



“Non-standard” work in Germany: self-employed and “mini-jobs”*

EMPLEO NO ESTANDARIZADO EN ALEMANIA: TRABAJADORES POR CUENTA PROPIA Y TRABAJADORES EN MINI-EMPLEOS

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ABSTRACT

The paper discusses two forms of “non-standard” work in Germany: self-employment and the so-called “Mini-Jobs”. While in the majority of EU countries the self-employed are systematically covered by social security schemes, compulsory social insurance in Germany is limited only to a few special groups of the self-employed. Another German “peculiarity” are the “mini-jobs”, which are treated differently than “regular jobs” under tax and social law. The paper first gives a brief overview of the German social security system, before discussing the social security situation of self-employed in Germany. Then, the so-called “Mini-Jobs” and their European dimension are described and discussed.

RESUMEN

Este estudio propone la reflexión a cerca de dos formas de trabajo no estándar en Alemania: el autoempleo y los denominados mini-empleos. Mientras que en una amplia mayoría de Estados miembros de la Unión europea los trabajadores autónomos están legal y obligatoriamente incluidos en alguno de los regímenes de la Seguridad Social, en Alemania esta obligatoriedad solo está prevista para un reducido número de supuestos dentro del más genérico colectivo de trabajadores por cuenta propia. Los mini-empleos son otra peculiaridad alemana en la medida en que conllevan un régimen jurídico distinto al del trabajo estándar en lo que se refiere a la contribución y protección en materia de Seguridad social. Esta investigación se construye, pues, ofreciendo un breve repaso por el sistema alemán de Seguridad Social para a posteriori abundar en la discusión doctrinal y jurídica que actualmente circundan a los colectivos apenas referidos.

PALABRAS CLAVE

German Social Security System
Self-employed
Mini-jobs
Precarity
Non-standard workers

KEYWORDS

Sistema de Seguridad Social alemán
Trabajadores autónomos
Mini-empleos
Precariedad laboral
Trabajadores no estandarizados

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I. INTRODUCTION

The European Pillar of Social Rights, Principle 12, highlights the right of all working persons to adequate social protection. It stipulates that “*regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection*”. With regard to social security for the self-employed, Germany is a “special” case in comparison to other European countries: While in the majority of EU countries the self-employed are systematically covered by social security schemes, compulsory social insurance in Germany is limited only to a few special groups of the self-employed, in line with the Bismarckian tradition. Another German “peculiarity” are the so-called “mini-jobs”: These are forms of so-called “marginal” employment, which are treated differently than “regular jobs” under tax and social law.

This article first gives a brief overview of the German social security system, before discussing the social security situation of self-employed in Germany. Then, the so-called “mini-jobs” as a “German special path” and their European dimension are described and discussed.

II. GENERAL INFORMATION ON GERMAN SOCIAL SECURITY SYSTEM

The German social security system has often been described as the “Bismarckian” type of social security. Introduced in the late 1880s, the German social insurances (the sickness insurance was established in 1883, the job accidents’ insurance in 1884 and the pension insurance in 1889) were primarily addressed to blue-collar workers. The implementation of a social security system especially for this group had to do with Bismarck’s assumption that the emerging workers’ movement was a political hazard. Hence, he considered social security as an appropriate tool to reduce the influence of and ban left-wing political parties and trade unions: these institutions had since the 1850s created insurance systems based on the objective of providing mutual

assistance to workers in need and their families and they were gaining increasing political influence¹.

The Bismarckian concept still dominates the German social security system. In fact, the branches of social *insurance* are still being primarily addressed to employees – for example civil servants are not covered by social insurance². Regarding the self-employed, only (very) specific groups of self-employed are (compulsorily) covered.

The statutory old age pension insurance scheme in Germany, which is codified in Book VI of the German Social Code, covers 85 percent of population, the majority of them employees³. As already mentioned, civil servants are not included, neither are the majority of self-employed persons. Only certain groups of self-employed are compulsorily insured: these are self-employed lecturers, nursery teachers, nursing carers and midwives. Self-employed artists and members of the publishing professions are insured under the Artists’ Social Insurance Act⁴. Since 1999, self-employed persons working primarily for a single client without having employees of their own (“solo self-employed”) are also compulsorily insured⁵.

