and with overseeing – together with the employer – the equal treatment of all personnel engaged in the firm. It is inadmissible, for example, to discriminate against any person on grounds race or ethnic origin, descent or other provenance, nationality, religion or philosophy of life.

16. Are there any special aspects to the employment of Union citizens by national temporary employment agencies?

Also as workers in a temporary employment agency, Union citizens are entitled to full equal treatment with national personnel. The provisions of German law applying to temporary workers, particularly the Temporary Employment Act (AÜG), hold regardless of whether a national temporary employment agency employs national or foreign workers. On request, the temporary employment agency must issue foreign employees with the Federal Employment Agency’s leaflet for temporary workers and a certificate of the basic working conditions in their own language.

Further information on temporary workers is available, for example, on the website of the Federal Employment Agency (www.arbeitsagentur.de) under the heading – Businesses, Basic Legal Provisions, Temporary Employment (http://www.arbeitsagentur.de/nn_27716/Navigation/zentral/Unternehmen/Recht/Arbeitnehmerueberlassung/ArbeitnehmerueberlassungNav.html) and/or Citizens, Work and Occupation, Temporary Work (http://www.-arbeitsagentur.de/nn_25396/Navigation/zentral/Buerger/Arbeit/Zeitarbeit/ZeitarbeitNav.html). In particular, the above-mentioned leaflet on temporary workers published by the Federal Employment Agency is available here, which also lists their main rights and duties.

An initial draft law by the Federal Government passing through parliamentary legislative procedure at the time of publication of this booklet may amend AÜG for the purpose of preventing abuses in temporary worker supply. Also planned is the introduction of an absolute minimum wage for temporary work in the Temporary Employment Act to provide social flanking for the European internal market and
full freedom of movement. This will limit the margin for lowering equal pay downwards. During assignment and unassigned periods, all temporary workers are to receive an agreed minimum wage made legally binding in a statutory order. The German Federal Ministry of Labour and Social Affairs will provide current information on the latest changes, particularly on its homepage (http://www.bmas.de/portal/16702/startseite.html).

17. **Can Union citizens organise themselves in a trade union in Germany and what applies for corporate codetermination?**

Union citizens may join a trade union and engage as members with the same rights and duties. Union citizens employed in Germany can also establish trade unions here. Union law guarantees that Union citizens employed in other member states are treated in the same way as nationals with regard to membership in a trade union and the exercise of union rights (Article 8(1) of Regulation (EEC) No. 1612/68 on freedom of movement of workers within the Community). This includes in particular the active and passive right to vote and admission to the administration or the leadership of trade unions. In corporate codetermination also, no distinction is made in Germany between national and foreign employees.

**III.3. Social security law on employment in Germany**

18. **When are Union citizens employed in Germany subject to social insurance?**

By virtue of the direct provisions under Union law for the coordination of the social security systems, particularly Regulation (EC) No. 883/04, the legal provisions in the state of employment generally apply for a person working in a member state.
German legal provisions on social security thus generally apply for Union citizens working for an employer in Germany.

Exceptions to this basic rule apply for posted workers (see Question 47) and for persons who are employed in two or more countries. For the latter, either the legal social security provisions of the state where they reside or the state where the employer is located apply. The legal provisions of the state of residence apply where an employee is engaged by an employer, usually works for him in several member states and performs a major part of his activity in his state of residence. This is generally the case, if at least 25% of the activity is performed there.


19. Which registration obligations apply for Union citizens engaged in socially-insured employment in Germany?

Just like German workers, employed Union citizens must be registered for social security. Employers are obliged to register workers employed by them with the competent health insurance company as the collecting body. The obligation to register includes in particular name, address, insurance contract number, nationality, details on the activity and the amount of paid remuneration (Section 28a(3) of Social Security Code IV). Every employee must receive from his employer a copy of the data reported about him.

In some industries, there is also a special obligation to register immediately, which the employer must meet prior to the commencement of work (Section 28a(4) of Social Security Code IV). This includes the construction and restaurant and hotel trades, haulage, transport and the allied logistics trade, the building cleaning industry and the meat industry.
Additional information on the registration and contribution procedure is available on the internet pages of every health insurance company or the pension funds in the employer’s information service, such as German Federal Pension Insurance, via the following link: http://www.deutsche-Rentenversicherungbund.de/SharedDocs/de/Navigation/Service/Zielgruppen/arbeitgeber/DEUEV_node.html.

