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Legal and institutional incentives for undocumented work in private households in Germany: Stocktaking and problem-solving approaches

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Arbeitspapier **238**



Karin Gottschall | Manuela Schwarzkopf
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incentives for undocumented
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Stocktaking and problem-solving approaches¹

**Undocumented work in private households in
Germany**

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Abbreviations

In Germany, laws and regulations are identified by sets of initials. These are shown below for the texts cited in this study, together with various other abbreviations.

AEntG	Gesetz über zwingende Arbeitsbedingungen für grenzüberschreitend entsandte und für regelmäßig im Inland beschäftigte Arbeitnehmer und Arbeitnehmerinnen (Arbeitnehmer-Entsendegesetz) <i>Law on obligatory working conditions for workers dispatched across borders and for employees regularly working within the country (Dispatched Worker Act)</i>
ArGV	Verordnung über die Arbeitsgenehmigung für ausländische Arbeitnehmer (Arbeitsgenehmigungsverordnung) <i>Ordinance on work permits for foreign employees (Work Permit Ordinance)</i>
AsylbLG	Asylbewerberleistungsgesetz <i>Asylum Seeker Benefits Act</i>
AsylVfG	Asylverfahrensgesetz <i>Asylum Procedure Act</i>
AufenthG	Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet (Aufenthaltsgesetz) <i>Law on the residency, gainful occupation and integration of foreigners in the federal territory (Residency Act)</i>
BA	Bundesagentur für Arbeit <i>Federal Labour Agency</i>
BEEG	Gesetz zum Elterngeld und zur Elternzeit (Bundeselterngeld- und Elternzeitgesetz) <i>Law on parental benefits and parental leave (Federal Parental Benefits and Parental Leave Act)</i>
BeschV	Verordnung über die Zulassung von neu einreisenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverordnung) <i>Ordinance on the authorisation of newly immigrating foreigners to take employment (Employment Ordinance)</i>
BeschVerfV	Verordnung über das Verfahren und die Zulassung von im Inland lebenden Ausländern zur Ausübung einer Beschäftigung (Beschäftigungsverfahrensverordnung) <i>Ordinance on the procedure and authorisation of foreigners living within the country to take employment (Employment Procedure Ordinance)</i>
BKGG	Bundeskindergeldgesetz <i>Federal Child Benefits Act</i>

BMAS	Bundesministerium für Arbeit und Soziales <i>Federal Ministry of Labour and Social Affairs</i>
BMF	Bundesministerium der Finanzen <i>Federal Ministry of Finance</i>
BMFSFJ	Bundesministerium für Familie, Senioren, Frauen und Jugend <i>Federal Ministry for the Family, Senior Citizens, Women and Youth</i>
EStG	Einkommensteuergesetz <i>Income Tax Act</i>
EU	European Union
MiArbG	Gesetz über die Festsetzung von Mindestarbeitsbedingungen (Mindestarbeitsbedingungengesetz) <i>Law on the setting of minimum working conditions (Minimum Working Conditions Act)</i>
SchwarzArbG	Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung (Schwarzarbeitsbekämpfungsgesetz) <i>Law to combat undeclared work and illegal employment (Undeclared Work Prevention Act)</i>
SGB	Sozialgesetzbuch <i>Social Security Statute Book</i>
SGB II	Sozialgesetzbuch Zweites Buch – Grundsicherung für Arbeit-suchende <i>Social Security Statute Book, Vol. 2 – Basic Benefits for Jobseekers</i>
SGB III	Sozialgesetzbuch Drittes Buch – Arbeitsförderung <i>Social Security Statute Book, Vol. 3 – Employment Promotion</i>
SGB IV	Sozialgesetzbuch Viertes Buch – Gemeinsame Vorschriften für die Sozialversicherung <i>Social Security Statute Book, Vol. 4 – Joint Social Insurance Regulations</i>
SGB VI	Sozialgesetzbuch Sechstes Buch – Gesetzliche Rentenversicherung <i>Social Security Statute Book, Vol. 6 – Statutory Pension Insurance</i>
SGB VIII	Sozialgesetzbuch Achtes Buch – Kinder- und Jugendhilfe <i>Social Security Statute Book, Vol. 8 – Assistance to Children and Young People</i>
SGB XI	Sozialgesetzbuch Elftes Buch – Soziale Pflegeversicherung <i>Social Security Statute Book, Vol. 11 – Social Care Insurance</i>
SGB XII	Sozialgesetzbuch Zwölftes Buch – Sozialhilfe <i>Social Security Statute Book, Vol. 12 – Social Assistance</i>
G-SOEP	Sozio-oekonomisches Panel <i>Socio-Economic Panel</i>

Tables

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1 Introduction

In the past, the demand for support in carrying out necessary domestic and family tasks has constantly increased, as has the use of the relevant services on offer. The central factor in this development is held to be women's growing participation in the labour market.² When women take paid employment, by wish and/or out of economic necessity, the time resources available for the performance of the necessary household tasks, as well as for looking after children or relatives in need of care, are necessarily reduced. These activities have been traditionally carried out by women without remuneration. At the same time, there is an increase in the number of older people and people with disabilities who, despite physical limitations and restricted mobility, live in their own households and need support in dealing with everyday life.³ These developments are leading to an increasing need for alternative care provision, including a demand for what are termed "domestic services".

Definition: domestic services

Generally, this term is taken to cover all activities that usually are (or could be) performed by members of the household themselves, without remuneration, but which are carried out *within and for* the private household by persons who are paid to do so and are not members of the household.⁴ In particular, this applies to household tasks like house cleaning or washing and ironing, but also personal services such as childcare and support for people who have disabilities, are elderly or are in need of care. Not usually included are any tasks performed outside the household, for example in institutions, on wards, or in enterprises such as laundries.

In relation to those providing domestic services, households can operate in various ways. They may, as clients, buy the required services from firms – for example, a family member needing care may be looked after by a mobile care service. But they may also function as employers or even have staff who take on the employer role. The present study focuses on domestic services in which the user takes the *employer role*⁵ (the employer model), as undocumented employment in private households takes place in a context of direct contractual relations between the private household and the person employed. Services for which the user has client status are covered here only as supplementary information.

2 cf. i.a. Bundesregierung 2007, p. 111; BMFSFJ 2006, p. 92.

3 cf. Bundesregierung 2007, p. 9.

4 cf. Eichhorst/Tobsch 2008, p. 1.

5 In that respect, it would be more appropriate to speak of "domestic employment relationships", as the Income Tax Act does (cf. § 35a EStG and Federal Ministry of Finance 2007). But as the expression "domestic services" has come to prevail in specialist circles, it has also been used here.

Employment in private households

The role of employer entails declaration requirements and compulsory contribution payments, which the great majority of private households have not so far fulfilled. According to the Cologne Institute for Economic Research (Institut der Deutschen Wirtschaft Köln), some 4.5m households in Germany currently employ home helps, 95% of whom are not declared.⁶ Whether declared or not, domestic services, like private unpaid work in households and families, are in the great majority of cases performed by women. About nine out of ten of the *declared* employees are female and 90% of them have German nationality (cf. Ch. 2.1). It is assumed that the *undeclared* employment is also mainly by women, but in this case more often by women who do not possess German nationality. Also, particularly in the field of time-intensive work with people in need of care, these workers often lack work permits and/or residence permits.⁷ As a result of this “double illegality”, their living and working conditions are often especially precarious. Due to the high number of unregistered and thus unprotected employment relationships, the domestic services sector is also seen by the Federal Government as a “blackish-grey, deregulated and precarious labour market”⁸.

Policy aims

Increasingly, domestic services are attracting political attention – and not only due to these often precarious working conditions. While so-called “cash-in-hand work”⁹ is being combated, for reasons of good order and tax revenue, at the same time the expansion of domestic services is being promoted due to considerations of labour, social and family policy. Given the social and demographic developments, the sector is thought to have considerable employment potential¹⁰, which ought to be exploited through various policy measures. In particular, improved tax-deductibility is to be used to boost overall demand for domestic services, while the employer model in particular is to be promoted through what is termed a “household cheque scheme”, allowing for reduced social contributions and taxes and a simplified registration procedure. At the same time, provision of domestic services is intended to enable women and men who have care responsibilities to take up (or expand) an occupational activity.¹¹ Moreover, domestic services are seen as having “essential significance for the realisation of social rights [and] the protection of human dignity”¹², as they can enable older people and disabled people needing care or assistance to lead a (more) autonomous life.

6 cf. Institut der Deutschen Wirtschaft Köln 2009.

7 cf. Lutz 2007b, p. 23; BMFSFJ 2006, p. 92.

8 cf. BMFSFJ 2006, p. 92.

9 See footnote 16.

10 cf. Bundesregierung 2007, p. 6.

11 cf. Bundesregierung 2007, p. 7.

12 Bundesregierung 2007, p. 69.

Aims of this study

However, the policy efforts seem to be accompanied by different sets of interests on the part of the employees and of the private households, as the large proportion of undeclared employment shows. To date, little research has been conducted into their specific interests, even though domestic services have been a particularly frequent subject of scientific study in recent years. But these studies tend to focus mainly on the new demand for domestic services as a result of women's increasing labour market activity, and on the growing number of people requiring care¹³. Or else they concentrate on the particularly precarious social situation of the doubly illegalised migrants among these employees¹⁴. As the "invisible servant class", these migrants are portrayed as living and working – indeed, having to live and work – under "quasi-feudal conditions"¹⁵. Despite the considerable potential for precarisation that is associated with undocumented employment, the employees as well as the private households show great interest in this form of employment. It may be supposed that the interests of both sides are highly heterogeneous and that legal provisions represent particular stimulus structures for this phenomenon. The interests of the private households, and particularly of the employees, in undeclared employment relationships have not been studied so far. Nor have the possible legal and institutional incentives for particular ranges of interest, and yet these are of growing importance. Given the increasing needs for domestic services, issues of organisation and regulation are becoming more acute.

Structure

That is the starting point of the present study. The aim is to identify legal regulations that, particularly from the employees' point of view, provide incentives for preferring an *undeclared* job. To that end, the study first takes stock, on an empirical basis, of the extent and structure of employment in private households (Ch. 2). A further chapter describes private households' needs for domestic services, as well as the possibilities and particularly the problems they have in meeting those needs by official means. It thus also sheds light on private households' interest in undeclared employment (Ch. 3). This is followed by an analysis of the main legal provisions on social security, taxation, labour and residency that could, from the employees' point of view, provide incentives for preferring undeclared employment (Ch. 4). From this are deduced the characteristics of the groups for whom undeclared employment could be particularly attractive or could even be the only possibility of securing gainful employment (Ch. 5). Finally, after a summary of the results (Ch. 6), approaches are outlined that seem likely to increase the interest of both the contracting parties in having a declared employment relationship (Ch. 7).

13 cf. i.a. Enste et al. 2009, Neuhaus et al. 2009, Herdt et al. 2008, Trabert 2008.

14 cf. i.a. Lutz 2007b, Gather et al. 2002.

15 cf. Rerrich 2009.

Definition: undocumented employment¹⁶

The subject of the present study is “undocumented employment in private households”. The term “undocumented employment” is used to *situate* a job in a specific sector of the unofficial economy – the undocumented or “shadow” economy. The chief manifestations of employment in the undocumented sector are “cash-in-hand work” and “illegal employment”. In both cases, intrinsically legal services or goods are illegally performed or produced. Often, the terms are treated as synonyms, but the Law to combat undeclared work and illegal employment (SchwarzArbG) does distinguish between these two forms. In terms of this legislation, *cash-in-hand work* occurs particularly when employers cause work to be carried out without fulfilling their obligations of declaration or payment as regards social insurance and taxation, and also when social benefit recipients do not declare to the social benefits provider, or do not fully declare, their employment or the income gained from it (Clause 1 Para. 2 SchwarzArbG).¹⁷ *Illegal employment*, on the other hand, occurs particularly when foreigners without a work permit and/or rights of residence are employed or pursue gainful employment (Clause 2 Para.1 SchwarzArbG in conjunction with Clause 284 SGB III and/or Clause 4 AEntG).¹⁸

The present study examines undocumented employment in private households as manifested specifically in “cash-in-hand work” and “illegal employment”. However, as these two terms have discriminatory and criminalising connotations, particularly in everyday usage, they will be avoided here. Instead, drawing on the European Union’s value-neutral term “undeclared work”, this study will speak of “undeclared employment” or “undocumented employment”.

16 A more literal translation of the German phrase would be irregular employment. However, as the English expressions *irregular employment* and *regular employment* are ambiguous, the terms *undocumented employment* and *documented employment* have been preferred throughout. The German terms *nicht angemeldete Beschäftigung* and *angemeldete Beschäftigung* have been translated respectively as *undeclared employment* and *declared employment*. The phrase *cash-in-hand work* has generally been used to translate the German word *Schwarzarbeit*. But as the study explains, the German term is defined in law and a distinction is made, in some contexts, between *Schwarzarbeit* and *illegale Beschäftigung* (illegal employment). For the reasons set out in the main text, the study mostly avoids using the terms *Schwarzarbeit* and *illegale Beschäftigung*.

17 Cash-in-hand work (*Schwarzarbeit*) is also held to have taken place in cases of non-compliance with the declaration and registration requirements in the laws governing crafts and trades.

18 Illegal employment is also held to have taken place when, in the case of the employment of foreigners, the working conditions (Clause 23 AEntG) or minimum wages (Clause 18 MiArbG) that have been determined by collective agreement or by ordinance are not respected.

