

## DeZIM Research Notes +

DRN #13 | 22 Berlin, November 29, 2022

### ”We Treat Everyone the Same”

Formal and Informal Expressions of Institutional Discrimination  
Against Intra-EU Migrant Citizens in German Job Centres



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# ”We Treat Everyone the Same”

## Formal and Informal Expressions of Institutional Discrimination Against Intra-EU Migrant Citizens in German Job Centres

Nora Ratzmann

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### ABSTRACT

This Research Note illustrates the different forms of institutional discrimination informally exercised against EU migrant citizens when claiming social subsistence-type benefits in local German job centres. We can observe recurring patterns of administrative exclusion which go beyond individual instances of discriminatory behaviour. The unwritten rules and everyday practices which shape individual administrators’ claims processing routines often go against what the law or administrative procedures proscribe and create barriers to receiving benefits, regardless of Germany’s manifest legal obligations to EU citizens. Administrative practices of excluding migrant claimants from receiving benefits can be traced to structural constraints and institutional blind spots, such as a performance-oriented management culture or merely superficial diversity policies. Brokers, as cultural translators, can shift such policy outcomes in unexpected ways, enabling access to social benefits and services for otherwise excluded EU migrant citizens, for instance by bridging language gaps, and by clarifying misunderstandings on legal entitlements and obligations when claiming.

*Keywords: institutional discrimination; intra-EU migrant citizens; social administration*

### ZUSAMMENFASSUNG

Diese Research Note beleuchtet verschiedene Formen informell ausgeübter institutioneller Diskriminierung in deutschen Jobcentern gegenüber EU-Bürger\*innen, die in Deutschland leben und soziale Grundleistungen (Arbeitslosengeld, ALG II) beziehen. Dies beinhaltet wiederkehrende, systematische, durch Verwaltungshandeln verursachte Ausschlussprozesse, die über individuelle Fälle von diskriminierendem Verhalten hinausgehen. Durch blinde Flecken im institutionellen Gefüge werden EU-Bürger\*innen, die einen rechtlichen Anspruch auf Leistungsbezug hätten, in der Praxis oft ausgeschlossen. Dies wird unter anderem durch eine ungenügend institutionalisierte Diversitätspolitik sowie ambitionierte quantitative Zielvorgaben verursacht. Daneben wird die Qualität von Dienstleistungen selten berücksichtigt. Mithilfe sprachlicher Übersetzungsprozesse und der Aufklärung über soziale Rechte und Pflichten können kulturelle Mittler\*innen informellen Praktiken von Leistungsausschlüssen vorbeugen und so einen rechtmäßigen Leistungsbezug ermöglichen.

*Schlagwörter: Institutionelle Diskriminierung; EU-Bürger\*innen; Sozialverwaltung*

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## KEY FINDINGS

- This Research Note deals with the informal access barriers to tax-financed basic subsistence benefits for EU citizens in German job centres and the related institutional mechanisms. To cover different positions and enable a broad survey, a comprehensive dataset consisting of qualitative interviews with individuals affected, individuals responsible and outsiders was analysed. This dataset was combined with quantitative data from a survey of the Federal Anti-Discrimination Agency on “Discrimination Experiences in Germany”.
- The results of the evaluation highlight that discrimination experiences are part of everyday life for EU citizens, although from a legal perspective they are usually on equal terms with German citizens. One of the central results of the study is that EU citizens who are already marginalised (particularly in precarious jobs and frequently of Eastern European origin) are systematically excluded from receiving basic subsistence benefits – by legal provisions being disregarded or interpreted in a restrictive way in social administrations. The latter can be explained to some extent through an interpretation of the meritocratic principle of equality as a formal principle of equal treatment. In this way, the differing resources of EU citizens are taken into account only inadequately, leading to hidden inequality effects.
- EU citizens being disqualified for social benefits can consequently be explained by the interplay of (to some extent unconscious) forms of institutional discrimination and the compounding effects on the part of inadequately informed affected individuals. Here, discrimination effects can be explained less through individual attitudes than through established practices, institutional processes and organisational conditions. These include both breaches of law, such as the refusal of acceptance of written benefit applications, and improper interpretation of functional instructions, for instance as relates to how the “official language is German” is dealt with.
- Furthermore, the data shows that German ability and the knowledge about how the German social system functions are central for the affected individuals to assert their social rights. While to some extent differences due to educational background (and nationality) become apparent, these differences are less significant than familiarity with the “cultural context”.

- Social networks (such as friends, family, acquaintances) as well as social counselling services frequently play a mediator role in this context. Through linguistic or cultural translation services, they can open up new scope for action, and enable marginalised groups of EU citizens de facto access to social benefits. The role of ‘cultural translators’ helps shape in practice how institutional discrimination ultimately affects access to basic subsistence benefits.
- However, not all bridge builders can be regarded as equivalent. Professional migration counsellors are significantly more effective in asserting social claims than those who have been involved informally. This is due to their experience, their knowledge and their position in the institutional framework.
- From a political perspective the results are relevant in two respects: on the one hand, there is in practice exclusion from social benefits on the part of EU citizens who are legally entitled to them through institutional mechanisms and constraints. On the other, this is a group that lives close to the subsistence level, and whose risk of poverty increases when denied benefits.
- From a research perspective, the case study of German job centres provides insights into the relationship between law and its application in practice, which here tends to be dealt with restrictively. The results of the study also suggest that institutional logics of action and organisational conditions can lead to some extent to unlawful and unfair administrative action.

## 1. Introduction

Interactions with the state bureaucracy can be a stressful experience, even more so if one is a foreigner, not accustomed to the language and intricacies of one's host country's bureaucratic system. Tasked with securing subsistence for the neediest groups in the population, German job centres are a good example of what could be perceived as a faceless bureaucracy. Benefit applicants and recipients often feel misunderstood and discriminated against. This includes migrant residents, who often report experiences of discrimination when interacting with German employment administration, including job centres (Dittmar 2016; Brussig, Frings & Kirsch 2017).

