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Precarious Academic Labour in Germany: Termed Contracts and a New Berufsverbot¹

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Abstract

The author examines how precarity is produced in German academia and explores how labour activists are trying to combat it. The focus is on mid-level faculty. In the first part, the mechanics of precarisation are explained; in the second part, the institutional supports of the status quo blocking change in favour of labour are identified, and in the third part, the demands and strategies of two organisations are analyzed that have made headlines in recent years by exposing the proliferation of precarity in German academia: the Education and Science Workers' Union (GEW) and the Network for Decent Work in Academia (NGAWiss).

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The German term *Berufsverbot* entered the lexicon of international political debates in the early 1970s. It referred to a law enacted in West Germany that banned people from working in the public sector because they were aligned with what were deemed anti-constitutional organisations such as the pro-Soviet German Communist Party (DKP), for example. The expression made a comeback in recent years in a completely different context: mid-level faculty in academia use it to protest against the legal regulation of termed contracts.² Notably, in 2015 academic labour activists included it in an open letter directed to the Minister of Education and all members of the Federal Parliament. The MPs had drawn the ire of the activists because they were in the process of amending a law regulating termed contracts in academia, and it had transpired that a majority were not prepared to repeal its most controversial provision. This provision limits the employment period of people in mid-level positions who are on termed contracts. Mid-level faculty can only work in state-funded positions for six years before the completion of their PhD and for another six years after that point. The frustration of the activists results from the fact that permanent positions in the medium bracket of academia are incredibly rare, and that it is very difficult to attain full professorships, which is the standard way to obtain a secure job. Many academics have to leave their profession altogether once they have reached the end of the six-plus-six-year period – often after having spent roughly two decades of their lives studying and working in higher education institutions.

In this article, I will examine how precarity is produced in German academia and explore how labour activists are trying to combat it. In so doing, I will focus on mid-level faculty. First of all, I will explain the mechanics of precarisation; second, I will identify the institutional supports of the status quo blocking change in favour of labour; and third, I will analyse the demands and strategies of two organisations that have made headlines in recent years by exposing the proliferation of precarity in German academia: the Education and Science Workers' Union (GEW) and the Network for Decent Work in Academia (NGAWiss).

² When I speak about “mid-level faculty”, I refer to what is called *Mittelbau* [intermediate structure] in German, a technical term that points to an ill-defined intermediate layer of scientists employed by universities, who are neither students nor full professors. Some of the members of this status group are still in the process of completing a PhD programme (PhD candidates are not necessarily considered students in Germany), others are post-docs, and some are teaching or research fellows or coordinate research projects.

The Mechanics of Precarisation

In the German higher education system, mid-level faculty are faced with two peculiar challenges, which result both from the mode of operation of higher education institutions and from recent political interventions. First of all, there are very few open-ended positions in the intermediate stratum of academia – of the under-45s who are mid-level faculty, 93 percent are on termed contracts (BUWIN127). This scarcity of permanent jobs reflects the fact that mid-level positions are seen as transitory: their institutional function is to facilitate the passage of younger academics to a full professorship.

Second, reaching this goal is a daunting task. In order to qualify at all, mid-level academics are usually required to have completed a second thesis after their PhD (Habilitation), which is dedicated to a new, separate topic. In the social sciences and humanities, this thesis is typically comparable to a fully revised book manuscript; in the natural sciences, it is commonly a collection of peer-reviewed articles. Aspiring full professors have to tackle this challenge on top of carrying out all the tasks that secure the functioning of higher education institutions on a day-to-day basis: teaching, the supervision of BA and MA dissertations, the mentoring of students, committee work, writing applications for research funding, and research and publication activities that are unrelated to the second thesis. Importantly, however, achieving the qualification needed to obtain a full professorship is not in any way linked with being offered a permanent position. Whereas assistant professors with tenure-track positions in the United States (US) automatically advance into permanent jobs at their home institution once they have met tenure requirements, German mid-level faculty who have successfully defended their second thesis and have reached the end of their six-plus-six-year period find themselves out of their jobs. They compete for full professorships in the job market, and the number of openings is strictly limited. In 2014, for example, the ratio of people appointed to a full professorship to those who had successfully completed their second thesis was roughly one-to-five. On average, only one in twenty-three applications for a full professorship was successful (BUWIN194).