20. How is compliance with German social security regulations supervised?

At least every four years, the inspectorates of the German statutory pension insurance scheme inspect employers for the correct calculation and payment of social security contributions for national or foreign workers. Ad-hoc inspection audits are carried out on suspicion. In addition to these inspections, the Financial Control Section of the Federal Customs Administration verifies adherence to social insurance registration obligations. Additional information on external inspection audits by the German statutory pension insurance scheme is available at the website of German Federal Pension Insurance: http://www.deutsche-rentenversicherung-bund.de/SharedDocs/de/Navigation/Service/Zielgruppen/arbeitgeber/Betriebspruefdienst_node.html. More details on the tasks and powers the Financial Control Section of the Federal Customs Administration are available on its homepage: http://www.zoll.de.

21. What are the legal consequences of infringements by employers?

Failure to comply with legal obligations to report, contribute or keep records of social insurance constitutes illicit work (Section 1(2) no. 1 of the Act to Combat Clandestine Employment - SchwarzArbG).

If evidence is found that payments have not been correctly made, unpaid contributions are reclaimed. Moreover, employers must pay a default fee for contributions not initially paid as due. Added to this, the infringement of statutory obligations to register, pay and keep records of social security contributions can be punished with
a fine (Section 111 of Social Security Code IV). Furthermore, circumventing the obligations to register and pay contributions can constitute the criminal offence of withholding wages or salaries (Section 266a of the Criminal Code - StGB). Punishable here are both withholding employees’ contributions and the failure to pay employers’ contributions.

22. What are the legal consequences of infringements for employees?

A socially-insured employee has certain obligations to cooperate. For example, the employer must be provided with all the requisite information to carry out the registration procedure. Under the Act to Combat Clandestine Employment, employees are also obliged to inform the Federal Customs Administration during inspections about their employment relationship or activities and provide access to carried documents, which can be expected to show or indicate their scope, kind or duration. Furthermore, employees in certain industries, such as the construction and restaurant and hotel trades, building cleaning, the meat industry, haulage, transport and the allied logistics trade, are obliged to carry their passport or substitute passport or identity card. A fine can be charged for infringements (Section 111(1) no. 4 of Social Security Code IV; Section 8 of SchwarzArbG).

23. What benefits are socially-insured Union citizens entitled to in Germany?

Union citizens subject to German social security law have the same rights and duties as Germans. They may not be disadvantaged on grounds of nationality. If a specific insurance period is required for a benefit entitlement, as in pension insurance, Union citizens must also meet these. Here, the periods of insurance that a Union citizen has acquired in Germany and other member states are added together. This ensures that insurance cover is not lost or contribution periods lapse if a Union citizen decides to leave his member state and continue to work in Germany.
24. **What applies in the case of illness or an occupational injury or disease?**

Socially-insured Union citizens in Germany have benefit entitlements to the same extent and under the same conditions as German nationals in the case of illness or occupational accident or disease. They are entitled to non-cash benefits, particularly out-patient and in-patient medical treatment and medication, to direct payments for reimbursing the costs of these services as well as to financial payments, such as sickness benefit and injury pensions. General information on the benefits of German social security in the case of illness or occupational injury or illness is available, for example, on the internet pages of the Federation of German Health Insurance Providers (GKV) ([www.gkv-spitzenverband.de](http://www.gkv-spitzenverband.de)) and German Statutory Accident Insurance ([www.dguv.de](http://www.dguv.de)).

25. **What applies in statutory pension insurance?**

In general, German national pension funds pay a pension in keeping with the pension insurance period recorded in Germany. Returnees need not fear any disadvantages, because the pension is paid out without deductions, delays or changes, regardless of where a Union citizen lives in the European Union at the time of pension payment.

Anyone who has worked in more than one member state of the EU need not fear any disadvantages, either. Pension entitlement and the pension amount are calculated by adding up the recorded periods of insurance in all member states where a Union citizen has worked. The German statutory pension insurance scheme calculates the pension amount as if the Union citizen had contributed throughout the whole period of insurance (e.g. 35 years) in Germany, even if he has worked 10 years in Germany, 15 years in Poland and 10 years in the United Kingdom. Of the amount calculated, the German national pension fund then pays the share that corresponds to the actual contributions made in Germany (i.e. in the example: 10/35 of the total...
amount). The other fractions are paid by the national pension funds in the other respective member states, depending on the recorded insured period there. Anyone employed in more than one member state applies for the pension in the member state where he lives, unless he has never worked there. In this case, the pension application must be submitted in the state where the Union citizen was last employed.

More information on the topic of pensions and foreign countries is available on the website of the German statutory pension insurance scheme: http://www.deutsche-rentenversicherung.de/SharedDocs/en/Inhalt/05_international/dt_rentenzahlung_anderer_staat.html?nn=71750.

