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| 2014, 1, 1 | Osservatorio sulle fonti / Observatory on Sources of Law  ----------------------------------------------------------------------------  Section: Sources of Law in the EU member States  Germany – 2014  By Jakob Nolte, Humboldt-Universität zu Berlin |
| Name of the Act/s | Bundesgesetz über die individuelle Förderung der Ausbildung –Bundesausbildungsförderungsgesetz (BAföG) |
| Date of entry into force of original text | 1952 |
| Date of Text (Adopted) | 7.12.2010 new version in planning |
| Type of text  (name in English / name in the official language) | Law / *Bundesgesetz* |
| If federal State | • Federal level  □ State level (specify the State) |
| If Regional State | □ State level  □ Regional level (specify the Region/Comunidad Autonoma) |
| Enacted by | Project by legislator |
| Reference to the Constitution (art) | Art 74 par 1 no 13, Art 116 German basic law (Grundgesetz) |
| Subject area | Education grants |
| If the act implements a source of EU Law: cite the relevant EU legal source | Arts. 20, 21 Treaty on the Functioning of the European Union |
| Comment | One of the first legislation projects of the newly elected Federal Government will be a reform of the Federal Law on assistance for education and training (BAföG). Apart from a fundamental increase in education funding, it will eliminate some funding deficits that are associated with the conversion of the German higher education to the European bachelor-master system that has not been sufficiently taken into account yet. Thus, the project tries to improve the transition from bachelor to master programs and the transition from one degree programs to two-stage Bachelor and Master degree studies.  In particular there is a need to adapt the German regulations to the requirements of European law. The European Court of Justice has recently decided that various provisions of the German assistance for education are incompatible with European law. This concerns notably studies abroad. So far, education grants for studies abroad will normally only be granted if the student has resided in Germany (s 5 para 2 BAföG). For Germans, who have their permanent residence abroad, an education abroad can be sponsored only under special circumstances (s 6 BAföG). In the Court's opinion, a dependency with the residence constitutes a violation of the right to free movement, so far as the regulation excludes Germans if they receive an education in other EU countries. The regulation in ss 4, 5 and 6 of that Law is able to prevent European Union citizens to use their freedom to move to another Member State and reside there.[[1]](#footnote-1)  In addition, the provisions of s 5 BAföG correspond to the regulations in s 16 that regulate the grants period for studies abroad differently from the grants in Germany. Short stays are generally sponsored for one year in the whole world. Studies in an EU Member State and Switzerland are sponsored without time limit. But this is true only if the student had his permanent residence at least three years in Germany before. In Opinion of the ECJ this is also a violation of the right to free movement.[[2]](#footnote-2)  It is not yet fully clear what consequences this has for the provisions of the new law. In order to avoid the violation of the right to free movement it is theoretically possible to give up the requirement of domestic residence in ss 5 and 16 as well as to further extent the grant under s 6. It is clear that the regulation must be reformed by the forthcoming law. |
| Secondary sources/ doctrinal works (if any) |  |
| Available Text | <http://www.bmbf.de/pubRD/bundesausbildungsfoerderungsgesetz.pdf>  or  <http://www.bafög.de/index.php> |

1. ECJ 24.10.2013 – C-220/12. [↑](#footnote-ref-1)
2. ECJ 18.7.2013 – C-523/11, C-585/11. [↑](#footnote-ref-2)