2 Extent and structure of employment in private households

As current data show, many private households make use of domestic services. By its nature, the precise share of undocumented employment in this cannot be determined. However, estimates suggest that it is considerable. The usual way of estimating this is to compare official statistical data on employees in private households (Ch. 2.1) with survey data on people working in private households and/or on private households that employ home helps (Ch. 2.2). The difference between the two is then taken to be the undocumented employment. On that basis, the number of documented employees has considerably increased in recent years, but as a proportion of all employees they still seem to be very few in number. The implication is that the level of undocumented employment in private households is high.

Problems of method

Methodologically, this procedure is not without its problems, for two reasons:

Firstly, not all those working for payment in private households are in declarable occupations. An unquantifiable proportion of them provide traditional types of neighbourly help, for which they may happen to receive some kind of “expenses”. As long as these tasks are not performed regularly and their aim is not sustained income generation, there is no requirement to declare them.¹⁹

Secondly, the number of households employing a home help cannot be equated with the number of home helps employed, as some of them work in several households.

Both of these factors will bring down the number of employees who are actually *required* to be declared and will thus reduce, by an unquantifiable amount, the extent of undocumented employment. This should be borne in mind when interpreting the data.

Problems of definition

One source of figures on employment in private households is the official statistics. The centrally held employment statistics break the employee figures down by sector. The basis for this is the German Classification of Economic Activities.²⁰ In the subsection “Activities of households as employers of domestic personnel”²¹, the households

19 cf. Deutsche Rentenversicherung K-B-S 2009, p. 6.

20 The German Classification of Economic Activities is based on European and international statistical systems (cf. Statistisches Bundesamt 2008, p. 3). In the period 2003-2007, the 2003 Classification applied. Since then, the 2008 Classification has been used.

21 The reference numbers for this section differ between the two editions of the Classification (P-95 in 2003; T-97 in 2008). However, in the two cases, the definitions for the activities and employee groups covered by the present study are identical, and to that extent the data are comparable.

concerned do employ staff who perform domestic services within the meaning of the present study – for example, cooks and educators. Also covered, however, are other occupational groups such as doorkeepers and stablehands.²² So the group of employees covered is, to an unquantifiable degree, bigger than the group of employees who perform domestic services within the meaning of the present study. In the interests of a precise description of the extent and structure of employment within private households, drawing on the available empirical data, this fuzziness has had to be accepted here.

2.1 Documented employment in private households – more of an exception

Documented employment can take place in the context of employment relationships that are subject to social contributions, but also those that count as “marginal employment”²³. Reliable information on the number of employees subject to social contributions is provided by the registration data of the Federal Labour Agency (BA), which is the registration authority responsible for gathering this information. However, employees in minor jobs are declarable to the Minijob Centre. In the statistics kept by the Minijob Centre, a distinction is made between those engaged in trades and those in domestic services. The latter, known as “minijobbers in private households”, are declared under the household cheque scheme²⁴, and they perform domestic services within the meaning of the present study.

The following description of the extent and structure of documented employees in private households is prestructured by the publicly available data and covers the period from June 2003 (first data after the introduction of the household cheque scheme) up to the present cut-off date (June 2009).

Employees subject to social insurance contributions

On 30 June 2009, there were 36,056 employees subject to social contributions declared as employed in private households (see Table 1). The overwhelming majority of these employees were living in Western Germany (93%), were female (88%) and had German nationality (83%).

²² cf. Statistisches Bundesamt 2008, p. 554.

²³ In Germany, “marginal employment” (*geringfügige Beschäftigung*) is a specific category, characterised by a remuneration of 400 euro maximum per month and a dispensation from social contributions by the employee. These employment situations are also known as “minijobs”. The word “marginal” is used in this specific sense throughout the English translation of this study.

²⁴ As part of the Second Law for Modern Services on the Labour Market (Hartz II), the regulations governing minor employment relationships were changed, with effect from 1 April 2003. In order to promote the provision of domestic services in the form of marginal employment relationships, the household cheque scheme was introduced, with reduced obligations as regards declaration and contributions (see Ch. 3.2.2).

Table 1: Employees subject to social insurance contributions, in private households, by region, gender and nationality, 2003 and 2009

	30 June 2003		30 June 2009		Change 2009/2003
	Absolute	Column %	Absolute	Column %	%
Employees subject to social insurance contributions, in private households	34,008	100.0	36,056	100.0	6.0
by region					
- Western Germany	31,665	93.1	33,475	92.8	5.7
- Eastern Germany	2,343	6.9	2,581	7.2	10.2
by gender					
- Women	29,321	86.2	31,588	87.6	7.7
- Men	4,687	13.8	4,468	12.4	-4.7
by nationality					
- with German nationality	30,602	90.0	30,008	83.2	-1.9
- without German nationality	3,375	9.9	6,026	16.7	78.5

Sources: Bundesagentur für Arbeit n.d.-c; authors' calculations and presentation.

In comparison with 30 June 2003, over 2,000 more (+ 6%) employees subject to social contributions were declared. The increase in the number of employees occurred only for women and for employees without German nationality. For the latter group, due to the low *absolute* initial figure, a large *relative* increase of almost 80% is seen. So their share of all employees rises by almost 7 percentage points to almost 17%.

Marginal employment

With employee figures rising from 34,000 to about 200,000, the development of marginal employment in private households over the same period was far above the average (+ 495%, see Table 2), both in comparison to the employment subject to social insurance contributions in this sector (+ 6%) and in comparison to marginal employment as a whole (+ 30%)²⁵. As the data from the Minijob Centre show, the increase, in both absolute and relative terms, occurred mainly in the field of minijobs in private households (+ 584%).

²⁵ Between June 2003 and June 2009, the overall number of those in marginal employment rose from 5.533m to 7.192m, cf. Bundesagentur für Arbeit n.d.-b.

Table 2: Marginally employed workers in private households, by occupational category, 2003 and 2009

	30 June 2003		30 June 2009		Change 2009/2003
	Absolute	Column %	Absolute	Column %	%
Marginally employed workers in private households	33,648	100.0	200,207	100.0	495.0
- in the trades category	5,831	17.3	9,829	4.9	68.6
- in domestic services (minijobbers in private households)	27,817	82.7	190,378	95.1	584.4

Sources: Bundesknappschaft n.d, Deutsche Rentenversicherung K-B-S n.d.- b; authors' calculations and presentation.

The growth in minijobbers within private households varies by region, gender and nationality (see Table 3). A disproportionately strong rise is seen for the Eastern Germans (+ 697%) and for men (+ 829%). However, as the initial absolute level was low in both cases, their share of all employees remains slight. About nine out of ten employees still live in Western Germany, are female and have German nationality. So in these respects, the structure for minijobbers in private households is comparable to that for the employees subject to social insurance contributions.

Table 3: Minijobbers in private households, by region, gender and nationality, 2003 and 2009

	30 June 2003		30 June 2009		Change 2009/2003
	Absolute	Column %	Absolute	Column %	%
Minijobbers in private households	27,817	100.0	190,378	100.0	584.4
by region					
- Western Germany	25,761	92.6	173,985	91.4	575.4
- Eastern Germany	2,056	7.4	16,393	8.6	697.3
by gender					
- women	26,136	94.0	174,754	91.8	568.6
- men	1,681	6.0	15,624	8.2	829.4
by nationality					
- with German nationality	23,961	86.1	164,881	86.6	588.1
- without German nationality	3,856	13.9	25,497	13.4	561.2

Sources: Bundesknappschaft n.d, Deutsche Rentenversicherung KBS n.d.-b; authors' calculations and presentation.

The positive evolution in the field of documented employment in private households is essentially due to the introduction of the household cheque scheme, with its reduced declaration and contribution requirements. However, the high number of newly declared employees is probably attributable not so much to the filling of additionally created jobs as to the legalisation of existing undocumented employment relationships, since interpretation of other statistical data, notably the national accounts (see Table 4), does not point to any sudden leap in the number of minijobs in private households.²⁶ Already becoming apparent here is the influence of legal regulations on the actions of those concerned.

2.2 The core issue: undeclared employment relationships

Despite the positive developments on documented employment, these are clearly still not relevant to the overall employment system within private households, as the following representative statistics show. Undocumented employment is still far and away the most prevalent employment type.

The main sources for the number of *employees* in private households are the microcensus and the national accounts. The microcensus is a representative survey of the population, and amongst other things it asks about all activities that are carried out in return for remuneration.²⁷ On the other hand, the calculation of the gainfully employed within the national accounts draws on about 50 different sources of employment statistics, including the registry data from the Federal Labour Agency and the results of the microcensus.²⁸

A further main source is the annual panel survey of *households* within the framework of the German Socio-Economic Panel (G-SOEP). This provides details of the demand situation in the households surveyed, by asking about the employment of home helps. A comprehensive evaluation of the 2006 survey has been made by Enste et al.²⁹

Employees in private households

A comparison of the data from the Federal Labour Agency/Minijob Centre, the microcensus and the national accounts shows considerable quantitative differences regarding employees in private households (see Table 4). Whereas in 2008, the registry data from the Federal Employment Agency/Minijob Centre showed 217,000 employees, and so more or less agreed with the microcensus data, the national accounts gave a figure of 707,000 employees in private households – more than three times as many. The explanation for these considerable differences between the microcensus and the national

26 cf. Schupp et al. 2006, p. 48.

27 cf. Statistisches Bundesamt 2009b.

28 cf. Statistisches Bundesamt 2009e.

29 cf. Enste et al. 2009.

accounts is that marginal employment relationships are underreported in the microcensus. One reason is that some of the employees were, subjectively or objectively, in the grey area around undocumented employment, and therefore kept quiet about this when interviewed.³⁰

Table 4: Employees in private households in Germany, 2003 and 2008, according to various sources

	2003	2008	Change 2008/2003	
	Absolute	Absolute	Absolute	%
Federal Labour Agency/Bundesknappschaft ³¹ or Deutsche Rentenversicherung* (31 December)	81,000	217,000	136,000	167.9
Microcensus (annual average)	138,000	216,000	78,000	56.5
National accounts (annual average)	648,000	707,000	59,000	9.1

* The German statutory pension insurance scheme: employees subject to social insurance contributions and marginally employed workers.

Sources: Bundesagentur für Arbeit n.d.-c, Bundesknappschaft n.d, Deutsche Rentenversicherung K-B-S n.d.- a; Statistisches Bundesamt 2004, Statistisches Bundesamt 2009c; Statistisches Bundesamt 2009e; authors' calculations and presentation.

Assuming that the difference between the Federal Labour Agency/Minijob Centre data and the national accounts data represents the extent of undocumented employment, this would imply about half a million undocumented employees in private households, and the proportion of undocumented employees would be about 70%.

Private households employing a home help

In the G-SOEP household survey, the question asked about the employment of an outside person for the performance of services in the household was “Do you regularly or occasionally employ a cleaner or home help in your household?” and the response options were “Yes, occasionally”, “Yes, regularly” or “No”.

30 Other reasons cited for this underreporting are:

- Some groups did not intuitively regard themselves as gainfully employed, but instead identified with their main social status, for example as students or pensioners.
- The dividing line between marginal employment, within the meaning of the Social Security Statute Book (SGB), and activities that go beyond marginality was not clear to many of those interviewed.

Cf. Statistisches Bundesamt 2009d, p. 7f.

31 The *Knappschaften* are miners' mutual aid fraternities dating back to the thirteenth century. They later became the social insurers for the German mining industry. Since 2005, the Bundesknappschaft (Federal Knappschaft) has run the Minijob Centre, and is responsible for collecting all social contributions paid on behalf of workers in marginal employment relationships. Also in 2005, the Bundesknappschaft merged with rail and maritime industry social insurers to form what is now known as the KBS (Knappschaft Bahn See).

The 2006 survey results showed that 4.36m or just under 11% of all households in Germany employed a home help, of which 2.67m (61%) regularly and a further 1.69m (39%) occasionally.³² Overall, households tend to use home helps sparingly in terms of time – on average, 4.7 hours a week.³³ A considerable gap of 2.5m is seen between the number of declared employees (2006: 176,000) and that of the households that reported employing a household help *regularly* (2006: 2.67m). If the number of households with home helps were equated with the number of employees, the share of undocumented employees would be around 92%. If reference were made to *all* households with home helps³⁴ (4.36m), the gap would grow to almost 4.2m, and the share of undocumented employees to 95%, which would correspond to common estimates.³⁵

In the nature of things, no hard and fast data on the structure of the undeclared employment are available. There are, however, grounds for supposing that here too, most of those concerned are women – but including a higher number of migrants, both with and without German nationality, who have come to Germany mainly from Eastern Europe, but also from Latin America, Asia and Africa.³⁶ The great majority have legalised their residency status, but some are living doubly illegal lives in Germany.

32 cf. Enste et al. 2009, p. 25.

33 cf. Enste et al. 2009, p. 38.

34 cf. Ch. 2: Problems of method.

35 cf. i.a. Enste et al. 2009, p. 11.

36 cf. Lutz 2007a, p. 555.

3 Private households: needs for, and interest in domestic services

As the G-SOEP data show, there is a high demand for regular or occasional home helps, and thus a high need for domestic services. However, this is clearly met mainly through undocumented employment. This has to do with the fact that households' varying need situations (Ch. 3.1) cannot be adequately met through documented service offers or employment relationships (Ch. 3.2). For this and other reasons, undocumented employment is an attractive alternative for private households, and in some cases it is the only possible way of meeting their individual needs for support in the household and the family (Ch. 3.3). It may also be seen that, despite the households' very different need situations, comparable requirements are made of the employees. These requirements are characterised by complexity and a high degree of competence going beyond the formal skills of this occupation – notably social competence, in order to respond flexibly and sensitively to the user's individual needs.