Self-employed in so-called “liberal professions” can opt out of mandatory insurance in the statutory old-age pension scheme substituted by mandatory insurance in the liberal professions pensions scheme. Pension schemes for the liberal professions are mandatory for lawyers, notaries, physicians, architects, engineers, pharmacists, dentists, veterinaries, accountants, tax consultants etc.

All other self-employed persons are not compulsorily insured by the statutory old age pension scheme – this means that they have to make old-age provisions on their own.

The statutory health insurance scheme is codified in Book V of the German Social Code. Employees are compulsorily insured if their regular gross income exceeds € 520 per month and is below⁶ the compulsory insurance income limit⁷. Also students, apprentices, pensioners⁸, persons with disabilities, unemployed people receiving unemployment benefit, farmers and artists are compulsorily insured⁹.

Statutory health insurance also covers family members at no extra charge. A spouse or life partner and, up to a certain age, children of members are covered, provided among other things that their regular income does not exceed €520 per month and they are not themselves insured as members¹⁰.

1. Reinhard, H.-J., “The New Basic Pension Supplement in Germany”, in Devetzi, S. (ed.): *Minimum Income in Old Age* (in print), 2023; Eichenhofer, E., *Sozialrecht*, 12. Edition, Tübingen: Mohr Siebeck, 2021, pp. 21-23.

2. A special system (Beamtenversorgung) exists for them instead.

3. §1 Book VI German Social Code.

4. Under the Artists’ Social Insurance Act they pay only half the contributions themselves.

5. §2 (1) No. 9 Book VI German Social Code.

6. If a person earns above this limit, he/she can opt out for private sickness insurance.

7. In German: “Jahresarbeitsentgeltgrenze”: this limit changes every year, for 2023 the „general” annual income limit is €66.600.

8. Pensioners who have been in statutory health insurance or insured as a family member for most of the latter half of their working life.

9. §5 Book V German Social Code.

10. §10 Book V German Social Code.

Persons who are voluntarily insured in statutory health insurance, such as employees whose income from employment exceeds the compulsory insurance income limit, civil servants and self-employed persons, may opt out for private health cover with a private health insurance company. Since 2007 it is obligatory to be insured either in the statutory health insurance scheme or to have a private insurance.

Self-employed persons whose self-employment is their main occupation are not subject to compulsory health insurance and therefore come under private health insurance -- unless they were insured under the statutory scheme before entering self-employment¹¹.

Compulsory covered by the unemployment insurance scheme, codified in Book III of the Social Code, are also primarily employees. Self-employed can apply for voluntary unemployment insurance if they work at least 15 hours¹² a week¹³.

III. SELF-EMPLOYED PERSONS AND INCOME INSECURITY IN OLD-AGE

Self-employed persons in Germany amounted to 3.5 million in 2020. Of these, around 1.92 million are “solo” self-employed¹⁴.

As described above, the majority of self-employed are *not* part of the statutory pension insurance scheme. This is based on the idea that the self-employed can make themselves provisions for old age and do not need the collective protection of the solidarity community of the insured persons. Only for special groups of self-employed persons the assumption of a lack of need for protection was considered to be not justified¹⁵. This is especially the case of “solo” self-employed persons, who are subject to obligatory pension insurance if they receive job assignments from one client only (§2 (1) No. 9 of the Six Book of the Social Code). In fact, the legislator considers them to be kind of “false” self-employed because they have more similarities to employees; in any case, they can be regarded as a special category of employment in distinction to “classical” entrepreneurship or self-employment with personnel¹⁶.

In 2022, a study on self-employment in Germany was conducted for the Federal Ministry of Labor and Social Affairs¹⁷. The study takes a closer look at the income

11. Federal Ministry of Labor and Social Affairs, *Social security at a glance*, 2020, p. 105.

12. 28a Book III German Social Code.