These extreme numbers reflect a recent development that has been created through higher education policies. Whereas state funding for PhD and post-doc positions has increased significantly in recent years, the same cannot be said of full-time professorships. The result is “most extreme competition” (Ullrich392) for jobs at the highest level – in particular in the social sciences and humanities, where it is difficult to switch to new careers once people have spent a long time inside the system (Ullrich408;

BUWIN188).³

In any case, people are relatively old when they finally become full professors or have to leave academia for good. The average age of people appointed to full professorships is 41 (BUWIN: 59). Consequently, many female academics face the challenge that pregnancy and childbirth fall into their highly insecure “qualification period.” Some respond to the insecurity surrounding their jobs by choosing not to have children at all or to leave academia altogether (Schürmann139–40; Von Gross). Likewise, precarity at the intermediate level discriminates against people with working-class and immigrant backgrounds. They often lack family networks supportive of an academic career as well as financial resources and thus find the thought of having to switch to a new profession in one’s late thirties or early to mid-forties even more daunting than others (Lange-Vester and Teiwes-Kügler). Put differently, the existing institutional configuration in academia reinforces relations of social domination – be they gender, class, or race relations.

In sum, academic career paths in Germany are characterised, in the words of the 2017 National Report on Junior Scholars, by a “bottleneck problem” (BUWIN27).⁴ This is why activists argue that the law regulating termed contracts amounts to a de facto occupational ban for many academics: if they have not advanced into a full professorship during the

³ All quotations from German-language texts have been translated by the author.

⁴ Significantly, there are plenty of academics in Germany who even fail to secure termed mid-level jobs and try to make ends meet with sessional teaching. In 2016, there were 100,000 sessional lecturers in the country, compared to 50,000 full professors. They cover a significant amount of teaching, among it compulsory modules that are offered on a regular basis. In Berlin, where exact numbers exist for the 2013–2014 winter semester, sessional lecturers covered roughly between 10 and 50 percent of all hours taught at their respective institutions (Oberg3). Usually, they earn between 20 and 55 Euros per hour taught. Importantly, if time for preparation and marking is factored in, wages per hour worked are significantly lower than nominal remuneration (Scholz; Ullrich390). Peter Grottian, a Berlin-based political scientist, estimates that sessional lecturers “often work for three Euros an hour” (roughly 3.50 US Dollars at the time of writing). Furthermore, they are formally self-employed, which means that they have no job security whatsoever and no statutory entitlement to holidays, sick pay and minimum wages. Likewise, no work is available for them during the break periods, which extend to almost six months a year at German universities. In sum, sessional lecturers are in a far weaker position in the academic labour market than those who have the threat of the de facto occupational ban hanging over them. But it is important to note in this context that precarisation in higher education does not just affect academics: increasing numbers of staff are on termed contracts and university managers across the country create precarious jobs through outsourcing cleaning and other service work to “cheap” third-party providers.

six years of employment after their PhD, their chances of continuing to work in academia are slim.⁵