3.1 Need situations in private households

Various studies already exist on the (potential) need for domestic services and on the use that is actually made of them.³⁷ They suggest that support is most strongly wished³⁸, and indeed sought within the framework of minijobs³⁹, for home cleaning, washing and ironing, tending to those with care needs and – to a much lesser extent – looking after children, and gardening. What emerges is that private households' needs as regards support for necessary household and family tasks are heterogeneous and depend in particular on individual domestic and occupational situations. Typical demand groups can, however, be identified: elderly households, with or without people requiring care, and the gainfully employed, with or without children.⁴⁰ Their domestic services needs are outlined below, together with the resulting demands on the service providers' availability in terms of time. As the qualification requirements, independently of the different demand groups' specific needs, are largely comparable, they are described in a separate section, in order to avoid overlaps.

All demand groups: need for domestic services

All demand groups have particular interests in domestic services. For the gainfully employed, with or without children, the emphasis is on more or less extensive relief from

37 cf. Geissler 2010, Deutsche Rentenversicherung K-B-S 2009, Enste et al. 2009, Neuhaus et al. 2009, BMFSFJ 2008.

38 cf. BMFSFJ 2008, p. 31f, Deutsche Rentenversicherung K-B-S 2009, p. 11.

39 cf. BMFSFJ 2007, p. 7.

40 cf. i.a. Enste et al. 2009, p. 25ff, BMFSFJ 2008.

(generally disliked) housework, so gaining additional time for their job and/or family. Older people, on the other hand, often need support in everyday life, due to limitations caused by age or illness. Domestic tasks delegated to a home help can be defined in concrete terms and are performable at agreed times and within normal working hours.

Gainfully employed couples with children: need for childcare

As well as relief from housework, a more or less extensive need for childcare may also exist, depending on the parents' hours of work and the children's ages. This cover is required between the end of the children's day in facilities such as kindergartens and schools and the time of the parents' return from work. Given a still highly inadequate child-minding infrastructure, at least in Western Germany, together with the increased demands being made of gainfully employed people as regards flexibility of both time and place, very different childcare needs can exist here. They can range from a few fixed hours per week all the way up to comprehensive care in the afternoon, evening and night and also at weekends. In addition, the care may have to be adjustable at short notice, to fit in with the parents' flexible professional lives.

Older people: need for care support

The largest group among the households requiring support – about half of all the households that regularly employ a home help – consists of elderly people living either alone or as couples. Alongside the housekeeping support, additional needs may arise for help in everyday life, for example with body care, dressing and undressing, and meal preparation. The type and extent of need varies greatly in line with the level of everyday competences still retained and the availability of family support. If the care needs are profound, comprehensive support will generally be required in all areas of everyday life, and a carer will have to be permanently present or on call.⁴¹ This also applies to people with dementia, although in their case, the carer's presence will also be needed to prevent self-endangerment – for example, a risk could arise if a person goes out while disoriented. To ensure the necessary 24-hour support, the service providers have to show maximum flexibility about hours, and they must be prepared to work nights and weekends. When the needs are so comprehensive and include intimate care, many users find it important that the services required should not be performed by a whole series of different people. Rather, they look for staffing continuity, with *one* person carrying out *all* the necessary tasks over a certain period – several days, weeks or even months.⁴²

41 cf. Neuhaus et al. 2009, p. 52.

42 cf. Schmidt 2006.

Demands upon service providers

Despite households' highly heterogeneous needs, the demands made of the service providers are comparable, and they are anything but slight.⁴³ As with other person-centred services, physical resilience "is required for cooking, cleaning and particularly caring and tending, but so are many other competences: management skills, a conscientious approach, empathy, patience, endurance, a high frustration threshold, a sense of perspective, discipline, self-appraisal, emotional intelligence and feats of memory"⁴⁴. Moreover, a particular feature of domestic services is that, by crossing the threshold of the user's home, the provider enters a realm of privacy. This requires trust-based forms of behaviour, marked by understanding for users' values and lifestyles, and respect for their habits and feelings, as well as discretion and confidentiality.⁴⁵ All in all, domestic services are demanding activities. Although they do not generally require special vocational training, they do demand wide-ranging knowledge and abilities, together with social competences in particular, in order to respond adequately to the users' highly heterogeneous and sometimes fast-changing individual needs.

3.2 Meeting the needs through documented work: possibilities and problems

Corresponding to the different need situations of the various demand groups are differing possibilities for meeting those needs. Private households can choose between two fundamentally different variants, each of which has specific advantages and drawbacks:

One option is to buy in the services they want, from enterprises such as service agencies or mobile care firms, and the firm's staff will perform the services on the household's own premises (Ch. 3.2.1). Here, the private household acts as the client, who is billed for the service rendered but is not otherwise involved in staffing and administrative matters. The main disadvantage of this way of meeting needs is the higher costs, as in addition to the staffing costs, the firms' overheads are factored into the bill. Also, the user generally has little influence over the choice of the staff deployed.

Or else private households can act as employers and take on staff themselves. This enables them to make their own choice of a person who seems suitable, as well as permitting more individual agreements about the tasks to be carried out (Ch. 3.2.2). The services sought can thus be more closely adjusted to the needs and can generally also be performed at lower cost, as there is room for negotiation on the agreed compensation and there are no other enterprise overheads to be taken into account. Depending on the

43 cf. i.a. Geissler 2006, Schupp et al. 2006, Hieming et al. 2005, Lutz 2005.

44 Lutz 2005, p. 75.

45 cf. Geissler 2006, p. 8f.

volume of work, this employment will either be subject to social insurance or will be marginal. Each entails greater or lesser duties of declaration and contribution.

3.2.1 Possibilities for meeting the needs through service enterprises

Housekeeping services

Households wishing to have housekeeping tasks performed by service enterprises can turn to a generally extensive offer of mobile care services and service agencies, as well as independent service providers. The costs per hour of service are at least 12 to 15 euro.⁴⁶ If nobody living in the household is in need of care within the meaning of the Social Care Insurance legislation (SGB XI), the costs must be borne entirely out of private resources.

Childcare

Parents seeking a complementary or alternative childcare offer can have their child looked after at home by a day carer. However, the supply of home day care places is often insufficient. The care is individually agreed, so that tailored and possibly also flexible care hours can be arrived at. The costs vary from region to region and depend on the extent of the care. For example in Bavaria, all-day care by a childminder (eight hours a day, five days a week, meals included) costs between 270 and 330 euro per month.⁴⁷ In some circumstances and in cases of low income, the costs can be wholly or partially borne by the municipal youth department (Para. 90 subpara. 3, SGB VIII).

Support for people in need of care

Person-centred services, as required by people in need of care or people with dementia, can also be bought in from service firms, especially mobile care services, in the individually needed or desired quantities ranging right up to 24-hour care. The services are generally provided by a mix of specialised and auxiliary staff, according to the task concerned. Particularly for time-consuming tasks, care users may sometimes be faced with a multiplicity of carers. This practice often runs counter to the users' wish for staff continuity⁴⁸, and it has long been criticised by organisations representing the interests of people with disabilities.⁴⁹ The costs vary considerably according to the care needs of the person concerned. The Consumer Centre in Rheinland-Pfalz puts the cost

46 Online research on independent service providers (approx. 12 euro per hour), and telephone enquiry in late 2009 to a mobile care service run by church social services in Schwelm (15 euro per hour).

47 cf. www.hs-heilbronn.de/imstudium/service/krabbelkiste/infosundtipps/infosundtipps [08/10/2010].

48 cf. Schmidt 2006.

49 cf. Autonom leben e.V., at www.assistenz.org/pflege.html [07/01/2010], click on "Ambulanter Pflegedienst"; see also "Leitbild der Assistenzgenossenschaft" Bremen at www.ag-bremen.de/Downloads/Leitbild_10-09-07.pdf [07/01/2010].

of 24-hour care by a German care service at 2,700 to 3,200 euro minimum per month. However, the costs can be substantially higher than that⁵⁰ and for the heaviest care needs they can rise to 10,000 euro or more.⁵¹

As an alternative to German care services, firms from the Eastern European member states of the European Union (EU) are increasingly offering their services. They send carers to Germany, where they stay in the care users' homes for a few weeks or months as "live-ins". During that time, contrary to German labour regulations, they are available round the clock and provide all the necessary services. In this way, through regular rotation with a second carer, the person needing care receives constant attention but there is also staffing continuity.⁵² The cost of using an East European carer depends on the amount of care needed, the vocational qualifications of the dispatched worker and often also on her proficiency in German. It comes to between 1,200 and 2,400 euro a month, plus board and lodging.⁵³

If people in need of care are members of the social care insurance⁵⁴ and a care need has been recognised, the care insurance bears the costs of the identified need for help and support in "usual and regularly reoccurring tasks in the course of everyday life" (para. 14 subpara. 1, SGB XI). This includes the tasks named at the end of para. 14 subpara. 4, SGB XI, relating to body care, nutrition and mobility (known as basic care) and housekeeping.⁵⁵ If people in need of care use a mobile care service or other provider recognised by the care insurance funds, they may be entitled to care worth up to 1,510 euro a month, depending on the care level, and in cases of hardship up to 1,918 euro per month.⁵⁶ Optionally or facultatively, if they choose unrecognised care services or carers, for example from abroad, they can claim the substantially lower care allowance of 685 euro maximum per month.⁵⁷ Particularly if 24-hour care is needed, a significant

50 cf. Verbraucherzentrale Rheinland-Pfalz 2009.

51 According to a telephone response by the Assistenzgenossenschaft Bremen on 7 January 2010.

52 cf. Neuhaus et al. 2009, p. 85. The legality of this practice is a subject of disagreement among lawyers (see Ch. 4.2.1).

53 cf. Neuhaus et al. 2009, p. 84.

54 German social insurance has five branches: statutory unemployment insurance, statutory pension insurance, statutory health insurance, statutory (occupational) accident insurance and, since 1995, statutory long-term care insurance which provides financial support for those dependent on care and assistance from others.

55 Usual and regularly reoccurring tasks are, according to para. 14 subpara. 4, SGB XI: 1. in the field of body care: washing, showering, bathing, dental hygiene, combing, shaving, and evacuation of the bowels or bladder, 2. in the field of nutrition: the bite-sized preparation or intake of food, 3. in the field of mobility: autonomously getting up and going to bed, dressing and undressing, walking, standing, climbing stairs or exiting and entering the home, 4. in the field of housekeeping: shopping, cooking, cleaning, washing up, changing and washing linen and clothes, or heating.

56 As of 1 January 2010, under para. 36 subpara. 3, SGB XI, the maximum value of care benefits in kind is 440 euro per month for Care Level I (substantial care needs); 1,040 euro for Care Level II (heavy care needs); and 1,510 euro for Care Level III (heaviest care needs, in accordance with para. 15 subpara. 1, SGB XI, entailing a need for care every day, round the clock). Under para. 36 subpara. 4, SGB XI, the care insurance funds can, in particularly situated individual cases, in order to prevent hardship, provide further care interventions to those in need of Level III care, up to a total value of 1,918 euro per month.

57 As of 1 January 2010, the monthly care allowance is 225 euro for Care Level I; 430 euro for Care Level II; and 685 euro for Care Level III. There are no higher payments in cases of hardship.

financial gap remains, which has to be bridged through private means or, in the case of low incomes, through social assistance benefits (care assistance, para. 61ff, SGB XII).

3.2.2 Possibilities for meeting the needs by employing staff

Private households for which the supply structure described is inadequate, insufficiently flexible or too expensive can take on the employer role themselves and hire staff. Depending on the gross monthly wages, the engagement will take the form either of an employment relationship subject to social insurance or one exempt from social insurance – known as a “minijob in private households”. Special employment possibilities exist for households with inhabitants in need of care (home helps in households with inhabitants in need of care) and households with children (au pairs).

Minijobs in private households

Minijobs in private households are marginal employment relationships in which the monthly remuneration does not regularly exceed 400 euro, the employment is exercised entirely within the private household and the activities are habitually performed by members of the household (para. 8a, SGB IV). They are handled under the household cheque scheme, which provides for more favourable treatment of declaration and contribution requirements than in the case of trade minijobs.

The employer pays reduced flat-rate contributions to the statutory health, pension and accident insurance (in 2010: 12.27%), and can also take on the unitary flat tax of 2%. On a wage of 400 euro a month, the employer contributions will total 57.08 euro. On five hours' work a week, the average employment volume in households with home helps, and a wage of 10 euro an hour, there will be, in addition to the net wage costs of 217 euro per month, additionally payable deductions of 30.96 euro.⁵⁸

The administrative burden is relatively light, as the Minijob Centre is the sole collection and declaration point for everything concerning a minijob.

Employment subject to social insurance contributions

If the remuneration regularly exceeds 400 euro a month, an employment relationship subject to social insurance contributions must be established. This entails extensive duties of declaration and contribution.

The employer is liable for the full rate of contribution for all branches of social insurance, currently totalling a good 20% of the gross remuneration. On a gross monthly wage of 600 euro, the additional social insurance costs incurred by the employer

⁵⁸ Calculated at www.minijob-zentrale.de – Haushaltsscheckrechner [12/01/2010].

are about 120 euro per month, while on 1,200 euro gross, they are about 240 euro a month.⁵⁹ As social insurance contributions are also payable by the *employee*, it may be assumed that hourly wage rates will be correspondingly higher, thus further raising costs in comparison with the privileged minijobs.