13. Regarding the self-employed, the long-term care insurance and the insurance against accidents at work and occupational diseases are not further elaborated in this paper.

14. Bonin, H./Krause-Pilatus, A./Rinne, U.: *Selbständige Tätigkeit in Deutschland*, Study conducted for the Federal Ministry of Labor and Social Affairs, 2022, p. 16.

15. Schulze Buschoff, K. /Conen, W./Schippers, J.: “Solo-Selbständigkeit – eine prekäre Beschäftigungsform?”, *WSI-Mitteilungen*, 2017, pp. 54-61, p. 59.

16. Haasler, S. and Hokema, A.: “Female Solo Self-Employment in Germany; The role of transitions and learning from a life course perspective”, *Social Inclusion*, Volume 10, Issue 4, pp. 150-160, p. 151.

17. Bonin, H./Krause-Pilatus, A./Rinne, U.; *Selbständige Tätigkeit in Deutschland*, Study conducted for the Federal Ministry of Labor and Social Affairs, 2022. https://www.ssoar.info/ssoar/bitstream/handle/document/79972/ssoar-2022-bonin_et_al-Selbstandige_Erwerbstatigkeit_in_Deutschland_Aktualisierung.pdf?sequence=1&isAllowed=y&lnkname=ssoar-2022-bonin_et_al-Selbstandige_Erwerbstatigkeit_in_Deutschland_Aktualisierung.pdf.

situation and old-age provision of self-employed persons. It shows that they have more professional autonomy than employees; at the same time they are exposed to comparatively higher income risks. Since the majority of self-employed persons are not part of the statutory pension insurance, these risks can also be transferred to old-age provision. In fact, income security in old-age for self-employed strongly depends on the individual willingness to make provisions and also the amount of precautionary savings. This is particularly true for “solo” self-employed persons, who often have only low –and also volatile– incomes. This makes regular and adequate retirement provision difficult¹⁸.

The Old Age Security Report of 2020¹⁹ investigated –among other things– the question which categories of the working population only have a low income in old age: It is striking that formerly self-employed persons often have low incomes²⁰. This means that formerly self-employed are much more likely than former employees to be dependent on basic security/social assistance benefits in old age. The individual risk of old-age poverty and also the risk for society of having to pay for the income security of the self-employed with tax revenues would be considerably reduced by the introduction of a compulsory old-age insurance for all self-employed persons²¹.

IV. ANOTHER GERMAN SPECIALTY? “MINI-JOBS”

The term “mini-jobs” is used in Germany to describe a form of “marginal employment” where a person either earns a maximum of € 520 per month or only works for a max. of 70 days per calendar year. This special form of employment is treated “favourably” in terms of tax and social law: The employer is obliged to pay a flat rate for social insurance, which is lower than the employer and employee contributions for regular employment contracts subject to social security contributions. Mini-jobs can be described as a “German peculiarity”, because –in a European comparison– this kind of special treatment of “marginal employment” exists almost exclusively²² in Germany²³.

Mini-jobs can be regular or occasional, or jobs taken on in addition to regular employment. The majority of mini-jobbers are: a) people working in lower– and middle-income segments who have a mini-job as their *second* job; b) housewives and pensioners who have mini-job as their *main* job; c) students and d) unemployed persons supplementing their unemployment benefits²⁴.

18. Bonin, H./Krause-Pilatus, A./Rinne, U.: *Selbständige Tätigkeit in Deutschland*, 2022, op. cit., p. 4.

19. Alterssicherungsbericht 2020, https://www.bmas.de/SharedDocs/Downloads/DE/Rente/alterssicherungsbericht-2020.pdf?__blob=publicationFile&v=1.

20. Alterssicherungsbericht 2020, op. cit., p.134-137.

21. Deutsche Rentenversicherung Bund: *Schriftliche Stellungnahme*, 15.4.2021, DEUTSCHER BUNDESTAG Ausschussdrucksache 19(11)1032, p. 2. <https://www.bundestag.de/resource/blob/834696/0b702b0912317ddc7010fed0321368fc/19-11-1032-SN-DRV-data.pdf>.