Non-representative quantitative survey data (Beigang et al. 2016) of the German resident population (commissioned by the Federal Antidiscrimination Unit<sup>1</sup>) indicates that about 44.5% of foreign respondents (N=372 of 837) felt discriminated against by local administrations in the two years before being surveyed, while only approx. 30% of German-born nationals (i.e., of German citizenship by birth, whose (grand) parents were born in Germany; N=1,630 of 5,414) reported the same. Within this sample, experience of discrimination by state bureaucracies was among the highest by local job centres and employment agencies. About 62% of the foreign respondents reporting on their experience in local social administrations experienced some material disadvantage (N=30 of 48)<sup>2</sup>; more than 40% (N=20 of 47) of them had their benefit application rejected or their claim denied in another form. When asked about the reason behind discriminatory treatment in social administrations, about 79% of the foreign respondents (N=38 of 48) attributed it to the treatment by local administrators themselves, rather than other sources, such as the legal framework.

The same non-representative survey found that most foreign residents rarely take action in addressing

discriminatory treatment. Of those who answered questions on their reactions to discriminatory experiences at local job centres, almost 60% (N=27 of 46) did not act on the perceived discrimination. None of the foreign respondents surveyed (N=0 of 48) filed a formal legal complaint; about 17% (N=8 of 48) reached out to intermediaries such as professional advice and counselling services for help. What might these findings reveal about German social administration and its interactions with foreign claimants in need of social support?

I discovered through my PhD fieldwork (2016–2017) that, rather than administrative staff being unwilling to support those in need, they commonly felt constraints set by the institutional setting itself. Many appeared to be dedicated caseworkers, whose motivation in taking up this profession was to improve the dire situation of some of the most vulnerable strata of society. To uncover the mechanisms of the bespoke administrative exclusion, this Research Note analyses the barriers to de facto access that intra-EU migrant citizens may experience when engaging in local claims-making at German job centres – a group whose experiences for the most part remain overlooked, while now constituting one of the largest immigrant groups in Germany. Part of the EU migrant citizen population residing in Germany cannot substantiate its legal social entitlements in practice, which may exacerbate or prolong their spell of poverty.

My research found that administrative processes of deciding on a social benefit claim are characterised by intricate patterns of inclusion and exclusion. Many of these informally institutionalised or unwritten, yet systematic discriminatory practices relate either to the erroneous application of the law or to meritocratic principles of equality, which are implemented as formal, legalistic application of the same rules to each benefit applicant and recipient.

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<sup>1</sup> Source: "Experiences of Discrimination in Germany", a non-representative population survey, carried out by the Berlin Institute for Migration and Integration Research (BIM, September and December 2015), with a sample size of 14,534 items (see Beigang et al. 2016). A special thanks goes to S. Beigang who calculated the descriptive statistics presented here. Due to its purposive sampling approach via civil society organisations and social media, the sample included a comparatively higher share of respondents of so-called 'migration background'.

<sup>2</sup> The number of foreign residents who reported on discriminatory treatment in local job centres remains small. The survey only offers insights into the experiences of 48 foreigners in their interaction with job centre administrators.



## 2. Understanding Institutional Discrimination

Discrimination is commonly defined as policies and actions that disadvantage some persons or social groups based on their membership in that group (see Scherr 2016; Beigang et al. 2016). Institutional discrimination can be understood as rights, practices and institutional structures which may create inequalities in treatment and manifest themselves in practice in unequal access to state-provided benefits and services.

Progressing beyond the legal exclusions and stratifications of social entitlements, this paper focuses on the indirect, informal expressions of institutional discrimination. I analyse the actions and decisions of individuals as institutional representatives, which in turn are shaped by the larger institutional framework and its functioning logic. In the context of this research, institutional discrimination plays out in the form of administrative practices which include in or exclude from de facto access to social benefits and services, based on administrators' differential (or unequal) treatment among the EU migrant claimant group. I found that such discriminatory practices can emerge at different stages of claims processing without discriminatory intent,<sup>3</sup> for instance through legalistic equal treatment which disregards claimants' diverse needs and circumstances.

Considering the complexity of discrimination on legal, managerial and institutional levels, my analysis operationalises the concept by focusing on barriers to de facto benefit receipt, and their underlying mechanisms. The focus remains on the actions themselves, which closely relates to questions of fairness and social equality in a given society. Societal consensus of what is considered legitimate is commonly expressed in law. Hence, the legal framework, and its operationalisation through administrative guidelines, serves as the yardstick against which I measure inequalities in treatment.<sup>4</sup> In brief, the German social

security system provides three forms of income support, namely a statutory, contribution-based unemployment benefit *UB I (SGB I)*, a means-tested, tax-financed unemployment benefit *UB II (SGB III)* for jobseekers without sufficient contributions, and a social assistance benefit (*SGB XII*) for citizens unable to work. As a legal baseline, EU citizens who are exercising rights of free movement are entitled to social benefits in Germany under the Freedom of Movement Law (*FreizuegG/EU*), which translated relevant European directives into German national law. During the initial three-month period, incoming EU citizens cannot claim any German social security benefits. Economically inactive EU citizens are not eligible for any type of German social security benefit during their first five years of residence. In contrast, economically active EU citizens can receive German subsistence benefits as income supplements to reach the social minimum (which is defined by the current *UB II* benefit level) if their income falls below that threshold, and if they have contributed to German social security for at least six months prior to their spell of unemployment. In addition, administrative guidelines specify how to process claims in practice. This includes provisions on what documents are mandatory to provide for claims processing, when to apply sanctions (i.e., benefit cuts being justifiable when claimants do not fulfil their obligations of job search, attend mandatory trainings or show up for appointments at the job centre), or, in the specific case of intra-EU migrant citizens, their entitlements to interpreters provided by the respective job centre if they are unable to communicate in German.

But while decisions on benefit access are not discretionary, different ways of thinking about the eligibility for benefits indirectly open up space for significant informal discretion (Heidenreich & Rice 2016). According to the job centre representatives I interviewed, there is little administrative discretion of how local administrators can apply eligibility

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<sup>3</sup> While there are instances of positive discrimination (e.g., affirmative action) which can benefit certain social groups, this paper focuses on processes which enforce disadvantage and play out through barriers to access. The analysis includes forms of both legitimate and illegitimate discrimination. Some institutional practices (e.g., 'creaming' cases) could be considered legitimate from an organisational standpoint, though they still lead to unequal treatment within the same group during claims processing.

