

Translation

Act to Revise the Act to Regulate Secondment Support within the Framework of Civilian Crisis Prevention Operations

of 27 June 2017

The Bundestag has adopted the following Act:

Article 1

Act to Regulate Secondment Support within the Framework of Civilian Crisis Prevention Operations (Secondment Support Act)

Part 1

General Provisions

Section 1

Scope as to persons, subsidiarity

This Act shall apply to persons deployed at international, supranational or foreign state institutions within the framework of international civilian crisis prevention operations. Their social security coverage shall be governed by this Act insofar as such coverage is not provided otherwise, in particular by the receiving institution.

Section 2

Definitions

For the purposes of this Act

1. "Secondment support" shall mean social security coverage for a person deployed at a receiving institution within the framework of an international civilian crisis prevention operation by means of a contract under this Act addressing old-age provision, the risks associated with illness and infirmity, liability and accidents, as well as unemployment;
2. "International civilian crisis prevention operation" shall mean a civilian or civilian-military operation for the purpose of crisis prevention, crisis management or post-crisis rehabilitation outside the Federal Republic of Germany which is conducted on behalf of or in the interest of international, supranational or foreign state institutions;
3. "Receiving institution" shall mean the international, supranational or foreign state institution at which a person is deployed within the framework of an international civilian crisis prevention operation;
4. "Supporting institution" shall mean the institution which concludes contracts on secondment support;
5. "Person supported" shall mean the person who has concluded a contract on secondment support with the supporting institution pursuant to section 3 (1) 1 or 2 and who has been deployed within the framework of an international civilian crisis prevention operation;
6. "Period of secondment support" shall mean the period of duration of the employment or secondment support contract.

Section 3

Contracts on secondment support

(1) Secondment support may be effected on the basis of

1. an employment contract or
2. a sui generis contract to provide support and social security coverage for the person supported (secondment support contract)

between a supporting institution and a person. The supporting institution shall decide whether a contract is to be concluded under number 1 or number 2 of the first sentence above.

(2) An employment contract for the purposes of secondment support shall be referred to as an employment contract, a secondment support contract as a secondment support contract.

(3) Employment contracts and secondment support contracts should also specify the name of the receiving institution and the tasks of the person supported as well as the start and duration of the secondment support.

(4) No employment contract or secondment support contract shall be concluded if the deployment is undertaken within the scope of an other employment relationship with a private executing agency or public employer which is subject to German law, or within the scope of a civil service relationship.

(5) The Provision of Labour (Temporary Staff) Act shall not be applied to secondment support.

(6) If secondment support is effected on the basis of an employment contract, the collective agreements and other provisions applicable to federal employees shall be applied for the period of secondment support; the specific collective agreement rules for staff assigned to federal postings abroad shall apply mutatis mutandis with respect to pay.

(7) If necessary for the performance of the tasks of the supporting institution or the receiving institution, a person supported may be paid a salary that exceeds the salary paid to the highest pay group under the collective agreements. The consent of the federal ministry which granted the authorisation under section 4 (1) 2 is required for such a salary; consent is subject to the approval of the Federal Ministry of the Interior, which is to be given in agreement with the Federal Ministry of Finance.

(8) Subsection (7) above shall apply mutatis mutandis for the granting of any other benefits above or beyond those provided for in the collective agreements. Should the Federal Republic of Germany, represented by a federal ministry, act as supporting institution in any given case, that federal ministry shall apply subsection (7) above mutatis mutandis.

Section 4 Supporting institutions

(1) The following entities may act as supporting institutions:

1. the Federal Republic of Germany, represented by a federal ministry;
2. a third party authorised by a federal ministry.

(2) The authorisation referred to in subsection (1) 2 above may only be granted with the agreement of the Federal Foreign Office. In the event that a third party acts as supporting institution pursuant to subsection (1) 2 above, the federal ministry which authorised the third party to so act shall itself determine the operations for which persons may receive secondment support. The third party shall conclude the contract with the person supported itself and shall not represent the Federal Republic of Germany or a federal ministry.

Part 2 Benefits for persons supported

Section 5 Old-age provision

(1) The supporting institution shall be obliged to apply for compulsory insurance in the German statutory pension scheme in accordance with the provisions of German pension law.

(2) There shall be no such obligation if

1. the person supported has reached the regular retirement age specified in Book Six of the Social Code (Sozialgesetzbuch),
2. the person supported draws a pension for the period of secondment support,
3. another entity bears the cost of old-age provision for the period of secondment support,
4. the period of secondment support is taken into account under an old-age security scheme at no additional cost to the person supported,
5. the person supported has, before concluding the contract pursuant to section 3 (1), informed the supporting institution that he or she will, for the period of secondment support, receive a monthly grant towards his or her private old-age provision or professional retirement scheme equal to the contributions due under subsection (1) above, in lieu thereof, and furnishes proof that such grant is used for that purpose, or
6. the duration of the secondment support contract is less than three months.

Section 6 Health insurance and insurance for long-term care

(1) Unless the supporting institution takes out private health insurance and private long-term care insurance for the person to be supported for the period of secondment support, the person to be supported shall be obliged, before concluding the contract on secondment support, to furnish the supporting institution with proof that, for the period of secondment support, he or she has taken out

1. private health insurance which covers the special risks of the operation to the greatest extent possible, and
2. private long-term care insurance.

(2) If the person to be supported is able to obtain or maintain health and long-term care insurance cover for Germany for the period of secondment support, he or she shall be obliged to furnish the supporting institution with proof that he or she has, further to the compulsory insurance referred to in subsection (1) above, taken the steps needed to obtain or maintain such domestic health and long-term care insurance cover.