22. With the exception of Austria and Switzerland, where some forms of “marginal employment” are also treated differently in terms of social law: Koppernock, M.: “Minijobs” – ein deutscher Sonderweg auf dem Arbeitsmarkt, *Neue Zeitschrift für Sozialrecht* 2022, pp. 364-371, p. 365-366.

23. Koppernock, M.: “Minijobs” – ein deutscher Sonderweg auf dem Arbeitsmarkt, *NZS*, 2022, op. cit., p. 364.

24. European Commission: Case study: *Gaps in access to social protection for mini-jobs in Germany*, (written by Nicola Duell) 2018, p. 15.

A. Mini-jobs: taxation and social security

Regarding taxation, a flat income tax rate of 2% on gross wages is applied²⁵. This represents saved taxes for most mini-jobbers, in particular if their income from the main job, the pension or the spouse’s income is high.

Mini-jobbers are not compulsorily insured by statutory health insurance, which also means that they pay no contributions²⁶ to the health insurance scheme²⁷. However, the vast majority of them are in fact *covered* by health insurance because they have *derived* entitlements e.g. through a “primary job” or family insurance. Mini-jobbers are covered by the accidents at work and occupational diseases insurance scheme²⁸, but they are neither insured against unemployment (there is no contribution obligation to the unemployment insurance scheme)²⁹ nor are they obliged to pay contributions to long-term care insurance.

Since 2013, mini-jobs are –in principle– subject to insurance obligation in the statutory pension insurance scheme. The employer pays a flat rate pension insurance contribution of 15% (in the case of mini-jobs in commercial employment) or 5% (in the case of mini-jobs in private households). Based on the statutory pension insurance contribution rate of 18.6%, the remaining worker’s share is 3.6% (for mini-jobs in commercial employment) or 13.6% respectively (for mini-jobs in private households). These compulsory contributions give entitlement to the full range of statutory pension insurance benefits³⁰.

However, there is an opt-out option. On request, mini-jobbers can be exempted from compulsory insurance in the statutory pension insurance scheme³¹. The majority of them actually do make use of this option³²: In order to avoid deductions, more than 80 percent of all mini-jobbers exempt themselves from compulsory insurance³³. By doing so, they not only forego higher pension entitlements, but also other important benefits of the statutory pension insurance, such as rehabilitation benefits.

B. Mini-jobs in the german labour market

Mini-jobs have become a key feature of the German labour market: Round one fifth (17,8 %) of dependent employees in Germany hold a mini-job³⁴.

25. § 40a EStG (German Income Tax Law).

26. § 7 Book V of the German Social Code.

27. The employers pay a flat rate health insurance contribution of 13% (in the case of mini-jobs in commercial employment) or 5% (in the case of mini-jobs in private households) - §249b Book V German Social Code.

28. In Germany, the contributions to the accidents at work and occupational diseases insurance scheme are paid by the employers only: § 150 Book VII of the German Social Code.

29. § 27 Book III German Social Code.

30. §172 Book VI German Social Code.

31. §6 (1b) Book VI German Social Code.

32. European Commission: Case study... op. cit. p. 6.

33. Stand September 2021: https://www.deutsche-rentenversicherung.de/DRV/DE/Ueber-uns-und-Press/Presse/Meldungen/2021/210309_rententipp_minijob.html.

34. <https://www.dgb.de/themen/++co++f4287836-493e-11ec-882e-001a4a160123>.

Of the total of 7,37 million people with a mini-job in 2022³⁵, the majority of them (4,26 million) have a mini-job as their *main occupation*; most of them are women³⁶. If we add this to the fact that the majority of mini-jobbers make use of the opt-out option³⁷ and do not acquire pension entitlements, we can talk of a “systematic trap” that excludes in particular women from the pension system³⁸.