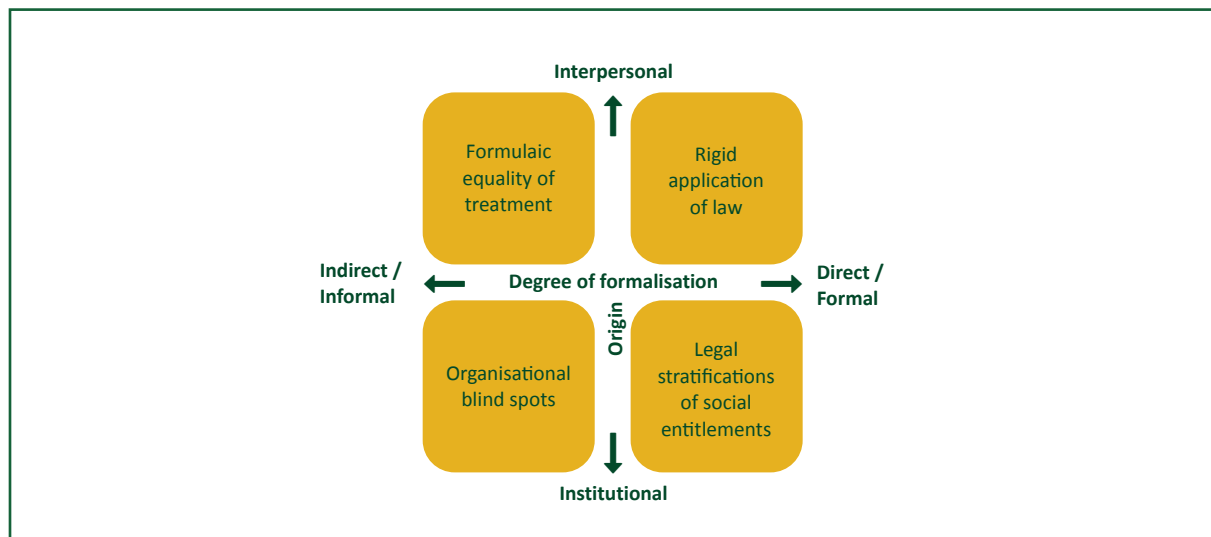
<sup>4</sup> The aim of this research is not to compare the experience of claiming between different claimant groups, but within one given group, namely intra-EU migrant citizens. The focus of the analysis is on instances of unequal treatment despite the same legal entitlements.

criteria. However, procedural discretion can be exercised at several stages of the job-seeker's basic allowance claim. This can include decisions about the documentation required for processing a claim, the nature of support offered during the application process, the number of face-to-face meetings demanded, timing of appointments, the waiting times for processing a claim, and the application of sanctions once the benefit has been granted. Moreover, social administrators can exercise professional discretion with respect to what they judge best or most suitable in terms of labour market integration measures for a claimant to offer tailored service provision. In short, informal discretion opens up space for unequal treatment when processing benefit claims, going beyond erroneous interpretation of the legal and administrative framework. For instance, informal gatekeeping can occur through the systematic

imposition of administrative burden in local claims processing, defined as disproportionate and burdensome hidden administrative costs that are not required by law. Administrative burden can take the form of asking for additional documentation to process a case, or of sharing information with some applicants, but not others.

To systematise the characteristics of discriminatory treatment in local job centres, i.e., individual discriminatory acts that are, however, institutionally embedded, I developed a matrix through inductive data analysis of my interviews and fieldnotes (Figure 1 below). The taxonomy of forms of discrimination is based on definitions from existing literature on discrimination, while their specific content as it takes form in the workings of social administrations was inductively developed during the qualitative data analysis.

**Figure 1. Characterising Institutional Discrimination in Local Job Centres**



Generally, we can distinguish between direct and indirect hidden forms of discrimination (i.e., their degree of formalisation or institutionalisation on the horizontal axis). Indirect discrimination happens when the same rules are applied to every benefit claimant, which may disadvantage some of them because of their characteristics. For instance, the *Race Equality Directive (2000/43/EC)* of the European Union defines indirect discrimination as

instances “where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons” (even though, based on the legitimate aim exception clause, there may be grounds to discriminate for objectively justifiable, proportionate reasons). Principles of formulaic equality and equal treatment fall in the realm of indirect discrimination.

Moreover, a distinction between individual and institutional discrimination is to be made. While individual discrimination is related to discriminatory treatment of an individual based on his or her attitudes and subsequent behaviour,<sup>5</sup> the lens of institutional discrimination sheds light on the institutional environment in which the discriminatory strategies of action emerge as part of administrators' professional role (see Gomolla & Radtke 2009). Administrative practices may have unequal impact on benefit applicants and recipients with equal legal entitlements.

As briefly indicated above, this Research Note focuses on the category of informally institutionalised discrimination; on the diffuse and often unwritten yet systematic rules, or, in other words, everyday routines and practices of benefit claims processing, rather than formally codified, stratified social entitlements in law. The latter legal exclusions from benefit receipt for different groups of EU citizens have been extensively covered elsewhere, for instance in the UK (Shutes 2016; Shutes & Walker 2017 on how gender divisions in relation to paid care structure unequal legal social entitlements). While not necessarily discriminatory in intent (Gomolla 2010), such diffuse forms of institutional discrimination by state agents foster practices of exclusion and systematic unequal

treatment, and de facto differential access between groups of social benefit claimants with equal legal entitlements.