The duty to declare is also much more extensive, as there is no unitary point of declaration. Instead, various social insurers (the Federal Labour Agency, the health insurance, the accident insurance) plus the Tax Office must receive declarations. The administrative effort needed to meet the requirements for monthly payroll accounting is so great that few private employers would be able to manage it. Rather, they would have to entrust it to a tax adviser.

Special type: home helps in households with people in need of care

Households with inhabitants in need of care, within the meaning of SGB XI, can engage home helps from those East European member states of the EU with which a placement agreement exists.⁶⁰ The overall costs are comparatively low, but the administrative burden is extraordinarily heavy.

The conditions for such hirings are that a person in need of care, within the meaning of SGB XI, is living in the household and that the employment is subject to social insurance and to the working conditions and pay rates determined by the relevant collective agreements or local practice. In addition, the employer must provide appropriate accommodation, which usually means that the home help is lodged within the employer's household. Home helps may be employed to perform household tasks and, since 1 January 2010, also for "necessary everyday care assistance" (para. 21, BeschV). Necessary everyday care assistance is defined as "measures of which anyone is capable without training and which would be expected from family members as a matter of course. These include assistance with body care, nutrition, excretion and mobility"⁶¹.

At a standard wage of around 1,200 euro gross per month (gross pay varies from one collective bargaining area to another) the cost to the employer, including social insurance contributions, comes to just over 1,500 euro per month, minus a flat-rate charge for board and lodging of about 390 euro a month.⁶² If a live-in home help is available round the clock, which would be a breach of labour law (maximum working week: 40 hours) but is probably common practice, this would be a relatively low-cost employment relationship, partly reimbursed by the care insurance through care benefit payments.

59 Calculated at www.dak.de – Gleitzoneurechner [12/01/2010]

60 Placement agreements exist with Poland, the Slovak Republic, Slovenia, the Czech Republic, Hungary, Bulgaria and Romania, cf. Bundesagentur für Arbeit, 2010b, p. 5.

61 Bundesagentur für Arbeit, 2010b, p. 4.

62 cf. Bundesagentur für Arbeit, 2010a, p. 2.

However, the administrative burdens are extraordinarily heavy. In addition to the extensive duties of declaration in respect of employment relationships subject to social insurance contributions (see above), there is a two-stage hiring process to be gone through via the Central Foreign and Specialised Placement Service (ZAV) of the Federal Labour Agency.⁶³ As a rule, this is required for every new employment relationship, so arranging for the fixed-term employment of two home helps in a rotation pattern is correspondingly time-consuming. In that respect, it is not surprising that the number of placement processes, at around 3,000 (data for 2008)⁶⁴ has so far been very low.

Special type: au pairs

For childcare too, live-ins in the form of au pairs can be brought into family households. The overall costs are relatively advantageous, and the administrative burden is extremely light.

Au pairs can be assigned to childcare and light housekeeping tasks for a maximum of 30 hours a week.⁶⁵ As they live in the household, individual and even short-term arrangements can be made about their working times. Their employment as au pairs is restricted to a maximum of one year.

The costs come to around 350 euro a month (260 euro pocket money, health insurance contributions, monthly season ticket for local public transport), plus board and lodging. They have to be financed entirely from private means.

Compared to other types of childminders, au pairs are relatively inexpensive and also very flexible. However, the one-year employment limit for au pairs means that the children who are being looked after must regularly get used to new childminders.

3.3 Summary: private households' interest in undocumented employment

Domestic services are in great demand, but only a small amount of that demand is met through documented employment. The reasons for this are closely linked to the specific modalities that characterise each of the various possibilities for documented employment.

- The documented labour supply of carers, but also of childminders, is not always sufficient and their availability often does not match the needs.

63 If an already selected home help is to be taken on, a placement application has to be made to the ZAV *before* she enters the country. The ZAV then confirms that a work permit will be issued. *After* her arrival in the country, but before she takes up her employment, the employer has to apply to the Federal Labour Agency for her work permit. cf. Bundesagentur für Arbeit, 2010b, p. 6ff.

64 cf. Bundesagentur für Arbeit n.d.-a.

65 cf. Bundesagentur für Arbeit 2009c.

- Particularly in the case of extensive needs, documented care workers entail high costs, most of which have to be paid out of private means. Many older people and parents on limited pensions or earnings would probably not have the financial resources needed for this.
- The bureaucratic burdens associated with employing one's own staff would no doubt be unmanageable for many households. Employment relationships subject to social insurance contributions can usually not be managed by private employers on their own, due to the extraordinarily heavy and complicated administrative burden involved. The household cheque scheme, despite its reduced duties of declaration, is still too demanding in these respects, particularly for older people.
- Many people are unaware that short-term jobs also have to be declared. This is closely linked to problems about where to place the dividing line between “neighbourly help in return for expenses” and gainful employment, particularly when the need for help gradually increases and lengthens over time – from occasional window-cleaning to weekly shopping trips to daily help with preparing meals. Moreover, private householders making use of such work may also not be clear about their duty to declare it if the task concerned is very minor and is carried out in *their* household, whereas the person performing it has several employment relationships of a gainful nature, and every employment relationship must therefore be declared, irrespective of the time spent on each individual job.

4 Legal provisions fostering undocumented employment

For various reasons, as explained, private households have a great interest in employing undocumented labour. But they could not do so unless they had a sufficient supply of workers with a corresponding interest. As the statistical data on undocumented employment show (see Ch. 2), that supply clearly exists. This chapter considers what interests an employee could have in undocumented employment. On the assumption that the purpose of earnings is to improve the earner's economic position, the main legal bases (as the law stood in 2009 or on 01/01/2010) are analysed to see in which life situations which possibilities exist to be gainfully employed and obtain a (side) income.

Major legal differences exist between people with and without German nationality as regards the possibility of taking documented employment.

People with German nationality (or with equivalent status) can generally move around the labour market without any restrictions, either as self-employed workers or as dependent employees. As undocumented work does not give rise to any social security entitlements, further analysis will assume that people in such employment seek out other forms of security and the income from undocumented employment is supplementary income, inasmuch as it is intended to improve the person's overall economic position, which may be precarious. Examined here are the legal bases that govern the possibilities for *supplementary earnings* on top of other incomes, particularly social benefits and occupational earnings, and which, against the backdrop of the specific restrictions and allowance rules, provide particular incentives to engage in undocumented employment (Ch. 4.1).

For *people without German nationality*, on the other hand, the basic legal doctrine is "forbidden unless allowed".⁶⁶ So entry to and residence in Germany, as well as engaging in employment, are prohibited unless explicitly authorised by law or through the granting of the appropriate permit. The possibility of taking up documented employment in Germany varies, depending on the person's country of origin. Examined here are the legal bases that govern *labour market access* and which, because of restrictions in relation to residence permits and work permits, provide particular incentives to engage in undocumented employment (Ch. 4.2).

4.1 People with German nationality

Disincentives to documented employment can arise when additional income reduces the level of social benefits or transfer payments, or triggers additional costs in the form of social contributions or taxes. Important legal bases, examined below, are the

⁶⁶ cf. Sieveking 2007, p. 138.

means-tested social benefits, namely type II unemployment benefit, child supplements, and the basic guaranteed income in old age or in case of reduced work capacity (Ch. 4.1.1); the *wage replacement benefits*, namely type I unemployment benefit, parental allowances and pensions (Ch. 4.1.2); and the *social security and taxation legislation* (Ch. 4.1.3). Of particular interest for this analysis are, as regards social benefits, the *tax threshold* and the *supplementary earnings rules* and, in relation to the laws on social insurance and taxation, the effects on the level of taxes and social contributions.

4.1.1 Means-tested social benefits

All the benefits examined here are strictly means-tested – i.e. prior, extensive depletion of the claimant's own income and wealth, but also those of his/her partner, whether in marriage or a registered life partnership or simply cohabiting "loosely", must have taken place for a benefits claim to become receivable. The benefits are designed as a minimum safety net and the levels are modest. Supplementary income is comprehensively offset, so there are only very limited possibilities for improving one's overall economic position by means of documented side earnings.

Unemployment benefit II (SGB II)

Type II unemployment benefit is paid to people who are of working age, are capable of working and are in need of assistance (para. 7 subpara. 1, SGB II).⁶⁷ The regulation benefit paid to ensure subsistence is flat-rate, and since 1 July 2009 it has been 359 euro per month for persons living alone or single parents, 323 euro each for couples, and between 215 and 287 euro for children, depending on their age. Reasonable rent and heating costs are also met, and the claimant's pension, health and care insurance contributions are paid. In particular cases, extra benefits may be paid to cover regular or one-off additional needs. In September 2009, the average recognised needs for a person living alone came to 635 euro per month.⁶⁸

A supplementary activity is permitted, and no limit is set on the time worked. Type II unemployment benefit is, in principle, also granted to people who are in full-time employment but do not have sufficient income to cover all of their or their family's needs. Supplementary incomes are partially offset after deduction of tax, social contributions and professional expenses (adjusted income) and of a flat-rate allowance of 100 euro (para. 30, SGB II). 20% of the gross income tranche between 100 and 800 euro is dis-

67 People of *working age* are those who have completed their fifteenth year and have not yet reached the age threshold stipulated in para. 7a, SGB II (65–67 years). A person who is *capable of working* is one who is able to engage in gainful employment for at least three hours a day under the usual conditions of the general labour market (para. 8 subpara. 1, SGB II). A person *in need of assistance* is one who cannot live, or cannot live adequately, by his/her own efforts and means and is not receiving the necessary help from others (para. 9 subpara. 1, SGB II).

68 cf. Bundesagentur für Arbeit 2009d.

counted, as is 10% of the tranche between 800 and 1,200 euro (or 1,500 euro for type II unemployment benefit recipients with children).

The following are examples of the allowances generated:

Gross income	Allowance
100 euro	100 euro
400 euro	160 euro
800 euro	240 euro
1,200 euro	280 euro

Source: BMAS 2009c, p. 46.

Child supplement (para. 6a, BKGG)

Parents who can cover their own needs within the meaning of SGB II but not those of their children are entitled to a child supplement of up to 140 Euro per child, if this will prevent recourse to type II unemployment benefit. The calculations made to verify entitlement to a child supplement are extraordinarily complicated. Basically, however, the income conditions are so designed that the safety net (income plus child supplement) is comparable to that provided under SGB II.

To gain entitlement to a child supplement, parents must at least achieve a gross income that covers their own needs. The *minimum income threshold* is a flat 900 euro for parental couples, and 600 euro for single parents. On the other hand, the adjusted income must not exceed the parents' needs within the meaning of SGB II plus the child supplement. The *maximum income threshold* depends on family circumstances (parental couple or single parents, the number of children, housing costs).

Simplified sample calculation

	Parental couple with three children Rent: 900 euro	Single parent with three children Rent: 830 euro
Minimum income threshold (flat-rate)	900 euro	600 euro
Maximum income threshold:	1,626 euro	1,333 euro
- Parents' total needs:	1,206 euro	913 euro
Standard rate under SGB II	646 euro	359 euro
Additional needs for single parents	-	129 euro
Contribution to housing costs	560 euro	425 euro
- Total child supplement (140 euro per child)	420 euro	420 euro

Source: Familienkasse 2009.

If the parents achieve an adjusted income that meets their own needs, the child supplement is paid in full. The total income of the parental couple with three children in the above example is increased by the child supplement (420 euro) from 1,206 euro (adjusted income covering parents' needs) to 1,626 euro per month. If, however, the adjusted income exceeds the parents' needs, about half of the excess portion will be deducted from the child supplement – each full 10 euro of excess income reduces the child supplement by 5 euro. For example, if the parental couple with three children achieves an adjusted income of 1,426 euro, as the parents' needs are met by 1,206 euro, the excess (220 euro) will be half-deducted (110 euro) from the child supplement (420 Euro). So the total child supplement to be paid will be 310 euro, and the total income will be raised to 1,736 euro per month.

Basic guaranteed income in old age or in case of reduced work capacity (SGB XII)

Persons entitled to a basic guaranteed income in old age or in case of reduced work capacity are those who are of working age and permanently totally work-incapacitated, as well as those of pensionable age, provided that they are in need of assistance within the meaning of SGB XII (para. 41 subpara. 1, SGB XII). The needs tests and the level of guarantee are basically comparable to those of the SGB II.

A supplementary activity is permitted, and no limit is set on the time worked. However, a condition for entitlement in the case of total work incapacity is that employment for at least three hours per day is no longer possible. So in that respect, this is also the upper working time limit for a supplementary activity. Supplementary incomes are partially taken into account. 30% of the adjusted income, to a maximum of 180 euro (50% of the standard threshold rate⁶⁹), is discounted (para. 82 subpara. 3, SGB XII).

4.1.2 Wage replacement benefits

Wage replacement benefits, especially as they are contributory, can, as regards type I unemployment benefit and parental benefit in relation to net earnings, lead to precarious financial situations – but this is not necessarily the case. If the net income was modest, the type I unemployment benefit and parental benefit will be correspondingly low. If (in addition), the claimant's occupational history has been marked by contribution gaps, for instance due to career breaks taken in order to raise children or provide care, this will have further detrimental effect on the size of the pension. Women's occupational histories are particularly characterised by part-time jobs and low pay, as well as insurance gaps. The result is that, on average, they have lower occupational incomes than men, and hence also lower wage replacement benefits. As no minimum subsist-

69 The standard threshold rate (*Eckregelsatz*) is the minimum income deemed essential for a single adult in the federal state in which the person's household is located.

ence levels are built into these benefits systems, an *individually precarious* economic situation can arise. However, the payment of benefits is not subject to needs testing, so that *the overall economic situation may nonetheless be satisfactory*. For this reason, the possibility of earning a supplementary income is more important for some individuals than for others. However, it is particularly relevant for people in precarious overall economic situations.