A study conducted on behalf of the European Commission in 2018³⁹ argues that mini-jobs tend to *de facto* subsidise the expansion of the low wage sector: this is due to reduction of non-wage labour costs and possible tax savings that the existing schemes offer to both employers and employees.

Mini-jobs are also more widespread among jobs requiring a low level of skills and expertise and in sectors with low-wage levels (e.g. retail trade, hotels and restaurants, household services ...).

According to the study, mini-jobs are promoting traditional gender roles in families, as they offer strong incentives for women to only work few hours⁴⁰. Furthermore, the risk of future old-age poverty of women results from breaks in life and working biographies. To counter this, women should be encouraged to acquire their own pension rights. This involves working more than what entails a mini-job.

In addition, there is a low tendency to move from a mini-job into standard employment. The authors conclude that in current and future times of labour shortage in Germany due to demographic change the concept of mini-jobs has to be questioned. Instead of boosting employment, mini-jobs are potentially reducing the volume of work. The authors argue that it would be advisable that all types of employment – including mini-jobs – become subject to the same social security contribution rules⁴¹.

Another study, conducted by the Institute for Employment Research (IAB) in October 2021⁴² concludes that mini-jobs displaced up to 500,000 jobs subject to social security contributions in small companies with fewer than ten employees. Contrary to hopes, mini-jobs rarely provide a bridge to employment subject to social security contributions. On average, an additional mini-job in a small company replaces about half an average job subject to social security contributions. Accordingly, mini-jobs are – at least in small companies – not just a supplement to “regular” employment but they rather substitute it. Moreover, they rarely built a bridge to employment subject to social security contributions. According to the study, employees often remain in the low-wage segment and in many cases work below their qualification level.

35. Bundesagentur für Arbeit, Statista 2022.

36. <https://www.wsi.de/de/erwerbsarbeit-14617-minijobs-als-einzige-erwerbstaetigkeit-2004-2017-14869.htm>.

37. See above.

38. Reinhard, H.-J., “The New Basic Pension...”, op. cit.

39. European Commission: *Case study...*, op. cit.

40. *Ibidem*, p. 40.

41. *Ibidem*, p. 41.

42. Collischon, M./ Cygan-Rehm, K./ Riphahn, R.: *Minijobs in Kleinbetrieben: Sozialversicherungspflichtige Beschäftigung wird verdrängt*, IAB-Forum 20. Oktober 2021, <https://www.iab-forum.de/minijobs-in-kleinbetrieben-sozialversicherungspflichtige-beschaeftigung-wird-verdraengt/>,

C. The european dimension of “mini-jobs”

“Mini-jobs” may lead to gaps in social protection for persons moving within the EU or cross-board workers. In order to prevent persons who make use of the right of free movement within the EU from losing entitlements to social benefits because of their migration, the EU social security coordination law has been created. The objective of Regulation 883/04⁴³ is to coordinate –and not to harmonise– the various social security systems of the Member States. It “provides a “bridge” for migrants to assist them to gain access to the social security system determined to be applicable to them”⁴⁴.

The rules for determining the applicable legislation are laid down in Title II (Art. 11-16) Reg. 883/04. They determine which national social security law is applicable in cross-border situations. The Member State whose legislation is applicable is called the “competent State”. The “main rule” is that the legislation of the Member State in which a person is working is applicable (*lex-loci-laboris* principle). The rules for determining the applicable legislation have “exclusive effect”, meaning that migrants are to be subject to the legislation of a single Member State only.