To that end, this Research Note first describes different forms of direct and indirect institutional discrimination which lead to practices of administrative exclusion. I then explore potential explanations of institutional discrimination, in particular focussing on how blind spots with respect to processing intra-EU migrant citizens' benefit claims can emerge in an institutionalised manner. Significant in this regard is the organisational practice of legalistic equal treatment, whereby administrators interpret procedural principles of equality as formulaic equality of treatment – rather than focusing on equality of opportunity to generate equal outcomes. Such a practice appears to be tied to ideas of fairness and a structural unawareness of migrants' challenges as newcomers to a society which for a long time declared itself a non-immigration country. In a final reflection, I focus on some of the strategies to remedy the barriers EU migrant citizens may face when claiming benefits and accessing associated labour market integration services. The findings,<sup>6</sup> which pertain to the needs of an increasingly diverse migrant client population, have the potential to assist policy-makers in designing more inclusive public service provision.

### 3. Methodological Note

The findings presented in this Research Note are part of a larger PhD research project on how administrative practices in local job centres construct inequalities in access to basic subsistence benefits (Ratzmann 2019). The study builds on 103 in-depth, qualitative interviews, which lasted between 15 and 180 minutes each (on average 45 minutes), with (i) key informants, including policy-makers, specialised service providers performing social and labour market integration services for

the job centre, legal experts, migrant advisory and advocacy agencies (32 interviews), (ii) intra-EU migrants (16 interviews) and (iii) job centre staff (55 interviews). The aim was to allow for the maximum variety of perspectives and voices to better understand the complex mechanisms of institutional discrimination, including insights of those subjected to practices of institutional discrimination, of those shaping such practices and of outsiders observing the bespoke implementation dynamics.

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<sup>5</sup> The role of ideas about a benefit applicant's social legitimacy or moral worthiness to receive state-financed social benefits and services goes beyond the scope of this paper, and have been examined elsewhere (see Ratzmann 2021).

<sup>6</sup> All findings presented in the empirical sections of this Research Note are grounded in the data collected, and based on the author's inductive theorisations.

In more detail, key informant interviewees provided an aggregated overview of EU citizens' claiming experiences from a third-party perspective. Interviewees were selected based on their professional function. The complementary benefit claimant interviews helped to reveal EU citizens' subjective interpretations of their interactions with local German bureaucracy. To reflect EU citizens' diversity of circumstances and experiences of claiming, the sample considered a range of genders, ages and education levels. Regarding their citizenship status, selected interviewees were intra-EU migrant citizens, i.e., nationals from EU member state other than Germany, who had moved from another EU country to Germany after the 2004 Eastern enlargement, but had not reached the five-year threshold of gaining permanent residency at the time of the (potential) benefit claim. To comprehensively cover the perspectives of different types of front-line staff, job centre representatives at different levels of the hierarchy (from the local job centre director to assistant administrators) and within the main organisational units (i.e., labour market, benefit and entrance zone teams) were interviewed. Variance in terms of gender, years of work experience, educational level and country of origin was taken into account whenever possible to allow for a range of viewpoints (for details see Ratzmann 2019: 85–88).

The majority of the interviews were carried out between June 2016 and July 2017 in Berlin, which, as the largest agglomeration with 3.6 million inhabitants, is an interesting case. Berlin represents Germany's main migration hub, hosting three times more foreign nationals on its territory than the German average; they account for 19% of its

population. About 38% of the foreign resident population are EU migrants, mostly Bulgarian, Romanian, Italian and Polish nationals. Berlin-based job centres are governed as so-called joint institutions by the *Federal Employment Agency* and the municipality (*gemeinsame Einrichtungen*), which corresponds to the model that about 75% of local institutions in Germany have adopted.<sup>7</sup>

I triangulated emerging findings from the Berlin-based interviews with observational material from expert discussion fora and practitioners' meetings, which brought together job centre representatives from various German regions. Observational data from contexts other than the Berlin-based job centres helped to discern whether the trends observed in Berlin could apply to local institutions in other parts of the country. My findings remain, however, context-specific. I do not intend to claim any generic representativeness or abstract generalisability. Instead, I rely on the idea of context-dependent transferability across job centres of similar embeddedness. The findings present the informal processes which may lead to discrimination, but whether such practices are applied by a specific local job centre depends on the individual case.

The interviews were conducted in German and English, with a few exceptions for French-speaking respondents. The findings emerged using two main methods of qualitative data analysis, namely a more traditional close, interpretative reading of the interview scripts, and a relatively rigorous coding exercise. Transcripts were coded after each round of fieldwork using emergent themes and categories.

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<sup>7</sup> Today, 303 out of 408 of the local job centres are joint institutions, while 105 job centres are locally-run job centres, authorised municipal authorities (zugelassene kommunale Träger), which constitute an alternative governance model.

#### 4. Local Experiences of Institutional Discrimination

The European Union upholds the principle of freedom of movement, entitling its citizens to move to and reside for the most part without restrictions in another EU country, work there without a work permit or visa, and enjoy equal treatment with nationals in accessing employment and associated social advantages. With it comes a common claim among EU and national policy-makers that EU migrant citizens living in another member state are treated as non-discriminated co-nationals. But to what degree are these legal principles upheld in practice?