Other participation benefits (medical rehabilitation benefits, employment participation benefits and supplementary subsistence benefits) are provided to socially-insured Union citizens in Germany by the responsible pension insurance funds under the same conditions as for German employees. The personal (medical) and legal insurance requirements for this have to be met. Information on this is available from the local pension insurance information and advice centres or the internet pages of the national pension funds, for example, German Federal Pension Insurance, via the following link: http://www.deutsche-rentenversicherung-bund.de/DRVB/de/Navigation/Rehabiitation_node.html

26. **Do special regulations apply for frontier workers?**

A frontier worker is an employee who does not perform his occupation in the member state where he lives, but returns at least once a week to his place of residence. The same regulations generally apply for frontier workers as for all gainfully employed Union citizens, i.e. they are subject to social security law in the state of employment. One exception are non-cash benefits provided for sickness. Frontier workers can choose here: They can avail themselves of these benefits either in the state where they live or in the state where they work.

Further information on frontier workers is provided in a leaflet published on the German Liaison Agency Health Insurance – International (DVKA) homepage (http://www.dvka.de/oeffentlicheSeiten/DVKA.htm).
III.4. Jobseeking in Germany

27. Can Union citizens enter Germany and stay here to seek work?

Union citizens may enter Germany and stay here to search for employment (Section 2(1) nos. 1, alt. 2 of the Act on the General Freedom of Movement for EU Citizens). For entry, all that is needed is a valid passport or an identity card. The right to stay in Germany to seek work holds for at least three months and for a limited period beyond this, provided the Union citizen can prove that he is genuinely looking for work and with reasonable prospects of success. After three months, the foreigners authority can demand plausible evidence of meeting the requirements for exercising the right to freedom of movement as a jobseeker.

28. How can jobseeking Union citizens inform themselves about vacancies in Germany?

Besides researching in newspapers and on the Internet, Union citizens seeking work can make use of information provided by the Federal Employment Agency and the EURES cooperation network. These provide the following facilities for seeking employment on the German labour market:

**EURES**

Union citizens seeking work can start by obtaining advice from EURES in the country of origin. EURES is the cooperation network of the European Commission, the public employment services of the EEA member states (EU member states plus Norway, Iceland and Liechtenstein) and other partner organisations. EURES has 700 consultants Europe-wide, who provide information advice and placement services for workers and employers as well as for all citizens generally wishing to avail themselves of the right to freedom of movement. The network has compiled its range of services on its homepage at [http://ec.europa.eu/eures/](http://ec.europa.eu/eures/).
Free movement of workers

*International Placement Services at the Federal Employment Agency*

*JOBBÖRSE of the Federal Employment Agency*
On its website, the Federal Employment Agency has established the JOBBÖRSE portal ([http://jobboerse.arbeitsagentur.de/vamJB/startseite.html?kgr=as&aa=1&m=1](http://jobboerse.arbeitsagentur.de/vamJB/startseite.html?kgr=as&aa=1&m=1)). National and foreign jobseekers can search for job vacancies advertised by employers from Germany and enter their own applicant profile. Besides these facilities, jobseekers can also register with the Federal Employment Agency. This can be done both via the JOBBÖRSE Internet portal and by phone or through personal visits to an employment office.

29. **Are Union citizens who have entered Germany in search of employment entitled to unemployment benefit under Social Code III?**

Normally not. Union citizens are only entitled to German unemployment benefit if they were last employed here and meet the general eligibility requirements. This is not the case for Union citizens who have not been previously employed in Germany. They can, however, transfer to Germany an entitlement to unemployment benefit acquired in the country of origin for a three-month period, possibly extendable to six months, for the purpose of seeking work. For this, they must have registered as unemployed in the country of origin and filled out the requisite form at the local employment service.
**30. Are newly arrived jobseeking Union citizens entitled to benefits from basic income support for jobseekers or to social assistance?**

Like all foreigners, Union citizens seeking work are excluded from benefit entitlements under Social Security Code II (cf. Section 7(1), sentence 2 no. 1 of Social Security Code II) during the first three months of their stay in Germany. Also subsequently, they may not receive basic income support benefits for jobseekers if they are staying in Germany solely for the purpose of seeking employment (cf. Section 7(1), sentence 2 no. 2 of Social Security Code II). Nor is there any entitlement to social assistance for foreigners whose right of residence has only been granted for the purpose of seeking employment (Section 23(3) of Social Security Code XII).

In exception to these basic provisions, however, Union citizens seeking work may be entitled if they have already been employed in Germany or are nationals of a signatory EU member state to the European Convention on Social and Medical Assistance of 11 December 1953 (EFA). Of the states that joined in 2004, the latter only applies for nationals from Estonia and Malta.