Some problems arise in cross-border situations, especially for persons moving between states with an employment-based social security system on the one hand and a residence-based system on the other. In some cases, persons are not covered by the system of the competent State (state of employment), but they would have been covered by the system of their state of residence had the Art. 11-16 Reg. 883/04 not precluded this. This has led to some case law decisions of the CJEU⁴⁵. A case showing the “negative effects” of mini-jobs in practice is the Case of *Franzen, Giesen and Van den Berg*⁴⁶. The case concerned persons who lived in the Netherlands and went to work part-time in Germany as cross-border workers – in “mini-jobs”. German law was applicable to them (*lex-loci-laboris* principle). However, as “mini-jobbers” they were only insured for accidents at work in Germany and not for the other social security schemes⁴⁷. They were neither entitled to family benefits nor built up old age pensions for the period of employment in Germany. Moreover, their employment was so limited that their income from it was not sufficient to guarantee them a minimum income or to allow them to contributions to a voluntary insurance scheme. Pursuant to the rules on the applicable legislation, they could not claim benefits or acquire Dutch benefit rights – despite of the fact that they continued to live in the Netherlands, and in the

43. Regulation (EC) 833/2004 of the European Parliament and Council on the coordination of social security systems [2004] OJ L166/1.

44. Essers, G. and Pennings, F., “Gaps in social security protection of mobile persons: Options for filling these gaps”, *EJSS*, 2020, vol. 22 (2), pp. 163-179, p. 164.

45. CJEU 392/84 Ten Holder, ECLI:EU:C:1986:242; CJEU C-352/06 Bossmann, ECLI:EU:C:2008:290; CJEU C 611/10 and C 612/10 Hudzinski, ECLI:EU:C:2012:339.

46. Case C-382/13, *Franzen, Giesen and Van den Berg*, ECLI:EU:C:2015:161 and cases C-95/18 and C-96/18 *van den Berg and others*, ECLI:EU:C:2019:767.

47. The legislation that made mini-jobs subject to insurance obligation in the statutory pension insurance scheme was only introduced in 2013; before that, there was no obligatory insurance in all social security branches, with the exception of the work accidents scheme. The judgements concerned facts before 2013.

Netherlands social security is based on residence: The law of the state of employment (Germany) was applicable – even if this employment was only a “mini-job”.

The CJEU decided that Articles 45 and 48 TFEU may not be interpreted as obliging the state of residence to grant benefits to migrants who are not entitled to such benefits under the legislation of the competent Member State⁴⁸. This conclusion was characterized as “disappointing” because it states that EU law does not offer adequate protection to migrant workers who, because of marginal employment in their country of employment, are not covered by a number of social security schemes; the Court missed the opportunity to provide access to the social protection system of the Member State of residence for these workers⁴⁹. However, as *Verschueren* put it, it is “primarily the result of the restrictions in the national legislation of the State of employment and the responsibility of the policymakers in that country”⁵⁰.

As described above, since 2013 “mini-jobs” are better protected in Germany, at least when it comes to the insurance obligation in the statutory pension insurance scheme. However, their “favourable treatment” when it comes to taxation and social security contributions –which also leads to low contributions and thus low pension entitlements in the future– still remains. Also, the effects of the “opt-out” option on cross-border situations have not been examined yet.

V. CONCLUSIONS

The German social security system does not adequately protect a large number of self-employed persons. This leads in many cases to income insecurity, especially in old age. Also, the German peculiarity of “mini-jobs” deserves criticism: not only does it subsidise the expansion of the low-wage sector, but it furthermore cements traditional gender roles in families and jeopardizes (future) social security rights, especially for women. These two aspects of an inadequate protection of “non-standard” work is hardly compatible with Principle 12 of the European Pillar of Social Rights. As it has often been recommended, all types of employment – and self-employment – should be equally included in the social security system. An “adequate social protection” for all, as stipulated by Principle 12, would then be feasible.

48. Cases C-95/18 and C-96/18 van den Berg and others, ECLI:EU:C:2019:767, para. 58-65.

49. Verschueren, H.: “The role and limits of European social security coordination in guaranteeing migrants social benefits”, *EJSS*, 2020, vol. 22 (4), pp. 390-402, p. 393.

50. *Ibidem*.