(3) If the person to be supported has dependent family members in Germany who may be insured as family members in accordance with section 10 of Book Five of the Social Code, he or she shall be further obliged to furnish the supporting institution with proof that he or she shall, as a voluntarily insured person, continue to provide such cover under the statutory health and long-term care insurance scheme.

(4) The supporting institution shall be obliged to reimburse the person supported the costs he or she incurs under subsections (1) to (3) above. The parties may agree on the payment of a fixed monthly sum in order to effect such reimbursement.

(5) No claims shall arise under subsection (4) with respect to costs incurred by the person supported under subsections (1) to (3) above which are borne by another entity.

(6) If the international civilian crisis prevention operation has an adverse effect on the health and long-term care insurance cover of the person supported subsequent to the operation, the Federal Republic of Germany,

represented by the supporting institution, shall bear the necessary costs not covered by this Act or other social security legislation as required to prevent inequitable hardship.

Section 7 Liability insurance

(1) The supporting institution shall be obliged to reimburse the person supported the costs of appropriate liability insurance to cover damage caused by the person supported abroad in the course of his or her deployment within the framework of the international civilian crisis prevention operation. This obligation shall only arise if the person supported has, prior to the conclusion of the employment or secondment support contract, furnished the supporting institution with proof that such liability insurance exists for the period of his or her deployment within the framework of the international civilian crisis prevention operation.

(2) There shall be no obligation to reimburse the insurance costs if another entity pays the premiums for appropriate liability insurance for the person supported or it is otherwise guaranteed that this risk is insured against.

Section 8 Travel expenses

(1) The supporting institution shall be obliged to reimburse a person supported who has a secondment support contract pursuant to section 3 (1) 2 the necessary costs of ground or air transportation for travel from his or her domestic place of residence to the place of deployment at the beginning of the deployment and travel from the place of deployment to his or her domestic place of residence at the end of the deployment in the same way as any other official travel. If, upon the conclusion of his or her deployment, a person supported immediately undertakes a further deployment within the framework of an international civilian crisis prevention operation, travel from the place of deployment to his or her domestic place of residence as referred to in the first sentence above shall be replaced by travel from the old place of deployment to the new place of deployment.

(2) In derogation from subsection (1), the payment of a fixed travel allowance may also be agreed.

(3) No claim for the reimbursement of travel expenses shall arise if another entity bears the travel expenses of the person supported. If another entity bears the costs of travel between a place other than the domestic place of residence and the place of deployment, subsection (1) shall apply subject to the substitution of such other place for the place of deployment.

Section 9 Additional contractual benefits

Benefits additional to those specified in this Act may be agreed in the employment or secondment support contract. Before including additional contractual benefits in an employment contract, the supporting institution must obtain the agreement of the Federal Ministry of Finance and the assent of the Federal Ministry of the Interior. When determining such additional benefits, due account must be taken of statutory benefits, the person's duties and place of deployment, as well as the risks and general circumstances of the operation abroad.

Section 10 Duration of benefits

The benefits provided by the supporting institution as governed in this Part shall become due upon the commencement of the deployment by the person supported at the receiving institution once such claim has been asserted by the person supported, or at the latest on the date on which the person supported starts his or her journey to the place of deployment and asserts such claim. The benefits shall terminate upon the expiry of the day on which the person supported commences his or her return journey. The return journey shall be commenced without delay following the termination of his or her deployment at the receiving entity. If the person supported, for reasons for which he or she is personally responsible, returns to the Federal Republic of Germany at a later date, the obligation shall terminate upon the expiry of the last day of his or her deployment at the receiving institution.

Part 3 Unemployment benefits subsequent to the period of secondment support

Section 11 Income replacement benefits under the heading employment promotion

(1) For the purposes of entitlement to benefits under Book Three of the Social Code, the period of secondment support shall be deemed equivalent to a period of employment subject to compulsory insurance under employment promotion legislation.

(2) When determining the earnings of relevance for the assessment of unemployment benefit, the following earnings are to be taken into account:

1. for a period of secondment support based on an employment contract, the basic salary agreed therein, but no more than those earnings equal to the assessable income ceiling in the general pension insurance scheme and no less than the fictitious earnings pursuant to section 152 of Book Three of the Social Code, or,

2. for a period of secondment support based on a secondment support contract, the fictitious earnings pursuant to section 152 of Book Three of the Social Code.

(3) Additional expenditure incurred by the Federal Employment Agency as a consequence of this provision shall be reimbursed by the supporting institution. Administrative costs shall not be reimbursed. If the contract is concluded by a third party pursuant to section 4 above, this third party shall make provision for the financing of any such reimbursements.

Section 12 Transitional provisions

The Secondment Support Act of 17 July 2009 (Federal Law Gazette I 1974), as amended by Article 16 of the Act of 20 December 2011 (Federal Law Gazette I 2854), shall continue to apply in its latest version to secondment support contracts formed before the entry into force of this Act until such date as this Act enters into force.

[...]

Article 4 Entry into force

This Act shall enter into force on the day following its promulgation. The Secondment Support Act of 17 July 2009 (Federal Law Gazette I 1974), as amended by Article 16 of the Act of 20 December 2011 (Federal Law Gazette I 2854), shall simultaneously cease to have effect.

The constitutional rights of the Bundesrat have been observed.
The above Act has hereby been signed. It is to be promulgated in the Federal Law Gazette.

Berlin, 27 June 2017

The Federal President
Steinmeier

The Federal Chancellor
Dr Angela Merkel

The Federal Minister for Foreign Affairs
Sigmar Gabriel