Institutional Supports of the Status Quo

The Berufsverbot is just one facet of a higher education system that brings together, in the view of activists and critical scholars, the worst of all worlds. The organisational structure of German higher education institutions is characterised by a curious mix of feudalism and neo-liberalism (Ullrich 393; van Dyk and Reitz, b). On the one hand, there are steep internal hierarchies that date back to medieval times and have survived all the deep ruptures in German history. These hierarchies are visible in the fact that full professors are heavily privileged vis-à-vis mid-level faculty, members of staff, and students. This concerns not just their pay and job security but also their decision-making authority. One example is that professors usually have the absolute majority of votes in search committees and other key working groups tasked with institutional self-administration. Another is the chair-based internal organisation of departments (Lehrstuhlprinzip). Every full professor typically occupies a chair; that is, they are the head of a subdivision defined by a research field that reflects their specialism. The subdivision also consists of one or several mid-level positions. Importantly, the decision of whom to appoint to these mid-level positions lies with the chair, not the department, and mid-level faculty report, in the first place, to their chair, not to the head of department. As almost all contracts are termed, this means that chairs can regularly change the people working for them. Against this backdrop, it is unsurprising that demands to phase out termed contracts are met, from the side of full professors, with ambivalence at best. There is a systemic connection between precarity and privilege that Silke van Dyk and Tilman Reitz (2016b: n.p.) describe: “So far, the precarious careers and paths (which have been taken by almost everyone) often have been protecting feudal privileges because the latter are seen as a legitimate compensation for years of dependency, insecurity and exploitation and are therefore not given up easily” (van Dyk and Reitz).

In recent years, on the other hand, politicians, university managers, representatives of business, and lobbyists have successfully propagated the neo-liberal principle of the “entrepreneurial university.” This is visible, for example, in higher education funding. Adjusted for inflation, basic

⁵ A study by the Organisation for Economic Cooperation and Development (OECD) highlights that the number of German academics working outside their home country is in the tens of thousands, and that their main motive for emigrating are career opportunities (OECD, 2015: 120–21, 130). In light of this, it appears that in Germany, an important individual strategy for academics of dealing with insecure employment prospects is to move abroad.

state funding for higher education institutions per student and year has decreased from €7,268 in 2004 to €6,361 in 2013 (Baumgarth, Henke, and Pasternack⁴⁴). This funding shortfall is partly made up by the fact that third-party funding has increased significantly. In 2004, it was €3.4bn overall; in 2013, the number was €7.1bn (Statistisches Bundesamt, email communication).⁶ Significantly, the largest share of this money comes from public, tax-funded agencies like the German Research Foundation (DFG), the Federal Ministry of Education and Research (BMBF), and the European Research Council (ERC) (DFG). Consequently, this process of funding substitution, which is driven by the neo-liberal belief in the efficiency of permanent competition, produces insecure, short-term, project-based work (van Dyk and Reitzb). Many staff and mid-level faculty positions are created just for the duration of a research project, which may run for far less than the six years enshrined in the law, and many mid-level academics are faced with the task of creating their own jobs by acquiring external funding. At the same time, it is highly doubtful that this system makes academics more efficient workers: a lot of their working time is clogged up by writing research proposals that are often turned down by the funding agencies; this means that they never get to do the activities they were aiming to do, and many are unwilling to take risks with externally funded teaching and research projects because they feel to have to please their potential supporters.

Importantly, the flanking of feudal hierarchies with a neo-liberal mode of allocating resources through constant competition produces and reproduces the precarity of mid-level faculty. The privileges attached to the hierarchies invite full professors to defend a status quo based on job insecurity for their junior colleagues. The competitive pressures atomise mid-level faculty and create strong incentives for people to embrace strategies of individual instead of collective advancement – that is, to focus entirely on making headway in one’s career instead of organising around precarious working conditions. In sum, the traditional and novel facets of the German higher education system complement each other in blocking avenues for change.

Campaigns and Interventions

The Education and Science Workers’ Union

The existence of institutional mechanisms in higher education that reproduce the status quo gives rise to the question of where and how activists can intervene to challenge it. This is why it is important to

⁶ The numbers for third-party funding are not adjusted for inflation.

examine the strategies of academic labour organisations in the field, in addition to the constraints, opportunities, and dilemmas they are facing. The biggest organisation that has been working to expose precarious academic labour and the insecurity of mid-level faculty in recent years is the Education and Science Workers' Union (GEW). The GEW is affiliated with the German Confederation of Unions (DGB), the biggest union umbrella organisation in the country. Like other big union apparatuses, the GEW is not homogeneous. There are sometimes profound differences between regional and local union bodies and the national leadership. Some of the former take a more radical line than the high-level officials. In what follows, I will focus on the strategic line of the national leadership.