**31. How are qualifications obtained in other member states recognised?**

When taking up a regulated occupation in Germany, an initial procedure must be carried out for the recognition of occupational qualifications. An overview of all regulated occupations in Germany is available on the Internet at [http://www.anabin.de](http://www.anabin.de) under the heading, Competent authorities in Germany. Also available here are the addresses of the competent accreditation authority.

No recognition procedure is needed to take up an unregulated occupation in Germany. However, to improve their chances of successful application, university graduates can obtain an individual assessment of certificates from the Central Office for Foreign Education. The International Placement Services (ZAV) at the Federal Employment Agency provides accreditation services. A user’s guide on recognising occupational qualifications is available at: [http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_en.pdf](http://ec.europa.eu/internal_market/qualifications/docs/guide/users_guide_en.pdf)
32. **To what extent can employers require knowledge of German?**

Employers are basically entitled to require that applicants from other member states have knowledge of German. The language requirements must, however, be reasonable and necessary for the job in question. In particular, they may not serve as a pretext for discriminating against and excluding Union citizens. In certain cases and for certain jobs, it may also be warranted to require very good language proficiency. It is, however, inadmissible to demand of applicants that they must be as good as native speakers.

**CHAPTER C: Posting of workers to Germany**

I. **General remarks**

Besides the provisions dealt with in Chapter B on the free movement of workers for Germany (and Austria), the transitional arrangements on freedom of movement due to expire as of 1 May 2011 also include the option to restrict the freedom to provide services for posted workers in certain strategic industries. In these during the transitional period, the arrangements allow in particular for deciding under national law the extent to which enterprises located in other member states may assign employees from the new member states to provide services in Germany.

33. **What is freedom to provide services?**

The freedom to provide services is embodied in Article 56 of the Treaty on the Functioning of the European Union (TFEU). Like the free movement of workers, it is a fundamental freedom of the European internal market. Freedom to provide services guarantees in particular that enterprises located in a member state can operate temporarily in other member states and render their services there.
34. **What does posting mean?**

Freedom to provide services also allows companies to bring their employees with them to render a service in another member state, that is, to post their employees to the other member state to execute a contract across borders. Other forms of posting are the temporary assignment of employees to branch offices of the enterprise and of temporary workers to user enterprises located in other member states. Common to all forms of posting is that the employees concerned actually perform work in another member state but specifically not on contractual behalf of a local employer.

35. **Is there a maximum period for posting workers for the provision of services?**

No. As long as the enterprise concerned does not establish a branch in another member state, but solely renders temporary services through the assignment of its personnel who are still employed in the state of origin and will return there, this still constitutes worker posting even if this is for a longer period. Social insurance will, however, be suspended if the posting period exceeds two years. Under social insurance regulations, the posted employee must then be treated like a normal employee in Germany (see Questions 18 ff.).

II. **Changes as of 1 May 2011**

Transitional arrangements on the freedom to provide services are only provided for in the treaty of accession for Germany and Austria and only for individual, sensitive, exhaustively listed industries and in this case only for posted workers.

Self-employed persons from the new member states who render services themselves instead of posting employees are unaffected by the transitional arrangements. This
group, such as the oft-cited self-employed plumber, from the new member states can thus already offer their services without special restrictions for new Union citizens since accession in all industries in Germany.

In industries not explicitly cited in the treaty of accession, freedom to provide services also applies since accession without special restrictions for the new member states. Accordingly, enterprises in the large majority of industries from other member states have already been able to render services in Germany with the assignment of employees from EU-8 since accession. Furthermore, the transitional arrangements allow only for restrictions on posting new Union citizens but do not permit any difference in treatment on grounds of origin from old and new member states.

Therefore, legal changes as of 1 May 2011 only affect the posting of Union citizens from EU-8 to Germany in work permit regulations. The main questions on this will be dealt with in the following. In Chapter III, we shall deal with questions on provisions that already apply today for all Union citizens posted to Germany and that could simply acquire greater relevance due to the expired restrictions for new Union citizens in the industries concerned.

36. In which industries will legal amendments take effect for workers posted to Germany as of 1 May 2011?

Transitional arrangements on posting workers under the freedom to provide services expiring as of 1 May 2011 are only specified for individual, sensitive industries exhaustively listed in the treaty of accession. For Germany, these are the three following sectors: the construction trade including allied sectors; cleaning of buildings, inventories and transport facilities; activities of interior decorators. Besides these sectors, changes will indirectly affect temporary employment agencies from other member states, where these post foreign temporary workers across borders to Germany.
37. **What will change in the construction, building cleaning and interior decorating sectors?**

As of 1 May 2011 in all three industries cited, Union citizens from EU-8 no longer require a work permit from the Federal Employment Agency for posting to Germany. In the building trade, the work contract agreements to date with the states that joined in 2004 will therefore no longer apply, along with the specified quotas, restrictions for regional districts with high unemployment and procedures for worker posting. In the building cleaning and interior decoration sectors, Union citizens from EU-8 can also now be posted to Germany without the previous restrictions under the agreements.