The various social benefits are associated with different rules on additional earnings. Generally, these are relatively generous in the case of pensions, and relatively restrictive for type I unemployment benefit and parental allowances – so that particularly in these cases, the possibilities for improving one’s economic situation through a documented side income are very limited.

Unemployment benefit I (SGB III)

Those entitled to type I unemployment benefit are workers who are subject to social insurance contributions and are unemployed.⁷⁰ They receive 60% of the average net remuneration (at a lump sum estimate) that they earned in the last year before they became unemployed. Unemployed people with at least one child receive the increased rate of 67%. The length of eligibility is based on the length of contribution payments, together with the unemployed person’s age at the beginning of the unemployment. The maximum length is 24 months (para. 127, SGB III).

A supplementary activity of less than 15 hours per week is permitted; an activity going beyond that limit leads to the loss of unemployment status and thus of benefit entitlement. Adjusted income above the unitary allowance of 165 euro is completely set off against the type I unemployment benefit paid (para. 141, SGB III). Gainfully employed people with a higher earned income can suffer considerable financial losses in the case of unemployment, and in some circumstances it may not be possible to completely fill this gap by means of a side income from documented employment. For workers with very low benefit entitlements, a need for assistance, within the meaning of SGB II, can exist even if a documented side income reaches the permitted maximum.

Parental benefit (BEEG)

Since 1 January 2007, parents have no longer received the lump-sum “child-raising benefit” after the birth of a child. Instead, they are now paid a parental benefit. This is linked to the net occupational income achieved before the birth of the child. The benefit partly compensates for that income, at a replacement rate of 67%. Generally, the

⁷⁰ In terms of the law governing benefits, an unemployed person is one who is not engaged in any employment, or is engaged in employment of less than 15 hours per week, but is seeking employment of more than 15 hours per week that is subject to social insurance contributions (para. 119, SGB III).

child-raising benefit used to be paid for 24 months, at a *maximum* rate of 300 euro per month, whereas the parental benefit can be drawn for 14 months at a *minimum* rate of 300 euro per month.⁷¹ While the child-raising benefit depended on family income, and was not payable if a certain income threshold was exceeded, the parental benefit takes account solely of the income of the parent who draws the benefit. In the past, this meant that only about three-quarters of all parents (77%) received the child-raising benefit (for children born in 2006), whereas the parental benefit was drawn by around 100% of parents to whom a child was born in the first quarter of 2007.⁷²

As for the former child-raising benefit, gainful employment of up to 30 hours a week is permitted while drawing the parental benefit. The occupational income gained from this work is taken into account in setting the level of the parental benefit, as in this case the benefit is calculated from the difference between the adjusted incomes achieved before and after the birth. However, the parental benefit will be at least 300 euro.

Sample calculation

	Without occupational income alongside the parental benefit	With occupational income alongside the parental benefit
Net income before the birth	1,000 euro	1,000 euro
Net income after the birth	0 euro	400 euro
Difference	1,000 euro	600 euro
Parental benefit (67% of the difference)	670 euro	402 euro
Total income (Net income plus parental benefit)	670 euro	802 euro

Source: authors' calculations

This formula means that one-third of the side income is discounted as a matter of principle, while the rest is fully offset when calculating the parental benefit. So while drawing the parental benefit, a person's economic situation can be improved only to a limited extent by taking documented employment. This is comparatively more of a problem for people or families on low overall incomes than for those in a more comfortable financial position.

⁷¹ For the *child-raising benefit*, there was the option of reducing the entitlement period to 12 months while increasing the benefit up to a maximum of 450 euro. For the *parental benefit*, there is the option of increasing the payment period up to 28 months, while halving the benefit level.

⁷² cf. Rheinisch-Westfälisches Institut für Wirtschaftsförderung 2008, p. 39ff, 14ff.

Pensions (SGB VI)

Pensions may be drawn for various reasons: due to the insuree's own old age or reduced working capacity, or as a survivor's pension for another person after the insuree's death. The calculation of individual pension entitlements is an extraordinarily complicated business. The level depends, amongst other things, on the type of pension concerned. Gainful employment is permitted alongside all kinds of pension. The rules on supplementary earnings vary from one type to another, but the allowance is always *at least* 400 euro per month. Compared with the other wage replacement benefits, the supplementary earnings rules relating to pensions are generous and generally mean that a pensioner's economic situation can be noticeably improved through a documented side income.

Alongside a *pension at the statutory age* (from age 65), unlimited amounts of side income are permitted.

Premature old age pensions, taken before the statutory age, for example by those with a long contribution history, are subject to reductions (0.3% per premature month, to a maximum of 10.8%), and these remain in effect throughout the drawing of the pension. The amount of a *full work incapacity pension* corresponds to that of a premature old age pension. If there is a side income of more than 400 euro, the level of both these pension types is decrementally reduced.

The assumption behind a *partial work incapacity pension* is that (part-time) gainful employment will still be possible, so the level is set at 50% of a full work incapacity pension. Depending on the size of the supplementary earnings and on certain supplementary earnings thresholds, the pension is either paid in full or is decrementally reduced. In 2009, *at least* 870 euro (Western Germany) or 764 euro (Eastern Germany) could be earned on the side without reducing pensions.⁷³

The *main widow(er)'s pension* is equivalent to 55% of the deceased's premature old age pension.⁷⁴ But if the survivor is below 45 and does not have (or no longer has) children to look after, the assumption is that he/she will be able to engage in gainful employment. So in these cases, a *minor widow(er)'s pension* of 25% is payable. Deductions are made from main or minor widow(er)'s pensions if the survivor has an income of his/her own (occupational income, replacement income or income from wealth), but 40% of that income is discounted. In 2009, the basic discounted allowance was 718 euro (Western Germany) or 637 euro (Eastern Germany).

⁷³ cf. BMAS 2009a, p. 30.

⁷⁴ For certain groups, the more favourable treatment accorded to survivor's pensions before the pension reform of 2001 still applies. In particular, the main widow(er)'s pension is 60% and the minor widow(er)'s pension is payable indefinitely.

4.1.3 Social security law and tax law

As well as the social benefit recipients mentioned so far, two other groups may be interested in having a “side income”: employed people who, in addition to an occupational income subject to social security contributions from a main job that may be involuntarily part-time, gain a supplementary income; and employed people’s spouses who were (temporarily) non-employed and who are now (once again) interested in earning an occupational income of their own. Depending on the size of the supplementary income and various other factors, particularly family status, social security contributions and/or tax may have to be deducted, and this may (considerably) reduce the remaining net income.

The basic principle is that (side) income from *marginal employment* is exempt from contributions⁷⁵ and taxes on the *employee’s* side and is also not taken into consideration for income tax assessment. To that extent, the gross income from a marginal job corresponds to the net income paid out, thus lifting an employee’s or a married couple’s total income up to the full sum.

Things are different in the case of (supplementary) earned income above the marginality threshold. This is *subject to social insurance and taxation*, and the *individual* total income is, as a general principle, taken into account when determining the level of the contributions and taxes.

Employed people subject to social insurance

If employed people who are subject to social insurance enter a second employment relationship, also subject to social insurance, a heavy contribution burden will result.

The supplementary income will be liable to the full *social insurance* deductions (about 20%).⁷⁶ However, these additional social contributions lead to rather limited improvements in benefits, as the main job already provides comprehensive social insurance coverage. The volume of benefits in kind remains unaltered. Only the level of the wage replacement benefits rises in line with the additional social insurance contributions. However, this effect will not be felt until later – if and when benefits become due.

75 Employees have the option of themselves topping up the employer’s lump-sum contribution to the statutory pension insurance (15% of the remuneration) in order to reach the full compulsory contribution (19.9%). In which case, the monthly pension contribution for one year of marginal employment with an income of 400 euro per month will rise from 3.11 euro to 4.13 euro. As well as a slightly higher pension, this opens entitlement to the full range of benefits available under the statutory pension insurance (entitlement to all types of pension and to rehabilitation benefits). cf. BMAS 2009b, p. 10f.

76 For remuneration of more than 400 euro and up to 800 euro, a so-called “sliding-scale zone” exists, with reduced social contributions by the employees (see FN 76). However, it may be assumed that the total income from two employment relationships that are both subject to social insurance will come to more than 800 euro a month, so the full contribution rates will apply.

As well as social insurance contributions, *taxes* are payable on the additional income, and these are calculated on the basis of Tax Schedule VI. This category is characterised by a high tax burden, as there are no flat-rate allowances that can be used to reduce liability, such as the basic allowance or the employee allowance. While it is true that *all* incomes are taken into account for income tax assessment in order to determine the appropriate tax rate, and any overpayments made in the course of a year are refunded, the effective monthly deductions are nonetheless substantial at first.

The high overall tax burden is particularly problematic for employed people with low incomes, as they are especially reliant on their *available monthly income*. Because of their difficult current economic situation, extra benefits or tax rebates that take effect later on are a rather low priority for them.

Spouses of employed people subject to social insurance contributions

Married couples and registered life partnerships have a special status in both social insurance law and tax law. Non-contributory family insurance coverage⁷⁷ and the income-splitting process for income tax assessment⁷⁸ promote the so-called “male breadwinner model”. This is when the husband bears the main responsibility for the family’s livelihood, while the wife is mainly responsible for looking after the family and does not have any earned income – or only a minor one in the form of supplementary earnings. But if she takes up socially insured employment, she will be reducing state sponsorship of this model as her income level rises.

Her non-contributory family insurance coverage via her husband will come to an end. She will now have to pay her own *social insurance contributions*, which depending on her income level will amount to between 9% and 20% of her remuneration (the sliding-scale zone rule)⁷⁹. Here too, the additional social contributions will mean only limited improvements in benefits, as she previously had good basic social insurance coverage via her husband. Notably, she will now be entitled to wage replacement benefits. However, if her income is low, as is frequently the case for women in part-time jobs, these benefits will be correspondingly small and will not become effective and visible until a benefit is actually due.

77 Spouses of employed people subject to social insurance are covered by the statutory health insurance, the social care insurance and the statutory pension insurance without having to contribute, unless they are covered separately – notably because they are also in socially insured employment.

78 Married couples can choose between separate and joint assessment. In the case of joint assessment, income-splitting will be used to determine the tax rate. This means that the incomes gained by the two spouses will be added together. The tax on half of their joint income will then be calculated at the customary rate, and will then be doubled. This form of assessment is the more favourable one for married couples with very different income levels, as the lower income figure arrived at per spouse will attract a lower tax rate, cf. BMF 2009a.

79 For remuneration above 400 euro and up to 800 euro, there is what is known as a “sliding-scale zone”. On remuneration that falls within this zone, the employer in principle pays the full employer contribution, while the employee contribution rises linearly from about 9% at the beginning of the zone to the full employee contribution when 800 euro is reached.

Fiscal encouragement of marriage, through the income-splitting procedure, also declines as the wife's earned income rises. Quite apart from the higher total taxable income, a higher tax rate may now apply. Moreover, the additional earned income will often result in a high monthly tax burden, as married couples with markedly different levels of earned income generally used to opt for a combination of Tax Schedules III and V. This combination means that all the tax relief provisions in Schedule III are applied, so providing correspondingly extensive relief for the higher income, which is generally the husband's. The lower income, usually the wife's, is taxed under Schedule V, which does not provide for any tax-free allowances.

The impact of this, taken together with the social insurance contributions, will strongly reduce the remaining net income (and hence also all remuneration replacement benefits based on net pay). Due to these effects, the taxation applied to spouses has considerable disincentive effects on women's participation in socially insured gainful employment.

For this reason, a further option was introduced on 1 January 2010. It is known as the "factor process" (Tax Schedule IV-factor/IV-factor).⁸⁰ Here, unlike the previous practice, the tax-reducing effects of spousal income-splitting are calculated in relation to their real shares of the income. This means that the partner with the lower income retains a significantly higher net monthly income.⁸¹

4.2 People without German nationality

Entry, residence and labour market access by people without German nationality are subject to varying conditions and restrictions, depending on the country of origin. While European Union (EU) nationals enjoy *unlimited rights of entry and residency* in Germany (and every other EU member state) under the EU Treaty's binding provisions on the free movement of persons, the nationals of other states (hereafter called "third country nationals") generally cannot enter or reside in Germany unless they have permission. *Labour market access* is also subject to varying arrangements. Here, though, a distinction is made between nationals of the "old" EU member states, who have unlimited access to the labour market by virtue of EU free movement rights, and on the other hand those from the "new" EU states and third country nationals, to whom restrictions (still) apply. This second group is subject to the legal principle of "forbidden unless allowed", according to which any employment is prohibited unless it is expressly permitted by law or ordinance or is authorised or agreed by the Federal Labour Agency.

⁸⁰ cf. BMF 2009b.

⁸¹ For an income combination of, for example, 30,000 Euro gross annual earnings (husband) and 10,000 euro gross annual earnings (wife) the tax would, under the Tax Schedule combination III / V, be 1,594 euro/1,042 euro, and under the factor procedure it would be 1,364 Euro/0 Euro. cf. the BMF online calculator at www.abgabenrechner.de/fb2010/index.jsp?clean=true [17/01/2010].