The GEW is first and foremost a schoolteachers' union; relatively few of its members are employed at universities or research institutions: Out of 280,000 members in 2016, 176,000 worked in the schools section (roughly 63 percent) and only 18,000 in the higher education and research section (roughly 6 percent) (GEWa13). Considering the number of people working for German higher education institutions in academic jobs was 242,000 in 2016 (Statistisches Bundesamt, email communication), it becomes clear that the unionisation rate among academics employed at higher education institutions is rather low.⁷ This problem is further aggravated by the fact that the vast majority of mid-level members of faculty are on termed contracts, which means that many of them leave the higher education sector, either temporarily or permanently. Consequently, the social base of the union in the higher education sector is not just small, but also unstable.

This turns into a problem for academic labour on two fronts. First of all, collective bargaining in the public sector is usually not separated by branch, which means that GEW negotiates on behalf of all its members and joins forces with other public-sector unions in the process. As a result of the low unionisation rate in higher education, there is a strong incentive for the union to prioritise other groups of workers during the bargaining

⁷ There are two other large, nation-wide organisations representing the interests of people working in higher education. The first is the public and service sector union ver.di, which is also affiliated with the DGB. It has an "education, science and research" section, but not all of its members work in higher education. Ver.di does not publish membership numbers of its sections, but what is known is that the union is much stronger among staff than among faculty. Second, there is the German Higher Education Association (DHV), an organisation that avoids referring to itself as a union, but nevertheless claims to stand up for "the professional interests of university teachers vis-à-vis society and the state" (DHV). It has 30,000 members (DHV) and has a reputation for prioritising the needs and interests of full professors.

process, in particular schoolteachers. As a result, collective negotiations have rarely delivered much that addresses the specific grievances of mid-level faculty. Second, the lack of a strong and stable base means that the union has limited clout when it comes to threatening strikes or protesting against university management. This is further aggravated by the fact that, according to the dominant understanding of labour law in the country, full professors, similar to teachers and other state personnel, do not enjoy a right to strike. The legal reasoning is that their tenured status, which means, among other things, that they must not be made redundant under normal circumstances, obliges them to refrain from industrial action.

Despite the limited base of the GEW in the higher education sector and the lack of a broad academic labour movement demanding change, the union has been working actively to address precarious working conditions, in particular through discursive interventions such as the publication of demands and campaigns. The fact that the director of the union's higher education division, Andreas Keller, is also a vice-president of the union shows that the GEW is taking the sector seriously. In recent years, the union has been building a reputation for commenting critically on working conditions in higher education and for recommending practical changes that address precarity. In so doing, it has been batting above its average: although its membership base in the sector is limited, it has still managed to influence political discourse to a degree. This is reflected in the fact that it receives ample coverage in the news media whenever academic labour is discussed.

The first intervention of the GEW (2011) was the *Templin Manifesto*, which was published and disseminated widely in 2010. It served as the starting point for a campaign that promoted “dream job[s] in science.” The Manifesto was a short text attacking “fixed-term contracts and ... precarious employment.” It criticised that many academics “lack the leeway they need for independent teaching and research and are denied reliable career prospects,” and argued that “effective teaching and research ... and decent working conditions and career prospects ... are two sides to [sic] the same coin” (GEW). The Manifesto contained a list of ten demands addressing different aspects of academic precarity and related areas, among them the democratisation of university self-administration, gender-sensitive quotas for new appointments, collective bargaining coverage for everyone employed with a higher education institution, and the creation of a system which allows mid-level academics with a PhD to qualify for permanent positions at their own institution without having to become full professors. Obviously, this last demand calls for a change that would improve the situation of mid-level academics, but the question remains why they still have to qualify for a permanent position if they already have a PhD.

