



Communicating with the German Authorities ('Behörde')

What do I have to consider?

There are written documents for every transaction with authorities and offices in Germany. This makes the rights and obligations of the parties involved clear. This way everything can always be checked.

Important: For every written exchange it is always important to make a copy for your own documents. If the authorities decide something, they must inform you in writing. The decision is called a »Verwaltungsakt« (administrative act). The letter is called a »Bescheid« (notice). This happens, for example, when you receive money from the social welfare office or the job centre. Then you receive a so-called »Leistungsbescheid« (notice of benefits). The authority must always legally justify its decision. How the law is understood and applied can differ between different authorities.

Different regulations

EU: There are regulations that apply to the entire European Union.

Germany: There are federal laws and regulations that apply to all authorities in Germany.

Federal State (e.g. Saxony-Anhalt): Then there are laws that only apply to the individual federal states. In the individual federal states there may also be regulations which determine how a law is to be applied. This is called an »Erlass« (decree). »Rundschreiben« (circular letters) are another possible form of regulation, which are circulated from higher-level authorities.

It's good to check every »Bescheid« notice carefully. If you do not understand the »Bescheid« notice, seek help from an advice centre.

- › Are there several decisions stated in the »Bescheid« notice?
- › Is the legal basis for each »Bescheid« notice stated? Paragraphs »§« must be mentioned in the letter!

- › Does the »Bescheid« notice state what you can do if you disagree with anything written in it? This part is called »Rechtsbehelfsbelehrung« (information on legal remedies). There must be information in the letter about what you can do in this case. This is usually at the end of the letter.

If you have questions, ambiguities and above all problems, it is important to go directly to an advice centre or legal representatives instead of waiting!

TIPS

For applications:

- › Authorities are obliged to accept applications. Therefore, don't be discouraged. If necessary, try again at another time.
- › It is always best to submit applications in writing and to keep a copy. You should be able to prove when you made the application; e.g. send the application by fax and keep a fax log. When you submit the application to the authorities, insist on an »Eingangsstempel« (stamp of receipt) or take a witness with you.
- › The application is considered legally to have been made and must be accepted, even if any necessary documents are missing. If documents are missing, the authority must tell you which ones. This is called the »duty to advise and inform« (»Beratungs- und Hinweispflicht«) and is stated in the law, §§ 14-16 Sozialgesetzbuch Eins (SGB I).
- › It is good if you back up the application as well as possible. It helps if you submit all the supporting documents. If you don't have the evidence yet, write that in the application. Explain in the application that you will submit the evidence later.

- » You only have to submit the documents that are required. If the authorities require you to submit documents that are not necessary, you do not have to do so. It is then good to point out that these documents are not necessary. You can then also ask for a (written) justification of why these documents are required.
- » If an answer to your application takes a long time, ask the authority why. This is especially important when applying for benefits (e.g. »Asylbewerberleistungen« [benefits for asylum seekers]).

How long must I wait for a response from the authority? The law calls this »Untätigkeit der Behörde« (inaction of the authority).

The authority must reply to a request. It does not have unlimited time to do so. The authority must decide »within a reasonable time«. If the Authority fails to do so, you can take your case to court. The lawsuit will then be filed for »inaction« according to § 88 »Sozialgerichtsgesetz (SGG)«. The aim of the lawsuit is to ensure that you receive an answer to your application.

If there is no important reason for a further delay, a »Widerspruch« (appeal) can be filed after 6 months. (*Note: too much work or too few staff in the authority is not an important reason*).

If you have appealed against an authority's decision (see below), the authority has only up to 3 months to respond to the »Widerspruch« (appeal) and decide again.

Sometimes it helps to make it clear to the authorities that you know your rights and that you know you can file a lawsuit if you are waiting for a reply for a very long time.

Refusal of an application by the Authority

If I do not agree with the decision of the authority, what can I do?

How long do I have?

As soon as you receive a decision, the period for possible »Widerspruch« (appeal) against the decision begins. The period starts to run from the date on which you were notified of the decision. Please note the date on the envelope – see the postmark. Or, in the case of a yellow envelope you will find the date on the envelope itself.

You should find information on the time limit for filing a »Widerspruch« (appeal) in the »Rechtsbehelfsbelehrung« (information on legal remedies). As a rule, you have one month to file a »Widerspruch« (appeal) against the decision.

Please pay attention to the deadlines!

If there is no »Rechtsbehelfsbelehrung« (information on legal remedies), this is a mistake. In this case, you have one year to file an appeal. If the »Rechtsbehelfsbelehrung« (information on legal remedies) is incorrect, this is also a mistake. Then you also have one year to file a »Widerspruch« (appeal).

If you have not been able to meet the deadline from the letter, or only realise later that something is wrong, you can apply for an »Antrag auf Überprüfung« (review) up to a certain point in time.

What do I do next?