Due to these and other differentiations, the legal position regarding labour market access is extraordinarily complex and confusing. So in what follows, only the *main* provisions for the most important groups can be considered. In line with the country of origin principle, the extensive possibilities open to nationals of the “old” EU states will first be outlined (Ch. 4.2.1), then the limited possibilities open to the “new” EU citizens will be described (Ch. 4.2.2) and finally the few possibilities available to third country nationals will be set out (Ch. 4.2.3). The different provisions for new arrivals and for people already living in Germany will also be discussed.

4.2.1 Nationals of the “old” member states of the European Union

Nationals of the “old” EU member states (EU-15)⁸² together with Malta and Cyprus which joined in 2004 (abbreviated hereafter as EU-17) enjoy extensive free movement rights⁸³, which are enshrined in the EU Treaty and guarantee them *unrestricted access* to the German labour market:

- They may enter every other EU state and reside there (freedom of residence).
- They may establish themselves in every member state in order to exercise an independent activity (freedom of establishment).
- They may themselves provide services from any EU state to every other EU member state or they may dispatch employees to do so (freedom to provide services). As regards service provision, the condition is that it should be *temporary*, including the case of dispatched employees. The legality of *permanent* service provision within the household of *one* person through the *temporary* rotating dispatch of employees – so-called “live-ins” in households with inhabitants in need of care – is therefore a matter of dispute among lawyers.⁸⁴
- In addition to these freedoms, EU-17 nationals in particular may also take up dependent employment in every member state (free movement of workers).

4.2.2 Nationals of the “new” member states of the European Union

More recent entrants to EU membership are the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, the Slovak Republic and Slovenia (2004), as well as Bulgaria and Romania (2007; hereafter: EU-East). While their nationals have the same freedoms of residence, establishment and service provision as those of the EU-17, restrictions will apply to the free movement of workers up to 30 April 2011 in some cases and 31

82 The members of the EU-15 are: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

83 Agreements have been concluded in the past with a few non-EU countries in Europe, giving their nationals the same free movement rights as to those of the EU-17: with Iceland, Liechtenstein and Norway, the Agreement on the European Economic Area (EEA); and with Switzerland, the Agreement on the free movement of persons. However, in the interests of greater readability, the term “EU-17” has been used in the present text.

84 cf. Lutz 2009, p. 45f.

December 2013 in others. Up to those dates, these nationals can only take up dependent employment with a German employer under certain conditions: as a rule,⁸⁵ they need a “Work Approval – EU”, which is granted either as a fixed-term “Work Permit – EU” or as a “Work Entitlement – EU”, which is of unlimited duration (para. 284 subpara. 1, 2, SGB III).

Newly arriving EU-East nationals

EU-East nationals who wish to travel from their country of origin to Germany in order to take up employment need a Work Approval – EU. This is subject to conditions that seriously limit the possibilities for taking dependent employment in Germany.

- It can be granted for all occupations that require *qualified* vocational training – i.e. the training must take at least three years.
- For activities that require *no qualified* vocational training, approval can be granted only if the activity is explicitly listed in the Employment Ordinance (paras. 18-24, BeschV). These are activities involving notably seasonal workers, au pairs and home helps in households with residents in need of care.
- In addition to the qualification requirements, approval can be granted only if no German applicants, or EU nationals with unlimited labour market access, are available for the vacant position (*priority test*; para. 284 subpara. 3, SGB III together with para. 39 subpara. 2, AufenthG).

EU-East nationals living in Germany

EU-East nationals who are already living in Germany are subject to the same priority test for *all* occupations. However, they may obtain a fixed-term Work Permit – EU without reference to the vocational qualification requirements, as these conditions apply only to those moving into Germany – not to those who are already legally entitled to live there.

After 12 months of permitted access to the German labour market, they qualify for the Work Entitlement – EU (para. 12a subpara. 1, ArGV), which is also granted for all occupations and, moreover, without either a priority test or a time limit. So these EU-East nationals then have *unlimited access to the labour market*.

Initially, the same conditions and restrictions apply to the *spouses* and other family members of EU-East workers living in Germany as to the workers themselves. However, if the worker already has a Work Entitlement – EU, the spouse also qualifies for

85 Exceptions to the work approval requirement exist only for very specific groups of occupations or people, listed in the Employment Ordinance (paras. 2-16, BeschV), e.g. photo models, managers, teaching staff, and people with high qualifications.

one, even if he/she has not yet had 12 months of permitted labour market access (para. 12a subpara. 2, ArGV).

4.2.3 Third country nationals

The decisive conditions governing the residency and labour market access of people without German nationality are summed up in the Residency Act (AufenthG), which came into force on 1 January 2005. It states that, as a general principle, third country nationals require permission to enter and reside in Germany, in the form of a “Residency Title” (para. 4, AufenthG). For short-term stays or visits, this is issued as a “visa”⁸⁶, and for longer-term stays as a fixed-term “residence permit” or an “establishment permit”, which is of unlimited duration (paras. 7-9, AufenthG).

Newly arriving third country nationals

A residence permit is granted for specific residence purposes and with a time limit, among other things for the exercise of gainful employment, for reasons of international law, on humanitarian or political grounds, or for family reasons, in the sense of family reunification (paras. 16ff, AufenthG).

The conditions and limitations defined in the Residency Act and the Employment Ordinance (BeschV) concerning entry into Germany in order to *take up employment* are so extensive as to rule this out in the great majority of cases. A residence permit can be issued only for the few occupations that are explicitly listed in the Employment Ordinance. As well as the already mentioned possibilities for seasonal workers, au pairs and home helps in households with residents in need of care (occupations without vocational training, paras. 18-24, BeschV) a corresponding residence permit can also be granted to speciality cooks, language teachers and IT specialists (occupations with vocational training, paras. 26-31, BeschV), to highly qualified staff and executives, but also to particular occupational groups such as photo models and journalists (paras. 2-16, BeschV). With the exception of the groups mentioned in paras. 2-16, BeschV, permits can be issued only if the priority test has been respected. But as far as that is concerned, newly arriving third country nationals are the “last link in the chain”. Priority in filling vacancies is to go to (in this order): Germans and EU-17 nationals; EU-East nationals; and third country nationals with unlimited residency status.

⁸⁶ For visits of up to 3 months, no visa is required for nationals of those states for which the European Community has waived visa obligations. Among these are, in particular, most states in the Americas, as well as Australia, Korea and Japan. cf. Auswärtiges Amt 2010.

Third country nationals living in Germany

Third country nationals already living in Germany also generally need an appropriate permit in order to take up employment. By and large, its conditions are set by the Residency Act and the Employment Procedure Ordinance (BeschVerfV).

The extension of a time-limited *residence permit for employment purposes* is basically subject to the same conditions as when it was originally issued (para. 8 subpara. 1, AufenthG). However, the employment possibilities are not limited to the few, very particular occupations named in the Employment Ordinance. Rather, *all* occupations are in principle open to third country nationals already living in Germany.⁸⁷ Depending on the length of previous employment and/or previous residency in Germany, the limitations placed on taking a job are successively reduced. Third country nationals who have held a residence permit for five years, whose livelihood is ensured and who meet a number of other conditions are entitled to an *unlimited establishment permit* which opens up unrestricted access to the labour market (para. 9, AufenthG).

Turkish nationals who were already living in Germany used to enjoy a special status among third country nationals, due to the EEC-Turkey Association Agreement (Decision No. 1/80 of the Association Council). With this status came particular rights in relation to labour market access (para. 4 subpara. 1, AufenthG). In particular, the gradually diminishing conditions and restrictions were more favourably set, as they took effect after a shorter previous employment or residence period. When granting the Residency Title, the more favourable provisions of the Association Agreement were to be used (para. 4 subpara. 1, AufenthG in association with para. 15, BeschVerfV). However, as in the meantime the conditions and restrictions for other third country nationals have been so adapted that they are no longer less favourable, they are now also applicable to Turkish workers and members of their families.⁸⁸

Spouses and other family members of third party nationals living in Germany who hold a residence permit are also given access to the labour market. Entitlements and/or restrictions under the permit are in line with those of the third party national's permit (para. 29 subpara 5, AufenthG). If, for example, the person concerned has unrestricted access to dependent employment, the same will go for his/her spouse, regardless of the spouse's previous length of employment or residence.

People who did not come to Germany for gainful employment, but who sought refuge there for various reasons, can also, under certain conditions, receive permission to take up dependent or independent employment.

Asylum-seekers are not permitted to take any employment during the first 12 months of their stay. After that they may, subject to the priority test, be issued an employment

⁸⁷ Vgl. Bundesagentur für Arbeit 2009b, S. 16.

⁸⁸ cf. Bundesagentur für Arbeit 2009a, p. 28ff.

permit, which may carry restrictions, e.g. concerning the occupational activity (para. 61 subpara. 2, AsylVfG).

This also applies to people who are required to leave the country but are not immediately deportable, e.g. for humanitarian reasons (*tolerated persons*, para. 60a, AufenthG). However, after four years' stay in Germany, people in this group are no longer subject to the priority test and other restrictions (para. 10, BeschVerfV), so they receive unlimited access to all occupations.

People recognised as *entitled to asylum* or as *refugees* under the Geneva Convention relating to the Status of Refugees, are entitled to a time-limited residence permit on humanitarian grounds. This also gives them unrestricted access to the labour market (para. 25 subparas. 1 and 2, AufenthG).

4.3 Summary

The legal provisions analysed here are such as to severely restrict, in the majority of cases, the possibilities for people without German nationality to achieve economic improvement through a supplementary income or the pursuit of documented employment. They therefore provide specific incentives to engage in undocumented employment.

If income is earned while drawing social benefits, this income is to a large extent set off against the benefits, which are consequently reduced. Particularly in the case of needs-tested benefits, which guarantee no more than a very modest living, only a very limited improvement can be achieved in one's overall economic situation by means of an income from documented employment. This is equally true of wage replacement benefits incorporating low discounted allowances and strict offsetting rules – particularly type I unemployment benefits. In the case of low benefit entitlement, even the existence of a documented side income at the maximum level may not obviate the need to top up by drawing type II unemployment benefit in addition.

Workers subject to social insurance, and previously non-employed spouses, who wish to take up (supplementary) employment can do so without any fiscal and contributory “damage”, provided they confine themselves to a marginal job. A job subject to social insurance will, on the other hand, result in a substantial increase in contributions, while the corresponding improvements on the benefits side will be rather slight and will in any case only take effect later, if and when benefits are actually paid out. Due to the complicated rules and their economic impact, individual “cost-effectiveness” cannot be reliably determined by the people concerned themselves unless they have extensive knowledge of social law and tax law. They may therefore sometimes opt for a marginal or an unregistered job “to be on the safe side”. Because the rules on allowances and offsetting vary from one social benefit to another, and are sometimes complicated, this may also apply to social benefits recipients.

For people without German nationality, the legal provisions concerning foreigners provide substantial incentives to engage in undocumented employment, as the pursuit of documented employment is not allowed, or is subject to major restrictions. This is particularly true of people who wish to enter Germany afresh in order to take up employment. Moreover, the priority test means that third country citizens receive the necessary residence and work permits even less frequently than do EU-East nationals.

On the other hand, EU-East and third country nationals who are already living in Germany have significantly more extensive possibilities for taking up documented employment. Depending on their residency status and on their previous length of stay and/or employment, they are given access to the German labour market, subject to restrictions that gradually reduce over time. In particular, the large group of Turkish citizens who have long lived in Germany and their spouses (25% of all people without German nationality living in Germany) have, in the great majority of cases, unrestricted access to the German labour market, and they are allowed to be either self-employed or dependently employed.

5 Typical groups with an interest in undocumented employment

The main provisions of social law, tax law and immigration law are such as to severely restrict, in the majority of cases, the economic improvements that can be achieved by people without German nationality through a (supplementary) earned income and/or the pursuit of documented employment. So they provide specific incentives to engage in undocumented employment. On the basis of these legal provisions, groups of people can be pinpointed who are particularly affected by this situation and who therefore *might* show increased interest in undocumented employment. The description of these groups draws on the distinctions made in the previous chapter between people with and without German nationality, and in this one between groups of people *with* unrestricted access to the German labour market (Germans and equated groups, particularly EU-17 nationals, Ch. 5.1) and groups *without* unrestricted access (EU-East and third country nationals, Ch. 5.2). As the great majority of employees in private households are women, the group descriptions relate to their specific life situations.

5.1 Groups with unrestricted labour market access

5.1.1 Recipients of unemployment benefit I or II

While the type II unemployment benefit is designed to be a minimum safety net at a modest level, receipt of the type I benefit *can* lead to precarious economic circumstances. In both cases, most of the recipients ought to have the desire for a supplementary income that could improve their economic situation. However, due to the restrictive rules on additional earnings, this is possible to only a very limited degree, and that in turn might foster an interest in income from undocumented gainful employment. This might apply to three groups of women in particular: unemployed women, the wives of unemployed men, and single mothers.

Unemployed women

For women in low-paid employment, the type I unemployment benefits to which they will be entitled if they become jobless may be so small that basic needs as defined in SGB II cannot be adequately covered. To avoid the additional drawing of the type II unemployment benefit, and hence entry into the restrictive SGB II system, they may need a side income that exceeds the discounted allowance.