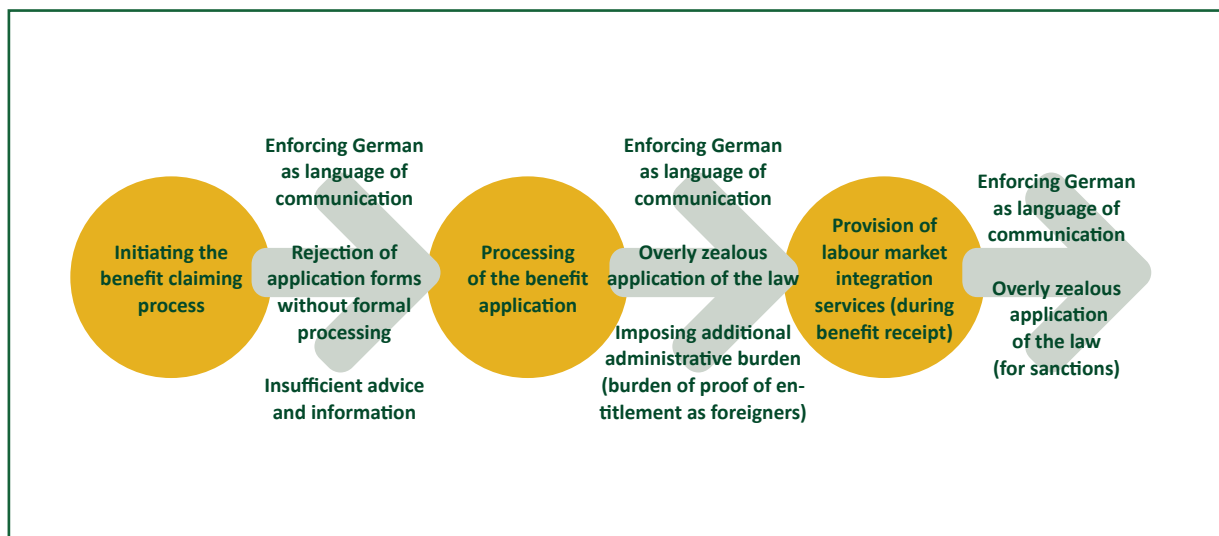
The interview sample reveals informal processes of excluding some intra-EU migrant applicants from access to benefits and associated labour market integration services, but not others. Such inequalities in treatment may emerge during different stages of the claiming process, creating a series of hurdles (described in more detail in Ratzmann 2019: 100–114). In the cases I studied, only benefit applicants who arrived at the local job centre with sound and detailed knowledge of their legal entitlements and obligations and some acquaintance with the German language were able to substantiate their benefit claim in practice. Those EU migrant applicants who approached the institution with a request for more information, unable to make their case due to informational gaps,

tended in practice to be denied access to social benefits and services. This experience was shared by several of my respondents of different nationalities and educational backgrounds, including low-skilled Bulgarian applicants and highly educated French ones, stating that they do not “know their rights in Germany”. The finding shows how educational or national background may play less of a role in securing access to social benefits and services. Rather, knowledge about social entitlements appeared to be crucial. Interviewees described such knowledge, however, as not very developed due to their status as newcomers to Germany.

To summarise, [Figure 2](#), developed inductively from my interviews, illustrates the different phases of the interaction between EU migrant citizens and local social administrators. The figure specifies the different forms informal institutional discrimination may take, which, often, though not always, contradict what is proscribed by law and administrative guidelines. Many job centre staff respondents I interviewed tended to justify the reliance on such informal administrative practices with the aim of equality of treatment.

To initiate a benefit claim, the official procedures of claims processing set out by the Federal Employment

**Figure 2. Forms of Institutional Discrimination in Local German Job Centres**



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Agency foresee a written response to any application independent of its prospects. However, key informant interviews illustrate how some caseworkers sought to intercept a claim by EU migrant citizens at the outset by refusing to accept a written application. For instance, a French couple in their mid-30s, both well educated, reported on their experience of being sent away by a receptionist at their local job centre office. Here, their lack of knowledge of their legal entitlements could not be offset by their social status as young, qualified Western EU citizens. When they requested more information as “newcomers to how things work here” in Germany, the young couple, who had recently arrived in Berlin, was told that “as newly arrived, [they would] not get any support”. They were not provided with any further explanation. According to the key informants I interviewed, as well as non-representative survey data (Tießler-Marenda 2017), their experience is not unique, and goes beyond individual instances of discriminatory behaviour. Fieldwork revealed how job centre representatives may informally intercept claims without written justification as an informal gatekeeping technique. In effect, several other applicants of my study were denied the opportunity, and legal right, to hand in a written benefit form to formally start the claiming process. Instead, their claim was rejected without the formal screening of their application. One Berlin-based job centre even went so far as to oblige EU citizens to sign a formal withdrawal declaration from any UB II claim at reception.

Once intra-EU migrant citizens had handed in their benefit application, many of them encountered less tangible barriers to access, such as instances of administrative burden imposed on them during the processing of their benefit application. Such local level practices, which increase the intangible costs of claiming, frequently consisted of requesting additional documents. EU migrant applicants reported how they often had to provide documentation which was not essential to the processing of their claim (e.g., deregistration certificates from their last country of residence; all notices of termination of employment within the last 15 years; their children’s vaccination

certificates; declaration of their reasons to move to Germany). They were asked for documents which German citizens did not have to provide to prove their legal entitlement to social provision. This could include documents on their current residence status and lawful residency in Germany, though the documentation ceased to exist in 2013. In fact, the registration certificate confirming benefit applicants’ status as a free mover continued to be requested by several local job centre offices, despite no longer being issued by the *German Foreign Office*. This was the experience of one of the French nationals I interviewed, who was asked to bring a document issued by the Foreign Office to confirm her right to free movement.

Moreover, EU applicants often had to detail their social security contributions in their previous country of residence. The latter document should, however, in accordance with *EU Directive 2004/883/EC* on EU social security coordination, have been formally requested from the respective national social administration, not from the benefit claimant. According to a representative of a German welfare organisation, in practice such a data exchange rarely happened. Instead, the burden of proof of status was shifted to the individual EU migrant applicant. In practice, such outsourcing created several obstacles. Foreign national bureaucracies tended to issue those forms only when requested in person. The procedure obliged EU applicants to travel home, engendering financial losses and delays. They also had to cover travel expenses and translation costs, though these ought to be covered by the German administration. Such hurdles led some of my EU migrant respondents to abandon their claim.

Once the benefit claim had been granted, during the time of benefit receipt and labour market integration counselling, several interviewees experienced overly rigid application of the law as a barrier to benefit receipt. For instance, a labour market advisor sanctioned a Polish claimant for not attending a job search coaching he had assigned him to.

He identified his client's behaviour as intentional non-compliance, while the written correspondence with the benefit recipient I reviewed revealed very poor German language skills, suggesting that the recipient might not have understood the purpose of the training. That consideration might have called for some leniency in the use of administrative discretion, considering the lack of German knowledge. This could have included spending more time on the client case, making sure the procedures were correctly understood, rather than applying rigid sanctions immediately.