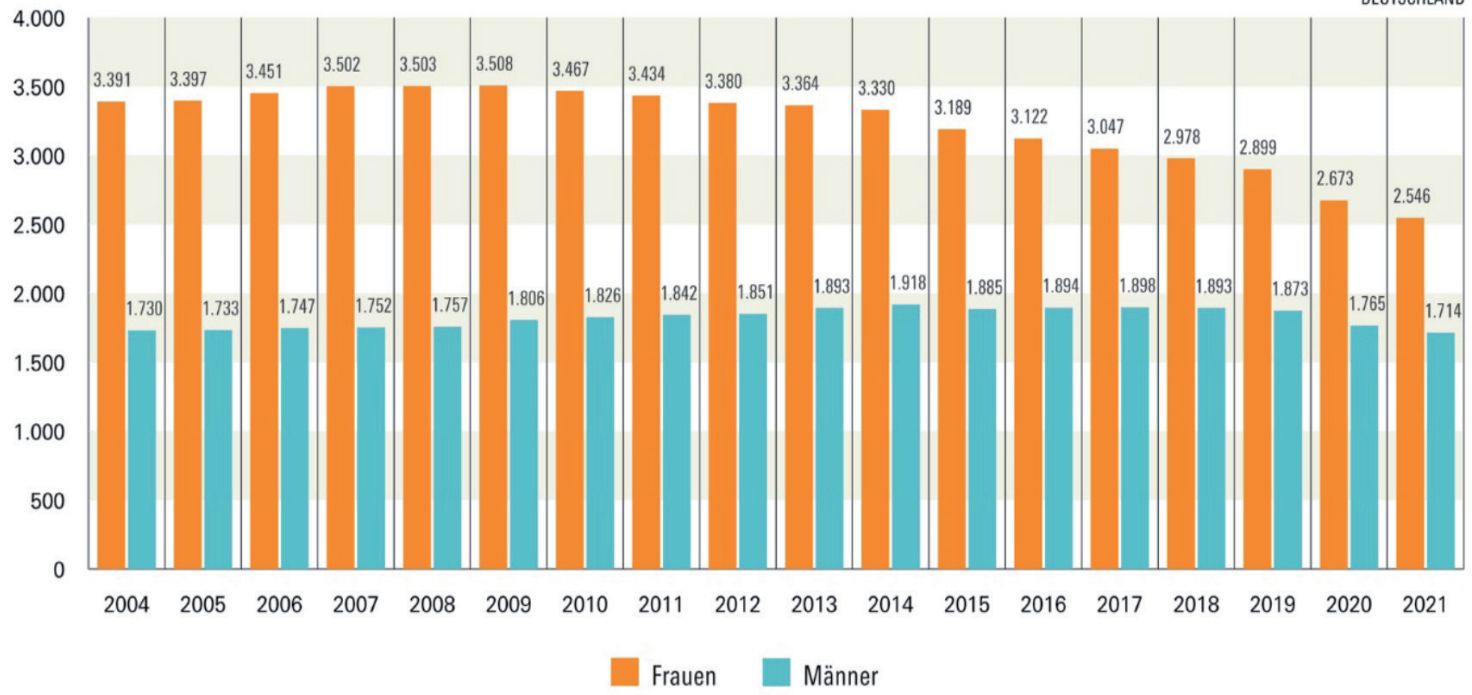
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ANEX I

Men and women with mini-jobs as their main occupation in Germany

Ausschließlich geringfügig beschäftigte Frauen und Männer in **Deutschland** (2004–2021),
Angaben in Tausend



Datenquelle: Bundesagentur für Arbeit, Beschäftigungsstatistik, eigene Berechnungen

Bearbeitung: WSI GenderDatenPortal 2023



ANEX II

Mini-Jobs March 2022-March 2023 by gender (Statistics of the Federal Employment Agency)

https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html?topic_f=beschaeftigung-sozbe-qheft

	%	Employees (mini-jobs)				
		March. 2023	Dec. 2022	Sep. 2022	Jun. 2022	March 2022
		1	2	3	4	5
Total	100	7.421.698	7.460.921	7.403.079	7.355.004	7.180.245
Men	43,0	3.189.623	3.194.738	3.167.179	3.128.541	3.045.999
Women	57,0	4.232.075	4.266.183	4.235.900	4.226.463	4.134.246