But gainfully employed women with higher earned incomes may also, in case of unemployment or short-time working, find themselves in a difficult economic situation if they have major financial commitments, for example the purchase of a home, which

can no longer be adequately met out of a type I unemployment benefit that is smaller than the previous earned income. To make up the difference, a short-term “gap-bridging” supplementary income will be needed. Against the backdrop of the world economic crisis and the rise in unemployment and short-time working, this situation could arise for a growing number of women or households, and could be accompanied by an increased readiness to earn the supplementary income needed through undocumented employment if necessary.⁸⁹

Wives of unemployed men

Many married couples have a traditional division of roles within their partnership, along the lines of the “male breadwinner model”. If the husband becomes unemployed and is on type II unemployment benefit, the wife may have an increased interest in taking up gainful employment. However, after several years of labour market abstinence, together with the massive expansion of marginal employment relationships precisely in the fields dominated by women, she will have little chance of finding the kind of socially insured gainful employment that would generate a livable family income. Indeed, this may not be what she is looking for, as there may be a wish to maintain the role model adopted up to now. Instead, the aim may be to earn a supplementary income that can help to improve the economic situation while type II unemployment benefits are being drawn and until the husband takes gainful employment again.

Single mothers receiving type II unemployment benefits⁹⁰

The chances that single mothers on type II unemployment benefits can get off them by taking employment that ensures a livelihood are markedly slimmer than for other groups, particularly if they have younger children to look after. This fact is closely linked to the inadequate childcare structure in Western Germany⁹¹, which rules out long working hours and flexible availability, elements that are often demanded precisely in those fields that have predominantly female workforces. But it is scarcely possible to resolve this structural dilemma at the individual level. This is one of the reasons why single parents often stay on type II unemployment benefits for longer than do other groups.⁹² To improve their precarious economic situation, they need to generate additional income. This is particularly in the children’s interests, as the standard benefit rates for children are often considered insufficient. Indeed, the Federal Con-

89 cf. Schneider 2009.

90 The great majority of single parents are female. In the population as a whole, 90% of single parents are women. Among recipients of type II unemployment benefit, 95%.

91 There are big differences between Western and Eastern Germany in labour market matters, particularly as regards the employment orientation of women with children and the childcare infrastructure, which have a considerable effect on employment possibilities and also on the size of wage replacement benefits. However, these differences cannot be examined in detail here.

92 cf. Graf/Rudolph 2009.

stitutional Court recently declared that the method of calculating them is not in conformity with the constitution.⁹³ So additional income is vitally necessary, in order to meet the children's actual needs and ensure at least a minimum of social participation. As the supplementary earnings rules are standardised and do not take account of the number of family members, it is particularly difficult for a single mother, as the family's only breadwinner, to make any noticeable improvement in their economic situation by means of documented additional earnings.

5.1.2 Pensioners

The size of individual pension entitlements reflects a person's whole employment history. Women, particularly in Western Germany, have on average markedly lower entitlements to statutory pension insurance benefits than men do.⁹⁴ This is essentially due to the pension insurance system's insufficient attention to specifically female employment histories, featuring lower female wages, and career breaks or career reductions in order to look after children or other people with care needs. Women who are not adequately protected, either via a marriage partner or through other income sources, may therefore find themselves in difficult economic circumstances when they come to take their pension. This can happen more particularly if a *premature old age pension* is drawn, as these entail major pension reductions that remain in effect throughout the period in which the pension is drawn. Particularly for women on type II unemployment benefits, who are obliged by the legal rules to apply for their old age pension at the end of their 63rd year (para. 12a, SGB II), this can lead to precarious economic situations, which in some cases cannot be adequately compensated by means of side incomes.

5.1.3 Gainfully employed women on low incomes

Women's earned incomes are often comparatively low and may sometimes not even suffice to cover their own living costs. This is mainly due to the fact that they are over-represented in low-paid fields of employment or/and (involuntarily) work part-time. To improve their economic situation, they may be interested in an extra job on such a scale that a further socially insured part-time employment relationship would need to be established. But it is precisely in the predominantly female sectors that marginal employment relationships are often the only ones on offer. If combined so as to produce a total side income of more than 400 euro, these will lead to social insurance obligations for *all* side jobs, and this will generally not be in the employers' interests. In these cases, a side income of the scale sought can be achieved only through undocumented employment. An additional income that is subject to social insurance may also not be in the employees' own interests, as it would entail large deductions. Substantial amounts of

93 cf. Ruling of the Federal Constitutional Court, 1 BvL 1/09 of 09/02/2010 at www.bverfg.de/entscheidungen/lis20100209_1bvl000109.html [09/02/2010].

94 cf. Deutsche Rentenversicherung n.d.

tax are deducted. These will be at least partially refunded after their tax declarations have been processed, but the income *available month by month* from the side job will at first be significantly reduced, and this is particularly relevant for households on low incomes. Moreover, the additional social contributions produce only slight improvements in benefits, as social security is already being covered by a main job that is subject to social insurance. And such improvements as there are will not be felt immediately. They will become relevant only if and when a benefit is paid out.

5.1.4 Non-employed married women

In Western Germany, the birth of the first child is still mainly followed by a division of labour within the family in line with the traditional “breadwinner model”, in which the wife gives up paid work and concentrates on family tasks, while the husband ensures the family’s livelihood through gainful employment. The State *promotes* this model through the non-contributory co-insurance of wives within the statutory health, long-term care and pension schemes, and through the income-splitting provisions for married couples in the tax laws, which ensure substantial tax relief. The State also *imposes* this model by maintaining a still wholly inadequate childcare infrastructure, which generally makes it impossible for both parents to engage in regular gainful employment. If married women wish to return to gainful employment again after taking a career break to have children, economic situations arise that are comparable to those facing people in employment with low earnings. Income from a job that is subject to social insurance entails a high contribution burden, both through the triggering of an individual obligation to pay social insurance and through the high tax rate.⁹⁵ Even though higher benefit entitlements are generated by the social insurance contributions and the heavy tax burden is lightened up again by joint tax assessment, a “psychological effect” can nonetheless be produced which has such a negative impact that wives either abandon gainful employment altogether, or restrict themselves to a marginal job or – if the wish or need for high income is strong enough – take undocumented employment.

5.2 Groups with restricted access to the labour market

5.2.1 Circular migrants from the new East European member states of the EU

Women, even if (highly) qualified, often have no possibility of achieving an income for themselves and their families in their home countries. However, for various reasons, there is often no desire for the whole family to emigrate to Germany. So sometimes temporary employment is sought abroad as a means of ensuring or adding to the livelihood of the family, which stays back in the home country. This so-called “transmigra-

⁹⁵ On the new tax schedule combination IV-Faktor / IV-Faktor, see Ch. 4.1.3.

tion” maintains a life focus in the home country but also creates another one in Germany. Given Germany’s geographical closeness to their home countries, a particular type of transmigration is opening up for women from the new East European member states. Known as “circular migration”, it involves the repeated alternation of periods of employment in Germany and periods of residence in the home country. The big advantage is that they regularly return to their families, thus reducing the risk of alienation. But due to the legal provisions, there are only very limited possibilities for them to find documented employment in Germany. It can also be difficult to find successive time-limited employment relationships, as well as (affordable) living accommodation for the time spent in Germany.

Here, the employment of circular migrants as live-ins in households where there are people in need of care does seem to be an “ideal” solution for both contracting parties: in a rotation process with a further migrant live-in, the employees gain a comparatively secure recurring employment opportunity, and the accommodation issue is solved at the same time. The private households receive the 24-hour care that they are looking for, together with a high level of staffing continuity. Moreover, it would appear that at least some of the live-ins and private households are not absolutely set on undocumented employment. The growing number of “dispatched” home helps placed via East European care services, which many regard as legitimate, points to a desire for documented employment in a (larger) part of this market.

5.2.2 (As yet) unrecognised refugees: asylum seekers and tolerated persons

Not all of the people without German nationality who are living in Germany came to seek employment. Some of them fled to Germany because of persecution or war in their home countries. If they are not (yet) recognised as refugees, they are granted permission to remain (launching of the asylum procedure) or toleration (postponement of deportation). The situation of asylum seekers and tolerated persons is particularly precarious:

- Their residence status remains uncertain for quite a while. The asylum application can be rejected at any time, and the applicant deported.
- Benefits paid under the Asylum Procedure Act are extremely low. The 224.97 euro “basic benefit” is a third less than the already modest standard rates under SGB II (para. 3, AsylbLG; converted into euro; all sums indicated are for single persons and heads of households). Also, except for “pocket money” of 40.90 euro, all the benefits needed for living are preferably to be provided in kind. Vouchers or cash are only fallback options.
- Employment is not possible during the first year of the permitted or tolerated stay, and is possible only to a very limited extent after that (labour market and priority tests).

- If employment is permitted, the earned income is largely offset: 25% of the income is discounted, but only up to a maximum of 60% of the combined total of the basic benefit and the contribution to accommodation costs (para. 7, subpara. 2, AsylbLG).

Improvement of this particularly precarious economic situation through the taking up of documented employment is possible only to a very limited extent, due to the one-year employment ban and/or the subsequent labour market access restrictions together with the extensive offsetting of the earned income. Here, the legal provisions create particularly powerful incentives to take undocumented employment.

5.2.3 Third country nationals without a residence permit

The motives and pathways that lead foreign women from third countries into illegal residence in Germany can vary greatly. If they come to Germany without a visa, although a visa is required for nationals of their home country (particularly non-EU East European states and states in Africa and Asia), then their entry is unlawful in itself – and so, therefore, is their stay. They may also have entered legally from a state for which visas are not required (particularly states in the Americas) or with a visitor's visa or a time-limited residence permit that allows au pair work, but have then overstayed. Or perhaps they fled to Germany, but then managed to evade deportation after their asylum application was refused. Whatever the reason, illegal residence puts them in a particularly precarious situation:

- If they are discovered, they risk being deported to their home countries.
- They have to earn a living, but they do not have access to documented employment.
- Their particular vulnerability, due to “double illegality”, increases the risk of falling victim to exploitation and violence.
- They also face other heavy burdens, as they do not have documented access to accommodation and health care, nor to educational provision for their children.
- Visits to their families in their home countries are scarcely possible, as each new crossing of the border brings with it the risk of discovery. For this reason, but also because their home countries are geographically distant, circular migration is generally not an option.

For the reasons set out above, illegally residing women find themselves in a serious predicament: they leave their home countries only to end up in a highly insecure situation in Germany.⁹⁶ Overall, however, the number of such doubly illegal women is probably

⁹⁶ On the situation of migrants employed in private households (without possessing lawful residential status), cf. i.a. Rerrich 2009, Tießler-Marenda 2008, Lutz 2005.

small.⁹⁷ A large proportion of them are presumably employed in private households, as such “invisible” work would particularly suit their situation – especially if they are live-ins. On the other hand, this may expose them to strong exploitation and abuse, which they would not tolerate if they were in a position of legal certainty.

97 The number of people living in Germany without a lawful residential status is not known. Estimates of the numbers involved and of their evolution fluctuate considerably. In the past, a volume of between 500,000 and 1,000,000 was often assumed (cf. European Commission 2009). On the other hand, the Hamburg Institute of International Economics (HWWI) put the figure for late 2007 at between 200,000 and 460,000 people living in Germany without lawful residency status, which was significantly lower than the estimates for just a few years earlier (cf. HWWI 2009).

6 Summary conclusions

Domestic services are in great demand. Given the increasing support requirements in households and families, particularly for older people and those with care needs, coupled with a decline in the care potential represented by daughters and daughters-in-law, it may be assumed that this market is continuing to expand. The great majority of domestic services in private households have so far been provided in the form of undocumented employment. Against the backdrop of further developments, the analysis of reasons for this phenomenon has become a particularly urgent issue. As the present study shows, institutional and legal provisions play a substantial role in pulling the otherwise quite heterogeneous interests of both employees and private households towards the use of undocumented employment.

On the *private households'* side, the interest is driven mainly by the lack of suitable, affordable offers to meet the needs that exist, particularly the more time-consuming support for older people, whether or not they have care needs within the meaning of SGB XI, and childcare. So far, the promotion of home-based care for older people and those with care needs, together with the growing number of women in employment and the increasing demand for flexible hours precisely in sectors where women predominate, has not been sufficiently matched by the necessary social infrastructure. Rather, privately provided or organised care is still being promoted: through the payment of care benefits to family members who provide care, the reduced declaration and contribution requirements for domestic minijobs, and the tax-deductibility of domestic services, but also more generally through the way in which social and tax law fosters the "male breadwinner model". Here, by far the greatest part of the costs is borne by the private households. Even the benefits paid by the social care insurance are designed only as *supplementary* benefits, and this is presumably a problem for a growing number of people or households. The politically driven expansion of part-time and marginal employment relationships and of the low-pay sector, as well as experience of quite long spells of unemployment and precarious minimum safety nets, create personal economic situations which may, in old age too, leave little or no scope for using documented service offers organised along commercial lines and mainly to be paid for out of pocket.

Due to the developments cited, a growing number of *individuals* and households also need an additional income in order to supplement low earned incomes and correspondingly low wage replacement benefits, and thus either to avoid drawing the generally modest basic safety net benefits or to top them up. The legally defined possibilities for additional earnings are, however, mostly very limited. Moreover, they vary from one type of benefit to another and some of them have a very complicated structure. It must often be very difficult for those concerned to make their own reliable estimation of the possibilities for documented additional earnings, as well as the impact of side incomes on their current overall economic situation but also on potential benefits improvements

that may take effect later within the social insurance system. In any case, a basic social safety net is already being provided through the drawing of social benefits or through a socially insured earned income. So for individuals or households in a difficult economic situation, an improvement in the *current* financial situation will be of prime importance. However, due to the supplementary earnings rules, this will be possible only to a very limited extent through a documented side job.