In subsequent years the GEW made several interventions based on the Manifesto. In 2012, it published the Herrsching Codex, a catalogue of suggestions as to how universities can improve working conditions. The Codex was an attempt to get universities to commit themselves to fixed rules concerning academic labour. The demands enshrined in the Codex reappeared in the Köpenick Appeal 2013, which was launched in the run-up to the general election of the same year. Four years later, the union launched kodex-check.de, an online tool that allows users to check working conditions at all German public universities against the criteria set out in the Codex. Apart from that, the union organised a “week of action” in November 2015, where local branches staged small events and protests criticising working conditions in academia.

In 2017, the GEW (b) published a pamphlet called *Science as a Profession*, which lays out how academic employment should be reformed in order to combat precarity. In this pamphlet, they modified their position vis-à-vis permanent positions insofar as they now demand the implementation of three separate career tracks: one that allows people without a PhD to apply for permanent positions; one that enables people with a PhD to apply for permanent roles with more far-reaching decision-making capacities; and one that institutes a US-style tenure-track model leading to a full professorship. To ensure this did not reproduce the traditional hierarchies in German academia, the union flanked this demand with a call to end the “chair” principle and the privileges of full professors attached to it.

Obviously, all of these steps would contribute significantly to driving back precarity in higher education. And yet, they may not go far enough. First of all, a tenure-track model would not remove insecurity. After all, it does not guarantee a job. In the US, tenure requirements often push candidates to their breaking points because a significant number of people in tenure-track positions are denied tenure. There are numerous academics without a job after several years of having worked very hard and under a great deal of pressure. This suggests that there is a real danger of such a three-track, three-tier system quickly becoming hierarchical again, all the more since it can be presumed that the positions on the different tracks diverge significantly in terms of responsibilities, pay, and resources. Against this backdrop, many full professors would probably argue that they have taken a high risk and have worked incredibly hard to get where they are, which is why their privileges need to be reinstated. This would then create a constant pressure to inch back towards the status quo ante. In light of this, a more lasting solution may be the simple and radical option of only differentiating, in terms of academic rank, between people without and with a PhD, and automatically offering permanent positions to the latter.

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The activities of the GEW reflect a dilemma the union is faced with: Due to its weak membership base in higher education, the union leadership focuses its activities in the sector on discursive interventions and small symbolic protests. In line with the “social partnership” approach dominating labour relations in Germany, it makes these interventions while presenting itself as a “respectable” partner in dialogues over higher education policy, and taking an approach that offers practical, piecemeal solutions. This leads to a moderation of demands and a dialogue-oriented approach that is at odds with the formation of a rank-and-file movement pushing for fundamental change.

This dilemma is visible in the official reaction of the GEW to the amendment of the Act discussed in the opening paragraph of this article. In contrast to the initiatives mentioned in the introduction, the GEW on the whole painted it in a positive light: It issued a statement that the amendment was a “success.” The reason was that the amended law contained provisions somewhat re-regulating the conditions under which contracts can be termed. What the statement failed to mention, however, was that the *de facto* Berufsverbot was fully left intact.

All in all, the GEW has had some success in exposing precarity in academia, in particular the precarity of mid-level faculty. However, the need to appear respectable, which is part of the discourse-centred strategy of the union, also limits the degree to which the status quo is openly criticised. There is also a risk that the interventions of the GEW could become integrated into a top-down push for “reforms” that leave the existing hierarchies intact and do little to remove insecurity.