Overall, intra-EU migrant citizens in this study identified the insistence on German as the only language of communication with job centre staff as one of the key barriers to benefit and service receipt (Ratzmann 2018a). A job centre in southwestern Germany even put up a sign at reception, stating "No service without an interpreter". The practice of *no German, no service* contradicts not only the *EU Regulation 883/2004*, which stipulates EU citizens' right to be served in their home country's language, but also the provisions on the right to interpretation and translation laid down in the 2016 *Federal Employment Agency Directive on Interpreting and*

*Translating Services*. If foreign-language applicants were not fluent in German when submitting their application or when attending appointments with their respective labour market advisors, they would not always be serviced in the same ways as those acquainted with the German language. Several migrant interviewees perceived job centre staff as unwilling to accommodate their limited language abilities, as this Anglophone respondent currently undertaking studies for a PhD in Germany explained:

*„Sometimes I can speak English and they can understand. But from my experience, going through this process, more often than not, they will stop you and say: 'No' [...] I just remember the language being a huge problem."*

The findings emerging from the qualitative interviews outlined above mirror data collected by the German welfare organisation Caritas (Tießler-Marenda 2017), which surveyed 122 migration counselling services for EU migrant citizens in Germany. They found that in 50% of cases legal social entitlements were not appropriately checked, and in 10% of cases clients were asked to provide documentation about their right to free movement that the Foreign Office no longer issues.

## 5. How Institutional Discrimination May Occur

Instances of unequal treatment of EU citizens with comparable legal entitlements can, as outlined above, result from the erroneous application of the legal and administrative framework. Moreover, barriers to access could be impacted by informal practices of formulaic equality and standardised equal treatment (applying the same rules and treatment to every benefit applicant or recipient, regardless of divergent needs and circumstances). The latter could engender disadvantage for some benefit claimants more than others due to their characteristics, as not all benefit recipients were equally equipped to meet the demands and hidden costs embedded in the benefit claiming process (also Dittmar 2016).

Some of the social administrators I interviewed justified such procedural principles of equality by referring to the legal framework and a logic of fairness:

*„For me, it does not matter whether a client is an EU citizen or not. The SGB II is decisive, it is the law and we act according to it."*

*„I treat every client the same, I take it fairly literally. Thus, I don't experience any moral conflicts. I treat all my clients the same, notwithstanding how I perceive them, nice or not nice, whether I understand them or not."*

While findings of this research allude to some instances of individual bureaucratic discriminatory behaviour, the qualitative interviews primarily highlight how individual treatment commonly intersects with the institutional environment, characterised by structural constraints of little processing time per case. For example, even though some job centre representatives alluded to the imposition of an informal administrative burden to actively discourage applications based on moral considerations, most job centre interviewees described the request for non-essential documentation as a technique to help them deal with their workloads. One of my key informant interviewees, a former job centre employee now working as a migrant counsellor, explained how such requests helped gain time in processing claims, as there was no clearly defined list of the necessary and sufficient documentation:

*„What I can confirm, as a former job centre employee, is that administrators seek to gain time by requesting documents [...]; one asks for some kind of document and gains at least an additional three weeks [to process the claim].“*

Parking techniques, deployed to push hard-to-serve claimants out of sight, enabled administrators to cope with their unmanageable workloads of 600 to 900 cases per caseworker (the ideal indicated by respondents would correspond to about 250–300 cases). While strategies of busying and burdening applied to EU migrant and national German clients alike, there appeared to be strong suggestive evidence in my interviews for parking to occur more commonly in cases of a complex nature, such as those of EU citizens whose legal entitlements often remained ambiguous.

Generally, I found that market-driven accountability principles appeared to have unintentional discriminatory effects on EU migrant applicants, whose cases were often complex to process. This can be related to an administrative culture dominating

job centres which incentivises the rejection or delay of time-consuming cases. Job centre respondents described how performance measurement indicators driven by New Public Management principles worked against the individualised processing of claims. Such quantitative performance indicators lead to an efficiency-driven logic of favouring quantity over quality, not allowing individual needs to be taken into account. One of the labour market advisors I interviewed summarised it as the “the job centre [operating as] a system focussed on control instead of care and charity”. As shown in other research, for instance in the US, marketisation practices have reduced the scope of social administrators’ professional discretion, changing their implicit calculus (Brodkin 2013). While aimed at improving individualised service provision to so-called clients, enacting the imaginary of competitive service provision, such efficiency-driven criteria commonly engender adverse displacement effects.

Overall, as they operate in a pressured work environment, caseworkers described they would retreat “into formalities”. Those administrators were mostly concerned with their own survival in the organisation, applying the law and procedures to fulfil administrative quotas efficiently and merely executing bureaucratic routines. Denying benefits claims to those who might have a legal entitlement tended to be considered a ‘safe’ option when caseworkers’ legal knowledge of legal entitlements or procedures relating to intra-EU migrant citizens remained limited and the time to process a claim scant.

In addition to the dominating accountability logics, a structural unresponsiveness to migrants’ needs may help to explain the recourse to formalistic equal treatment of EU migrant clients. Job centre interviewees talked about not having the means to overcome language barriers, and feeling ill-equipped to address the challenges that could arise from migration-related diversity.<sup>8</sup> And while intercultural awareness trainings could remedy some of these challenges, in practice they rarely yielded

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<sup>8</sup> Discriminatory behaviour hinged on culture is less clear-cut to demonstrate – as there are no precise legal or administrative rules compared to language policies. However, the data pointed to examples of cultural stereotyping which impacted labour market integration (e.g., prevailing norms of what were considered legitimate reasons to turn down job offers, including religious reasons or perceived care imperatives as mothers).



the intended outcomes. A special representative for migration in one of the job centres involved in the study declared the training initiative in Berlin to have failed. She explained how substantial financial investments had been made in intercultural awareness training, but training often remained voluntary and attracted only staff members who were already intercultural aware.

Moreover, training often lasted not more than one day, which was insufficient to adequately address stereotyped ways of thinking about 'culture'. The special representative also offered the critique that

the initiative had become insufficiently institutionally anchored in operational practices, as no mentoring, supervision or follow-up seminars were in place at the time of fieldwork. Interviewees from both inside and outside the job centre noted that, on an informal level, the institutional commitment to diversity lagged behind. Although local institutions had started implementing the Federal Employment Agency's diversity strategy of 2007, which marks a formal commitment to diversity, in practice, respondents considered related changes in administrative procedures to have remained thus far incidental and superficial (see Ratzmann 2018b).