This is similarly true of married couples with a traditional division of roles, whatever their economic situation. The way in which the social and tax laws foster the “male breadwinner model” may be seen here as a strong disincentive to the wife’s taking documented employment. After all, any employment relationship except a marginal one will mean additional social contributions and taxes. However, particularly in the case of part-time employment, there will be no corresponding benefits improvements, such as to create her own entitlement to benefits at a livable level. So insurance coverage via the husband will continue to be necessary.

As well as in social and tax law, incentives to undocumented employment are found particularly in immigration law. People who do not have German nationality and are not nationals of an EU-17 state have only very limited possibilities for coming to Germany to engage in documented employment. Due to the restrictive legal provisions, the only option open to them is usually to take an undocumented job, and for third country nationals this is often associated with an unlawful residential status. Their social situation is particularly precarious in Germany. However, this is “only” a quantitatively small group. In fact, it may have shrunk further since the East European states joined the EU, as the consequent freedom of residence gives them a lawful residential status in Germany.

The social, tax and immigration laws do, in some circumstances, provide strong incentives to prefer an undocumented job to a documented one. From the employees’ point of view, private households are particularly appropriate workplaces in this regard. They offer multiple employment opportunities for a large range of people, particularly women, as the tasks required generally do not presuppose any specific vocational training. At the same time, due to past experience of a gender-stereotyped division of tasks, women have often already acquired the necessary comprehensive practical knowledge – or are assumed to possess it. Moreover, “invisible” work within households and families offers particular protection against discovery, as the inspection authorities who deal with undocumented employment do not have a right of access to private property for the purpose of general checks.

To that extent, the employees’ interests in undocumented employment correlate with those of the private households, particularly as regards 24-hour care provision by East European home helps for those in need of care. The rotating block model of care provision does, on the one hand, enable circular migrants to return regularly to their families

while holding on to a relatively secure job. On the other hand, it corresponds to the care recipients' interest in continuity of staffing.

All in all, it may be seen that the inconsistent and in some respects contradictory demands made of the employees (promotion of employment that does not provide a living wage, versus severely restricted possibilities for additional earnings) and on the private households (promotion of female employment, versus privatisation of care work) are difficult to reconcile at the individual level within the framework of, respectively, documented employment and documented service supply. Consequently, they are a considerable stimulus to undocumented employment.

Apart from the institutional and legal provisions, both the employees and the private households have further motives for preferring undocumented employment relationships.⁹⁸ As well as financial and administrative reservations, the contracting parties' ignorance of the declaration requirements also leads to undocumented employment relationships. Particularly if the working times are very short or irregular, they may be convinced that the relationship is not one of declarable employment but rather a compensated form of neighbourly help. In some cases, that view may be legally correct. The dividing line between neighbourly help and gainful employment is blurred, and in practice it probably also shifts. So the border between legality and illegality may often be unclear.⁹⁹ This is no doubt particularly true for migrant women.

This ignorance, which is frequently encountered, is perpetuated by a lack of local advice centres that could provide information on the household cheque scheme and assist with declarations and administration. The online offers from the Minijob Centre, which is legally responsible for declarations and contributions, do not reach many users of domestic services, particularly the older ones.

98 cf. Deutsche Rentenversicherung K-B-S 2009, p. 8.

99 cf. Deutsche Rentenversicherung K-B-S 2009, p. 6.

7 Reflections on reform: making documented employment attractive

There are a number of reasons for preferring undocumented rather than documented employment. Some of those employed are in precarious economic situations and have an urgent, in some cases vital, need for additional income. Some act in a subjectively rational way, as an individual “cost-benefit analysis” will point to an undocumented job as the financially more attractive option, at least in the short term. Also, there is sometimes ignorance about when an activity in a private household constitutes declarable employment. From the various motives, different courses of action can be deduced that appear likely to increase the interest of employees (Ch. 7.1) and private households (Ch. 7.2) in documented employment.

7.1 The employees' viewpoint

Employees with unrestricted labour market access

For people in a precarious economic situation, particularly social benefit recipients, simplification of the supplementary earnings rules and higher ceilings could, *in the short term*, boost interest in documented employment. A unitary minimum allowable sum, applicable across all the social benefit systems, could help to reduce people's uncertainties about the amount of supplementary earnings permitted, and hence the impact on their overall economic situation. At the same time, the level of side earnings permitted while drawing wage replacement benefits could be set high enough to ensure that the drawing of the basic safety net benefits, and thus entry into the restrictive systems, can be avoided.

In principle, however, the overriding aim would be the promotion of “good work”¹⁰⁰, guaranteeing an independent livable income during employment but also in the case of unemployment. Here, the expansion of marginal employment and the low-wage sector, which was driven forward in the past, has proved counterproductive. Instead, the expansion should be sought of socially ensured employment that provides a livable income. One way of achieving this would be to abolish or reduce the marginality threshold while at the same time adjusting the “sliding-scale zone” downwards. Extending it upwards, particularly if combined with a broader spread of tax rates, might also help to make documented employment more attractive, as the contribution and tax burden

¹⁰⁰ The German trade union concept of “good work” (*gute Arbeit*) is based on the campaign by the International Labour Organisation (ILO) to give all women and men access to *decent work*. The ILO defines *decent work* as safe work that abides by the core labour standards, ensures an adequate income and guarantees social security, as well as respecting the right to social dialogue and freedom of association, cf. www.dgb.de and www.ilo.org.

placed on low earners has been particularly heavy up to now.¹⁰¹ Moreover, a legal minimum wage would help to ensure that a full-time job pays at least enough for the employees themselves to live on. These measures are particularly important for equality, as women are overrepresented in both marginal employment and low-wage jobs.¹⁰²

This would be of particular relevance to married women who up to now, in line with the “breadwinner model”, have often foregone a documented job of their own or have severely restricted their hours of employment. As this situation is fostered and made possible by wives’ non-contributory co-insurance within the social security system, as well as by marital income-splitting, the abolition of this state subsidisation, or its restriction to a few closely defined objective social needs such as looking after small children, would increase the need to take up socially insured employment. At the same time, individual responsibility within marriage would be upheld. This is in any case needed, given the tightened employment requirements in the recently revised alimony legislation. The factor process introduced for married couples on 1 January 2010 is an important first step in that direction, as the psychological effect of the tax schedule combination III – V on women’s labour market participation should not be underestimated. However, the optional nature of this procedure may not be sufficient. It remains to be seen how much use will actually be made of it.

Employees with restricted labour market access

For groups who are *legally* resident in Germany, the restricted employment possibilities could be broadened out, or else they could be given unrestricted labour market access. Irrespective of a person’s concrete residency status – whether an EU-East national or an asylum seeker or a recognised refugee – they would then be able to earn an independent living by means of employment. A further important step would be the recognition of vocational qualifications gained abroad. This would increase the range of potential employment and hence the opportunities for earning income. Up to now, this has often been prevented by the complicated recognition process in Germany, which makes it more difficult to validate qualifications on the labour market and leads to increased employment problems.¹⁰³ The migrants employed in private households include many well-educated and in some cases highly qualified women who, in Germany, are not allowed to conduct the activity for which they trained. So they have to turn their hands to other occupations in order to make a living.

The situation of migrants living *illegally* in Germany is particularly precarious. Action is therefore urgently needed here, even though their numbers are comparatively small. In order to improve their social situation, they should at least be ensured access to health care and to educational establishments for their children living in Germany,

101 cf. Eichhorst et al, n.d, p. 22ff, and OECD 2009.

102 cf. Weinkopf 2008.

103 cf. Brussig et al. 2009.

without having to fear discovery and deportation. Going beyond that, in order to facilitate documented employment including coverage by labour law and social insurance, it appears that, under the circumstances, the legalisation of the migrants already living in Germany would be advisable.

The opening up of the *care work market* in particular to those interested in immigration is sometimes advocated. This idea cannot be wholeheartedly supported. For one thing, transmigration has major social consequences in the countries of origin – the “care drain” is an issue that must not be ignored. Also, such an opening would amount to a strategy with a “sell-by date”, as it could be successfully implemented only for as long as an income gap existed between the countries of origin and the country of destination. As income-earning opportunities improve in the countries of origin and their living standards rise, work in households with people in need of care will presumably become increasingly unattractive, given the unsocial hours and the heavy work requirements. So, particularly with a view to documented employment opportunities, it would be more fruitful to further develop the care market in such a way that it creates attractive jobs for people living in Germany, and at the same time an affordable service supply infrastructure for those in need of care.

7.2 The private households' viewpoint

From the households' point of view too, building up a needs-oriented, affordable *infrastructure* for childcare, elderly care and other particular care needs would be the main way to set about promoting documented employment. As well as easing the burden on members of the family and ensuring a quality-proofed service offer, this could also lead to socially insured employment relationships.

Where institutional provision is not possible or not wanted, *service enterprises* could be an alternative way of providing care for family members inside private households and also performing other tasks, particularly housework. By bundling together various short tasks, this could also generate socially insured employment relationships. However, as past experience with service agencies has shown, they often cannot be kept running in the long term without state support, due to their significantly higher costs compared with undocumented service provision. In view of the various aims that can be furthered by running a service provision agency (documented socially insured employment, and a supply structure that meets demand), financial support – whether to the provider firms or to the users – seems both, meaningful and appropriate.

The promotion of domestic *minijobs* appears to be more of a problematic strategy, as it does not ensure either quality-proofed supply or socially insured employment. Also, the state resources devoted to it, at a time when public budgets are under pressure,

mean shortfalls elsewhere, notably as regards the expansion of public infrastructure. But if the minijobs were used alongside a well-developed public infrastructure, they might fill some remaining gaps in the services. Given the widespread unawareness of the obligation to declare time-limited marginal employment relationships, as well as the mainly online administrative requirements which are unsuited in particular to the big group of older users of domestic services, the establishment of local advice centres could be beneficial. Their tasks could include providing general information on minijobs in private households, handling first-time registrations with the Minijob Centre, and other administrative duties.

Especially when there are major care needs, the partial coverage of those needs by the Social Care Insurance, combined with the unregulated, unmonitored payment of care grants, is a particularly strong factor in the emergence of a grey or black market.¹⁰⁴ The introduction of a *care budget*, comparable to the Personal Budget for people with disabilities, might serve to counter this tendency in two ways. Firstly, it would be an important means of achieving (more) autonomous living by the people concerned, as they would be taking their own decisions about how the funds are used in practice. Secondly, as the spending of the money would have to be properly accounted for, it would have to go into documented service provision or employment relationships.

7.3 The bottom line

In view of the ageing population and women's growing participation in employment, together with increased demands for flexibility and mobility, private households urgently need help to ease the burden of their daily tasks. At the same time, women are increasingly in need of a livable earned income. However, the deliberately driven expansion of marginal employment and low(est) wages makes this increasingly difficult to achieve. For as long as modern (welfare) state provision that satisfies both sets of interests is lacking, those concerned will have to solve their problems individually. This is reflected in the high number of undocumented jobs in private households and the advent of a new "invisible servant class"¹⁰⁵, who perform the necessary family and household tasks in return for payment. That class includes migrant women who, if their residency status has not been legalised, have to live and work in Germany in quasi-feudal conditions.

Despite the scandals regularly whipped up around undocumented employment in private households, the real scandal is this: patterns of systematic exploitation, such as can be found in marginal employment and low(est) wages, the familialisation of care work and the toleration of greyish care work markets. In the interests of reducing undocumented employment, they must become a political issue.

¹⁰⁴ cf. Theobald 2009.

¹⁰⁵ Rerrich 2009.

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Karin Gottschall, Manuela Schwarzkopf (2010)

Legal and institutional incentives for undocumented work in private households in Germany. Stocktaking and problem-solving approaches.

Private households' demand for support in housekeeping, childcare and care of elderly is increasing. In Germany, it is met mainly by undocumented work. The report shows that this constellation is eased by legal and institutional regulations: Social as well as tax legislation promote a "marginal employment" of married women. Restrictive rules for additional earnings in the social welfare law and high charges on low wage incomes are often a hindrance to the improvement of welfare recipients' and low-paid workers' precarious economic situation by regular work. Foreigners from a non-EU member state eventually have – due to restrictive immigration legislation – few possibilities to take up legal work in Germany. The interest in regular work might be raised (i.a.) by an increase of the upper limits on additional earning and the promotion of employment which ensures livelihoods in domestic services.

Der Bedarf privater Haushalte an Hilfe bei Haushaltsführung, Kinderbetreuung und der Pflege von Angehörigen steigt. Er wird in Deutschland überwiegend durch irreguläre Arbeit gedeckt. Die Studie zeigt, dass institutionelle und rechtliche Regulierungen diese Konstellation für beide Seiten, Haushalte wie Beschäftigte, begünstigen: Sozial- und steuerrechtliche Regelungen legen eine geringfügige Beschäftigung von verheirateten Frauen nahe. Restriktive Zuverdienstregeln im Sozialleistungsrecht und hohe Abgaben auf Niedrigeinkommen führen dazu, dass Sozialleistungsbeziehende und Geringverdienende ihre prekäre ökonomische Situation mit regulärer Beschäftigung kaum verbessern können. Menschen aus Ländern außerhalb der Europäischen Union schließlich haben auf Grund restriktiver Zuwanderungsregelungen kaum Möglichkeiten, in Deutschland legal einer Arbeit nachzugehen. Gesteigert werden könnte das Interesse an regulärer Beschäftigung u. a. durch eine Anhebung der Zuverdienstgrenzen und die Förderung Existenz sichernder Beschäftigung im Bereich haushaltsbezogener Dienstleistungen.

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