38. **What will change in posting temporary workers to Germany?**

As of 1 May 2011, EU-8 nationals can be hired out by authorised temporary employment agencies located in old or new member states and posted to perform work in Germany. Till now, this has only been possible for temporary workers with old member state nationality, while disallowing the cross-border assignment of new Union citizens to Germany (Section 6(I), no. 2 of the Work Permit Regulation).

Employers seeking to supply employees to perform work for third parties need permission from the Federal Employment Agency (Section 1 of the Temporary Employment Act). This also holds for temporary employment agencies from outside the EU looking to hire out employees across borders to Germany. Further information on granting this kind of permission is published on the website of the Federal Employment Agency ([http://www.arbeitsagentur.de/nn_27716/Navigation/zentral/Unternehmen/Recht/Arbeitnehmerueberlassung/Arbeitnehmerueberlassung-Nav.html](http://www.arbeitsagentur.de/nn_27716/Navigation/zentral/Unternehmen/Recht/Arbeitnehmerueberlassung/Arbeitnehmerueberlassung-Nav.html)).
III. Ongoing legal provisions on posting workers under the freedom to provide services

In the following, we shall deal with major questions on provisions that already apply today for all posted Union citizens to Germany, regardless of whether these from old or new member states. For the industries affected by the expiring transitional arrangements, these questions will take on greater actual relevance in future.

III.1. Residence law

39. Do residence and registration obligations apply for Union citizens posted to Germany?

Posted Union citizens may enter Germany and stay here, if they have a valid passport or identity card. No visa is required.

When relocating to Germany, posted Union citizens, like nationals, must report to the local registration authorities under the relevant provisions of the federal state where they choose to reside. The registration authority then conveys the requisite registration data to the foreigners authority, which issues a certificate to the Union citizens on their right of residence ex officio, that is, without application. This certificate is not a prerequisite for the residence of Union citizens in Germany; it simply documents right of residence.

The foreigners authority can, however, demand plausible evidence that the posting meets the requirements for the right to freedom of movement, e.g. by submitting a letter from the employer. To obviate the need for an additional visit to the foreigners authority, it is therefore advisable to provide evidence of posting when registering. The registration authority will then convey the relevant evidence to the foreigners authority together with the requisite registration data.
III.2. Labour law

40. How far does labour law in the state of origin and/or in Germany apply for posted workers, including workplace health and safety?

The employment relationship between an employer located abroad and his employee posted to Germany to execute a contract is generally subject to the law of the employer’s state of origin. The employer is, however, always bound to the provisions of the Posted Workers Act (AEntG), which make up essential core minimum labour standards.

Under AEntG, minimum working conditions contained in German legal and administrative provisions also apply for posted workers (Section 2 of AEntG). This holds in particular for provisions on minimum paid annual holidays, maximum working hours and minimum rest periods, temporary work, workplace health and safety and maternity protection. More details on these provisions industries are available in an information sheet on Germany that is published on the internet pages of the European Commission (http://ec.europa.eu/social/main.jsp?catId=726&langId=en).

Added to this, AEntG binds certain industries to specific sectoral labour standards for employees engaged in Germany, including posted workers, (minimum wage, minimum holiday entitlement). An overview of the industries concerned and the current binding sectoral working conditions is available on the homepage of the Federal Customs Administration: www.zoll.de

In addition to their to legal protection entitlement under their national law, employees currently or previously posted to Germany can also claim their legal rights before a German labour court under the Posted Workers Act. This holds both for the legally regulated inter-sectoral working conditions under Section 2 of AEntG and for sectoral working conditions that are regulated in statutory orders pursuant to AEntG or in equivalent generally binding wage agreements.
41. **What (minimum) provisions apply for pay in general and in the industries affected by the Posted Workers Act?**

The Posted Workers Act (AEntG) provides a legal framework for the industries exhaustively listed in the law for extending minimum wages fixed in a sector to all employees in the industry in question. These sectoral minimum wages hold regardless of whether the employer is located at home or abroad – as in posting.

If the industry in question is included in the AEntG list, a related minimum wage agreement has been reached and this has been extended to all employers and employees in the industry through a declaration of general applicability or statutory order, these are entitled to a sectoral minimum wage. A special provision applies for the care sector, where a minimum wage regulation can be issued on the recommendation of a care commission.