## 6. EU Migrants' Strategies to Navigate the Claims-Making Process

Considering the forms of institutional discrimination benefit recipients may face, what are their reactions? The qualitative material shows that foreign benefit applicants tended to become discouraged by the informal barriers to accessing state-provided social benefits they face unless they were aware of their legal rights and opportunities for appeal. As a result, some interviewees dropped their benefit application and instead sought to secure alternative, informal sources of social support (Ratzmann 2020).

However, foreign benefit applicants may not always choose to disengage from the German system altogether. If they decided to claim, they might rely on third-party intermediaries to help them substantiate their social rights claims. None of the EU migrant citizens I interviewed went through the administrative process of claiming on their own. Those EU migrant applicants commonly reached out to external support once they wanted to start a claiming process, but did not know how. For instance, an Anglophone interviewee described her partner as having played a key role in explaining "tiny things" of how the system worked. She believed she would not have succeeded in making a claim without his help:

*"I wouldn't have known I have these rights. My partner explained to me that I have these rights [...] a system which is completely new to you,*

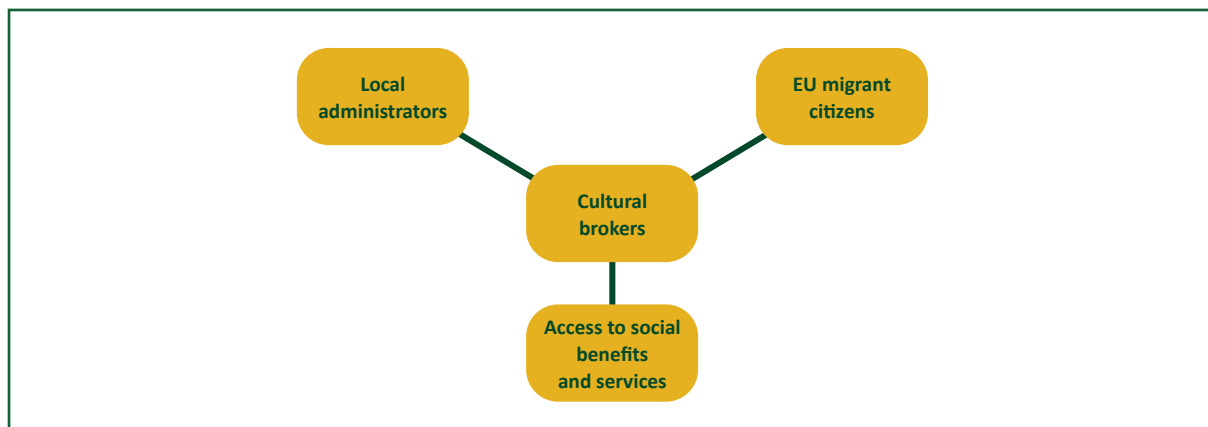
*[... the process] was made transparent through my partner [...]. He had the tacit knowledge, of what I had rights to [...] I was essentially blind to the process and he walked me through it."*

He not only acted as an interpreter, translating from English to German, but also provided her with the tacit knowledge on the behavioural norms which social administrators expected to be known. The 'cultural brokers' studied were involved in a double translation process, acting not only as language interpreters but elucidating tacit knowledge about the cultural norms and expectations of German society, as this community worker highlighted:

*"My role as a social worker is to explain to people that it is not self-evident to receive benefits. What the assumptions are that are embedded in the system."*

When foreign benefit applicants relied on what could be termed a 'cultural broker' (Ratzmann 2019), many tended to be successful in their claim (see Figure 3). Such allies or advocates, including welfare advice or community organisations, family, friends and partners, served as intermediaries, bridging language and tacit knowledge gaps on administrative procedures to help them secure their claim.

**Figure 3. Brokers Mediating Between Local Social Administrators and EU Migrant Clients**



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They were able to enable benefit access to EU applicants with low levels of familiarity with the German language and bureaucratic system, who might otherwise fail to get state support.

My findings show that third-party intermediaries typically fulfilled two key roles. On the hand, they functioned as ‘rights intermediaries’ (see Bruzelius 2019: 1). For instance, the migrant counsellors I interviewed explained to EU migrants their rights and duties and guided them through the claiming process. By educating clients about their rights, and if necessary, by filing legal appeals on behalf of EU migrant clients, they were able to mitigate the disempowering effects the interaction with the state bureaucracy could create. Brokers’ tasks also included the explanation of the legal framework or the content of official letters and documents, which could be up to 160 pages long, written in complex legal language.

On the other hand, brokers in the context under study also typically acted as translators between the EU migrant client’s native language and German. As EU migrant citizens often felt overwhelmed by paperwork in German, brokers’ tasks generally consisted of breaking down the complexity and perceived disorderliness of the claiming process. Third-party intermediaries helped with filling in forms, accompanying EU migrant clients to meetings and interpreting meetings with job centre staff. A local community worker who supported EU citizens in their claims described his job role as one of building bridges into German society, and into German social bureaucracy specifically:

*„We try to create bridges through our language and cultural knowledge.”*

Brokers often helped to convey EU migrants’ complex and diffuse needs into administrative language. As a job centre administrator summarised,

*„The issue is not only to translate the claiming forms, but to make claimants understand the content of it.”*

Third parties also commonly mediated the substantive knowledge deficits on the concrete steps involved in the administrative procedure, as this welfare counsellor explained:

*„Some claimants think that it does not matter if they do not provide a certain document. It’s not only a problem of miscommunication but of misunderstanding.”*

What distinguishes the brokerage processes described here is the cultural component, acting as a bridge between the cultures of the countries of origin and destination. They became tasked not only with language brokering, but also transmitting valuable information about host country norms and rules. Brokers commonly helped to interpret the social situations for those whose tacit linguistic or cultural knowledge remained insufficient to master the situation themselves. In so doing, they were able to remedy some of the de facto barriers to access described above.