Within this period (see »Rechtsbehelfsbelehrung« [information on legal remedies]) you should read the »Bescheid« notice carefully.

If you have received a positive reply, check whether everything has been approved or whether something is missing.

If you have received a negative reply, check whether **everything** from the application has been rejected or whether **only part of it** has been **rejected**.

It is also important to check whether the rejection is correct according to the law. It is also possible that one part is right and another part is wrong. It is important that the reasons for the rejection state under which law the decision was made – for each point. In each case, a paragraph (»§«) or article (Art.) from the law should be mentioned. If this is missing, it is a mistake. The authority must always give reasons for its decision.

It may also be that the authority has forgotten to take into account another legal regulation. It is therefore possible that a claim does exist after all and the authority must make

a different decision. This often happens when laws change.

What do I do if I do not agree with the decision of the authority?

If you disagree with the decision of an authority, you can make a written statement. This is called: »Widerspruch einlegen« (filing an appeal).

In most cases, an informal »Widerspruch« (appeal) is sufficient in the first instance. This is a letter in which you declare that you do not agree with the decision, in which you demand that the responsible authority review the situation again. If the »Widerspruch« (appeal) concerns only a part of the decision, you should write a »Widerspruch« (appeal) letter stating which part you do not agree with. It is also often helpful if you give reasons why you disagree with the decision. But you do not have to do that.

Usually this does not result in any costs or disadvantages for you.

If you need support, seek help from an advice centre or a lawyer. You can find further information and templates here: <https://www.fluechtlingsrat-lsa.de/antragshilfen-musterklagen/>

What do I do if only a part of it was rejected?

The »Widerspruch« (appeal) may apply to only part of the decision.

The »Widerspruch« (appeal) should state which part you object to. It is useful to explain the

reasons why you object to the decision. The authority must then consider your perspective. You do not necessarily have to include reasons. Even without giving reasons, the authority must review the decision in full.

What do I do if the review leads to the same result?

If the authority sticks to its decision or if a decision is made with which you also disagree, you can file a formal »Widerspruch« (appeal) against the new decision in court.

How much time do I have for a lawsuit?

After receiving the second notice (»Widerspruchsbescheid«), you have one month to file a lawsuit with the responsible »Sozialgericht« (social court). Please note the date on the envelope.

How much does a lawsuit cost?

If it regards benefits, the lawsuit does not cost anything (according to § 183 of the SGG). This also applies if there is a dispute about whether you are entitled to benefits at all. For lawsuits in all other courts, there are usually court costs.

If you have a lawyer, discuss the costs with her/him.

If you are successful in court, there will be no costs for you. The authority will then have to pay the costs for your lawyer. If you are unsuccessful, you will have to pay your lawyer.

Financial support – »Prozesskostenhilfe« (legal aid)

You can apply to the court for financial support. It's called »Prozesskostenhilfe« (legal aid). The courts offer help with the application for »Prozesskostenhilfe« (legal aid).

More information here: <https://www.fluechtlingsrat-lsa.de/prozesskostenhilfe>

The court will check if you do not have sufficient financial resources. If you are entitled to »Prozesskostenhilfe« (legal aid), the costs (including those of lawyers) will be covered.

Inactivity of the authority despite urgency

If it is urgent to receive the benefit (e.g. because you are in pain and need urgent medical treatment) and the authorities do not decide quickly despite your application, you can apply to the court for a quick decision. This is called an »Eilantrag« (urgent application). The »Eilantrag« (urgent application) has to be submitted to the responsible court.

If the »Eilantrag« (urgent application) is granted, the court can force the authority to grant you benefits provisionally.

You should have all the necessary documents (e.g. medical certificates) and submit them together with the application. The court must be able to understand quickly why you urgently need the benefits.

You can also apply for legal aid for the »Eilantrag« (urgent application).

What does provisional mean?

After the decision on the urgent application (»Eilverfahren« [summary proceedings]), the main court proceedings (»Hauptverfahren«) take place later. In the main court proceedings it will take more time to clarify whether you are actually entitled to benefits. Often, however, the decision on the »Eilantrag« (urgent application) is already indicative and therefore it is foreseeable whether the claim will be won or lost. If a positive decision is made on the »Eilantrag« (urgent application), chances are good that the main proceedings will also be decided positively.

Important: Inform yourself! Check the content of the letters from the authorities! Stick to deadlines! Keep documents (copy)! Go to the advice centre! File a »Widerspruch« (appeal) if necessary! Seek legal assistance!

If you have any questions or need help, please contact an advice centre or your lawyer.

Here you can find contact details of the **advice centres in Saxony-Anhalt**: <https://www.fluechtlingsrat-lsa.de/adressen-und-beratungsstellen/kontakte-landesweit/>

If you are looking for an **advice centre in another federal state**, ask the refugee council of that state. You can find the contact details here: <https://www.fluechtlingsrat.de/>



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