Currently, minimum wages are paid particularly in the construction industry and related trades and in building cleaning and the care sector. A full list of the currently applicable sectoral minimum wages is available at the homepage of the Federal Ministry of Labour and Social Affairs (http://www.bmas.de/portal/37846/2010_11_01_mindestloehne_aentg_uebersicht.html) and on the homepage of the Federal Customs Administration (www.zoll.de).

Regardless of membership of an industry, the prohibition of immoral pay also applies for all employment relationships. According to the ruling of the Federal Labour Court, the criterion of immorality is met when remuneration is more than a third less than the agreed pay for the relevant industry or – when this does not apply – the usual local rate.
42. **Is compliance with these standards supervised?**

Compliance with the relevant sectoral working conditions under AEntG is monitored by the Financial Control Section of the Federal Customs Administration. This is authorised in particular to examine documents, question persons (employers, contracting entities and employees) and enter business premises. Employers who are bound to pay minimum wages under AEntG must record the beginning, end and duration of daily working hours to enable inspections and keep these documents for at least two years. Like other documents required for inspection (regular employment contract, time sheets and payslip), these must be kept in the country. Further details are available on the homepage of the Federal Customs Administration ([www.zoll.de](http://www.zoll.de)).

43. **What are the legal consequences of non-compliance with these wage provisions?**

If an employer infringes his duty to ensure minimum working conditions as required under AEntG (minimum wage, minimum holiday entitlement), a fine can be imposed of up to EUR 500,000. Violations of the obligation to cooperate in inspections (e.g. failing to provide information or to submit documents or breaching the obligation to keep records) can be prosecuted with a fine of up to EUR 30,000. An employer charged with a fine of at least EUR 2,500 due to an administrative offence under AEntG can also be excluded from public contract awards. If the employer does not guarantee the sectoral working conditions specified under AEntG, the entitled employee can also demand these from his employer’s contracting entity, who is liable regardless of fault, just like a joint and several guarantor.

Immoral pay can constitute the elements of the criminal offence of exploitative wages (Section 291 of StGB).
44. **What registration obligations must employers meet when posting workers to Germany?**

If an employer located abroad is obliged to ensure sectoral minimum working conditions under AEntG (see Question 41), he must convey to the supervisory authority (Financial Control Section of the Federal Customs Administration) the requisite information for the inspection in writing and in German directly prior to commencement of work in Germany at the latest. If a cross-border temporary worker is assigned, the user enterprise is obliged to register. Further information and the text of the relevant registration regulations under AEntG are available at the homepage of the Federal Customs Administration (www.zoll.de). In other industries where no account must be taken of specific minimum working conditions, no registration obligations apply under the Posted Worker Act.

45. **Which documents on posted workers must the employer prepare, make available and retain?**

If an employer is obliged to ensure minimum sectoral working conditions under AEntG (see Question 41), he must record the beginning, end and duration of daily working hours and keep these documents for at least two years. Like other documents required for inspection (as a rule - employment contract, time sheets and payslip), these documents must be kept on national territory. Further details are available on the homepage of the Federal Customs Administration (www.zoll.de).

46. **Which provisions apply for working conditions of temporary workers posted to Germany, including pay?**

As with other employees posted to Germany, employment relationships of posted temporary workers are normally also subject to the law of the state of origin of their employer. Foreign temporary employment agencies are, however, also bound by the provisions of the Posted Workers Act (AEntG). For temporary work, the core mi-
Minimum working conditions unconditionally assured by AEEntG are broad in scope. Besides the current minimum working conditions applying for all posted workers (see Question 40), AEEntG also makes provision to ensure that the conditions for temporary work contained in German legal and administrative regulations also apply for hiring out workers, particularly through temporary employment agencies (Section 2 no. 4 of AEEntG). This affords the German Temporary Employment Act (ÄUG) comprehensive scope for temporary workers posted to Germany.

The principle of equal treatment under ÄUG in particular also accordingly applies for workers posted to Germany. This requires that temporary workers must be assured the same basic working conditions, including pay, as those due to equivalent employees in the enterprise where they are engaged (equal treatment, equal pay). Here, temporary employment agencies from other member states and those located on national territory may deviate from the principle of equal treatment by invoking the saving clause on collective bargaining provided for in ÄUG by means of a wage agreement. This must, however, meet certain minimum requirements. For example, it must provide for binding regulations on working conditions and conform with the principle of equal treatment. Any deviation from the obligation to pay comparable wages must comply with the prohibition on immoral pay.

Furthermore, when posting temporary workers, foreign and national temporary employment agencies must pay sectoral minimum wages, if a user enterprise subject to minimum wage requirements under AEEntG assigns activities to a temporary worker within the scope of a minimum wage regulation under AEEntG (Section 8(3) of AEEntG). The minimum wage provisions pursuant to AEEntG also apply accordingly for temporary workers posted to Germany from EU-8 in future.