However, the interviews revealed how brokers' ability to attenuate existing inequalities in access and treatment depended on their knowledge base and their anchorage or positioning within the institutional system. In the case studied (Ratzmann 2019), state-commissioned professional welfare counsellors tended to be the most effective mediators, but not necessarily the easiest to reach. On the contrary, informal social networks of acquaintances and family tended to be the intermediaries most relied upon, even though, as self-selected volunteers, they tended to be less well prepared for their brokerage task. Thus, the EU migrant citizens I interviewed commonly relied on several brokers simultaneously, in a two-step brokerage process: more informal, personal contacts facilitated access to formal brokers, such as the designated welfare counsellors whose mandate is to support EU migrant clients in Germany.

## 7. Concluding Thoughts

This Research Note explored how institutional practices can lead to barriers of access and de facto exclusions of some EU migrant citizens who have legal entitlements to social benefits. First, non-representative survey data illustrated how discrimination is a topic of concern when foreign claimants interact with local job centre administrations. The quantitative data also gave some insights into the strategies claimant respondents may rely on to counter such experiences, which include the help of welfare intermediaries to secure de facto benefit receipt.

While one may argue that bad servicing and discrimination could be a universal experience in job centres, the focus of my analysis was experiences within the intra-EU migrant group in particular. The aim was to demonstrate how the erroneous application of the law and ignorance of administrative procedures could bar some applicants from de facto benefit and service receipt, despite their legal entitlements. I discussed the reliance on German as the

sole language of communication during job centre interactions, the overly rigid applications of the law and the refusal of written benefit applications as overt forms of discrimination. Respondents reported that caseworkers sometimes deployed subtler techniques, imposing hidden administrative burden by requesting additional, and to some extent non-existent or hard-to-provide documents.

Next, the paper explored some of the underlying mechanisms, including the unawareness of EU migrants' complex legal entitlements or of their needs as newcomers to German society and bureaucracy. The analysis also touched upon the often skewed incentive structures created by a *New Public Management*-oriented culture of efficiency and performance control, which left little time to explore individual circumstances during claims processing. Overall, the analysis highlighted the discrepancy between EU migrants' formal entitlements in principle, and their substantive rights in practice. The interviews illustrated how policy implementation could develop into discriminatory practices, excluding EU migrant groups from accessing their legal entitlements. While local bureaucrats may not discriminate intentionally, their day-to-day practices can bring about adverse effects for migrant benefit claimants. Exclusionary practices transpired into rationing access, parking and rule adaption, which are typical coping strategies of local bureaucracies to resist work and managerial pressures (Brodin 2013). Moreover, superficial and legalistic treatment of EU migrants' claims could relate to their often ambivalent legal entitlements. The latter rendered cases particularly complex to process, and made their files become the object of parking processes. Consequently, administrators sometimes reject benefits claimants in need in order to protect themselves against additional or unpleasant work.

Considering the institutional hurdles migrant claimants face when claiming, the findings also point to the significant role of brokers, in their role as cultural translators. By bridging knowledge gaps

about entitlements and language, such third-party intermediaries can enable administrative inclusion for EU migrant applicants who would otherwise remain excluded. However, brokers' ability to mediate depends on their social position and perception thereof.

The study has two significant implications. First, by shedding light on the ways in which inequalities in access are constructed in daily administrative practice, the research adds to existing empirical knowledge on the informal inequalities in access beyond the law. The aforementioned discrepancies between policy design and implementation bring about an unlawful denial of entitlements in practice. The results present the experience of EU nationals, whose situation has remained overlooked by national politicians. Yet, the findings pertain more widely to the needs of an increasingly diverse migrant population. Substantive inequalities in access also entail substantial societal costs, as such inequalities can harm the social fabric of the entire society. In fact, access to social security can serve as a vehicle to social integration, as such access protects vulnerable (migrant) population groups against poverty, enabling them to participate meaningfully in society.

Second, revealing different forms of discrimination against EU claimants has important human rights implications. Administrative processes privileging non-migrant nationals over migrant residents in redistribution entail broader moral questions of social injustice and unfairness. Excluding some EU

citizen groups from de facto access to subsistence-securing benefits counters one of the fundamental principles enshrined in the German constitution, namely a life of dignity to every resident on German territory (*Article 1, German Basic Law*). While certain inequalities in treatment may be justifiable from an administrator's point of view (e.g., 'parking' and 'creaming' techniques of beneficiaries in claims processing), they nonetheless have discriminatory effects. This raises the moral question of what sorts of disadvantage state administrations should proactively counterbalance. Should granting social rights to foreign claimants go hand in hand with securing equal access to claiming the right in practice? Hence, should it be a government responsibility to make up for claimants' diverse needs and circumstances?

Even though such questions remain to date open to debate, the German state nevertheless does address some inequalities that an immigrant status may entail in practice. For instance, it has mandated the German welfare associations to support newcomers in all aspects of their social integration process. However, as this research also spotlighted, officially mandated welfare counsellors remain underutilised by their target groups. Apart from publicly debating the fairness of immigrants' social rights, small policy changes, such as strengthening the information resources available to intra-EU migrants regarding their social rights and obligations, and existing state-financed support structures, may improve de facto access to material benefits and social services.

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Dr. Nora Ratzmann has joined the German Center for Integration and Migration Research (DeZIM) in 2020, first as a Research Fellow in the Conflict and Consensus Unit. Since July 2022, she is leading the qualitative stream in the research project Support and Integration of Refugees from Ukraine in the Integration Unit on the perspectives and needs of recently arrived Ukrainians regarding German state-funded social services. She also coordinates the international research network Forced Migrants from Ukraine in Transnational Europe. Her work focuses on migration politics, social protection and policy implementation. Nora Ratzmann completed her PhD at the Department for Social Policy, London School of Economics, supported by a Leverhulme Doctoral Scholarship. Previously, she held research positions at the think tank RAND Europe, UNESCO, and the Expert Council of German Foundations for Migration and Integration.

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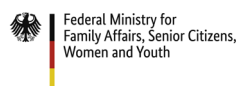
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