Amendments to ÄUG may be made through the draft by the Federal Government of an initial act to prevent abuse in temporary worker supply undergoing parliamentary legislative procedure concurrent with the publication of this booklet. Also planned is the introduction of an absolute minimum wage for temporary work in the Temporary Employment Act for social flanking of the European internal market and full freedom of movement. This will limit the scope for lowering equal pay. All temporary workers will receive an agreed statutory minimum wage. The regulation will
also apply for temporary workers from other member states hired out across borders to national user companies. The German Federal Ministry of Labour and Social Affairs will provide information on current changes, particularly on its homepage (http://www.bmas.de/portal/16702/startseite.html).

III. 3. Social security in posting to Germany

47. Are employees posted to Germany subject to compulsory social insurance here?

Workers posted to Germany are not as a rule subject to our social insurance law but continue to fall under that of the sending state. A person performing gainful work in a member state for an employer usually engaged there and posted by him to execute work in another member state on his behalf remains subject to the legal provisions of the first member state, provided that the expected duration of this work does not exceed 24 months and this person does not replace another. Another precondition, however, for the continued application of social security law in the sending state is that the posting enterprise performs substantial activities there that exceed mere internal administration.

Evidence of a proper posting is provided by the A1 certificate issued by the social insurance institution of the sending state. With this, the bearer certifies that the posted person is also subject to the social security law of the sending state during the posting period. The certificate must generally be applied for prior to posting, but it can also be issued afterwards.

Where posted workers - as is usual - are not subject to German social security law, they accordingly also receive no benefits from German national insurance agencies.

Further information on social insurance questions to do with posting is available in a practical guide of the European Commission on posted workers: http://ec.europa.eu/social/main.jsp?catId=471&langId=en.
48. Do social insurance registration obligations apply for posted workers?

Where posted workers - as is usual - are subject to the social security law of the sending state, which they normally verify with the A1 certificate, they are not obliged to register under social insurance law (on registration obligations under the Posted Worker Act, see Question 44).

49. Do workers posted to Germany receive medical care?

Posted workers are entitled to non-cash benefits when needed, particularly outpatient and in-patient medical treatment and medication, which they are granted under the same conditions as Germans. In this case, the treating physician should be presented with the European medical insurance card as evidence of entitlement, which the posted employee can obtain free of charge from his health insurance company.

The health insurance company in the sending state of the worker posted to Germany bears the treatment costs, if it would also have done so in the state of employment. If the actual costs incurred are higher, the employer or the employee must bear these in keeping with the respective national law. This is why it may be advisable to take out travel cost insurance. Further details on medical treatment abroad are available at the website of the European Commission at:

50. **How is posting supervised to ensure that it is not illicit work and what are the legal consequences?**

Under the Act to Combat Clandestine Employment, the personnel at the Financial Control Section carry out inspections without grounds for suspicion both as spot checks and based on risk assessments. Further information is available, for example, on the homepage of the Federal Customs Administration (www.zoll.de). Inspections are also regularly carried out by the control services of the German statutory pension insurance scheme (http://www.deutscherentenversicherung-bund.de/SharedDocs/Navigation/Service/Zielgruppen/arbeitgeber/Betriebspruefdienst_node.html). In the case of an A1 certificate, the issuing authorities in the state of origin must be involved in the inspection.

If these inspections ascertain that payments have not been correctly made, unpaid contributions are reclaimed by the German statutory pension insurance scheme. The employers must also pay a default fee for the contributions that have not been initially paid properly. Failure to comply with obligations to register and pay contributions by the employer can be punished with a fine (Section 111 of Social Security Code IV). Furthermore, circumventing these obligations can constitute the criminal offence of withholding remuneration for work (Section 266a of the Criminal Code - StGB). Criminal offences here are both withholding employee’s contributions and the failure to pay employer’s contributions.
Annex: Information sources and agencies

Information on Union citizenship, free movement and posting of workers can be found on the pages of the EU Commission. Important pointers on the issue of compulsory social insurance, posting and illicit work are available on the internet pages of the Federal Customs Administration and the German statutory pension insurance scheme. In the following, we first cite helpful booklets that contain more details on the individual topics (A). Contact addresses and phone numbers are then provided for obtaining further information (B).

A. Information and booklets

Information from the European Commission

Internet portal, Your Europe, for citizens and companies on living, working and travelling in the EU
http://ec.europa.eu/youreurope/

General information on social security
http://ec.europa.eu/social/main.jsp?catId=26&langId=en

General information on posted workers

General information on health care in the EU
http://ec.europa.eu/social/main.jsp?langId=en&catId=859

Booklet: Finding a job in Europe – a guide for jobseekers
http://ec.europa.eu/social/BlobServlet?docId=5658&langId=en

Booklet: Freedom to move and live in Europe
http://ec.europa.eu/justice/policies/citizenship/movement/policies_citizenship_movement_en.htm
Annex: Information sources and agencies

Booklet: EU provisions on social security  
http://ec.europa.eu/social/BlobServlet?docId=4783&langId=en

Booklet: Social security coordination: work anywhere in Europe:  
http://ec.europa.eu/social/BlobServlet?docId=6224&langId=en

Practical guide: The legislation that applies to workers in the European Union (EU), the European Economic Area (EEA) and in Switzerland.  

Guide on the recognition of qualifications  

Information from the Federal Ministry of Labour and Social Affairs

General information on posted workers:  
http://www.bmas.de/portal/13896/entsendung_von_arbeitnehmern.html

Overview of currently applicable sectoral minimum wages  
http://www.bmas.de/portal/37846/2010_11_01_mindestloehne_aentg_uebersicht.html

Booklet: Labour law – information for employees and employers:  
http://www.bmas.de/portal/9800/arbeitsrecht_a_711.html

Information from the Federal Employment Agency

JOBBÖRSE
On the homepage of the Federal Employment Agency, jobseekers can search for published job offers by employers from Germany under the category, JOBBÖRSE, and enter their own applicant profile. Added to this, they can register as a jobseeker at the Federal Employment Agency.  
Information from the International Placement Services (ZAV) on employment and jobseeking in Germany

Information on hiring out temporary workers/temporary work

Information from the Federal Customs Administration

Information on posted workers to Germany, particularly on obligations to register and minimum working conditions
www.zoll.de

Information from the German statutory pension insurance scheme

Information on pensions and foreign countries
http://www.deutsche-rentenversicherung.de/SharedDocs/de/Navigation/Rente/Ausland_Rente_node.html

Information on registration under social insurance law and government audit inspections
Booklet: Living and working in Europe

**German Liaison Agency Health Insurance – International (DVKA)**

General information on international health insurance, particularly leaflet for frontier workers working in Germany and living in another EU country
http://www.dvka.de/oeffentlicheSeiten/DVKA.htm

**B. Advice and contact**

**European Commission**

*Europe direct*
Europe direct is a general information service for Union citizens, including on travel, stay and work. It also offers free advice for all Union citizens by telephone on all questions to do with Union citizenship and the exercise of fundamental freedoms.

Online enquiries:

Telephone enquiries: 00800-67891011 (free of charge from all EU countries)
Contact

A list of contact persons in the member states is available at:
http://ednetwork.ec.europa.eu/contacts-directory
EURES
EURES is a cooperation network of the European Commission, the public employment services of the EEA member states (EU member states plus Norway, Iceland and Liechtenstein) and other partner organisations. Its task is to provide information, advice and placement services (matching job vacancies and jobseekers) for workers and employers and all citizens in general seeking to avail themselves of the right of free movement.

Online enquiries on EURES services:
empl-eures@ec.europa.eu
Telephone enquiries: 00800 40804080 (free of charge from all EU countries);
Estonia: 800 00 32 113
Greece: 00800 3222112
Poland: 00800 3211348
Romania: 0800 895207

EURES advisers in the respective state of origin or destination can be contacted via the online search form:

Federal Ministry of Labour and Social Affairs

Online enquiries:
http://www.bmas.de/portal/16748/kontakt.html

Hotline:
01805 / 67 67 10 (pensions)
01805 / 676712 (labour market policy)
01805 / 676713 (labour law)
Charge: EUR 0.14 per minute from the German fixed network, mobile phone maximum EUR 0.42 per minute
Federal Employment Agency

Online form for questions on Jobbörse services:  
http://www.arbeitsagentur.de/SiteGlobals/Forms/Kontaktformular/Rubrik/Fragen-Jobboerse/FragenJobboerse.html

General telephone information:  
01801/555111 (employees);  
01801/664466 (employers);  
Charge: fixed-network price 39 ct/min; mobile prices maximum 42 ct/min

International Placement Services (ZAV)  
Enquiries by email: zav-bonn@arbeitsagentur.de  
Telephone enquiries: 0228-7130  
Postal address: International Placement Services (ZAV)  
Villeombler Str. 76, D - 53123 Bonn

German statutory pension insurance scheme

Email: drv@drv-bund.de  
Service telephone: 0800-10004800  
Postal address: German Federal Pension Insurance, 10704 Berlin

Federal Customs Administration

Enquiries by email: poststelle@bfdw.bfinv.de  
Telephone enquiries: 0221/22255-0  
Postal address: Federal Customs Administration West, Wörthstraße 1-3,  
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