The Network for Decent Work in Academia

The Network for Decent Work in Academia (NGAWiss) is a new initiative in the field of academic labour activism. It was established in January 2017 in Leipzig and is a nation-wide platform of individuals and groups that are fighting against the precarious working conditions of mid-level faculty. At the time of writing, it was supported by twenty-three grassroots initiatives hailing from all parts of the country. Some of the groups represent mid-level faculty at individual universities or are committees that form part of disciplinary associations; others are smaller, locally based activist networks. The aim is to facilitate collective agency at the national level – that is, to develop, “at least, joint PR strategies and the capacity to launch campaigns, maybe even the capacity to go on strike” (NGAWiss). As of 2017, NGAWiss has formulated six key demands:

1. An end to the law regulating termed contracts in academia and the creation, across the board, of permanent positions for scientists who have a PhD and are employed with universities.

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2. Contracts with a six-year term for PhDs who are employed with universities.
3. The abolition of the second thesis after the PhD.
4. Adequate remuneration for sessional lecturers.
5. The abolition of the chair-based system and the democratisation of the self-administration of higher education institutions.
6. The expansion of basic state funding of higher education at the expense of third-party funding.

In comparison to the agenda of GEW, the demands of NGAWiss are more straightforward and far-reaching. In line with my critique of the three-track system proposed by the GEW, they are also assuming that academics should advance into permanent positions after they have completed their PhD.

So far, NGAWiss has held a number of national events aimed at drawing attention to the precarious working conditions of mid-level faculty. The first one was the founding congress of the network, which was attended by more than a hundred people from thirty-four higher education and research institutions (NGAWissb). In the run-up to the general elections in September 2017, NGAWiss used the Federal Press Conference, the key forum for media correspondents in Berlin, to present its aims and comment on the position of the main political parties on higher education. In November 2017, the network, together with the GEW, organised a one-day workshop in Berlin on decent work in academia. NGAWiss members also used the event to join forces with other academic labour activists and paid a visit to the bi-annual conference of presidents of higher education institutions, which took place at the same time in nearby Potsdam. Twenty-three activists, some of whom were carrying banners, gathered in front of the conference venue to protest and distribute flyers. They then entered negotiations with the conference president, who agreed that they could address the conference plenary for five minutes. Inside the venue, a representative of NGAWiss read out a short speech detailing the demands of the network; upon leaving, the activists chanted a slogan: “Who is doing the work? We are, we are, we are.”⁸

NGAWiss is a young initiative. So far, its most important achievement has been to facilitate a conversation between activists at the national level, and to ensure that there has been some media coverage and discussion of the precarious working conditions of mid-level faculty.

⁸ This information comes from two activists who are members of the NGAWiss steering committee and were present at the protest. I conducted an unstructured interview with them in Berlin in December 2017.

Furthermore, the network can be credited with having produced a catalogue of six clear-cut demands, which are open enough to cater for the potentially diverging needs and interests of the target group. But substantial challenges remain. Despite the fact that the relationship between GEW and NGAWiss appears to be amicable, the two organisations use competing organisational models. Whereas GEW pursues a unionisation effort and through its activities integrates academic workers into public-sector unionism and organised labour in general, NGAWiss is mainly reaching out to mid-level faculty as a status group. The two organisational models are not mutually exclusive, but the question remains of how to ensure they reinforce each other rather than divert attention from one another, and whether a status-based approach can be part of a broader agenda for change in the field of academic labour relations. After all, mid-level faculty are badly affected by precarisation, but they are by far not the only status group in higher education facing this problem.

Conclusion

There are some interesting activist interventions in the field of academic labour in Germany, but it would be premature to announce the birth of a unified movement. I see three strategic challenges that activists will have to tackle if they want to advance their cause. First, demand for academic jobs – even at the intermediate level – does not seem to be dwindling, and this is despite the fact that these jobs are precarious, and the labour market situation in the country is not totally bleak. This does not justify exposing people to precarious work, but it weakens the hand of academic workers in dealing with employers. In light of this, it seems to be imperative not to focus efforts exclusively on specific status groups such as mid-level faculty, but to build coalitions with sessional lecturers and student assistants. This would allow activists to counter the race for jobs with demands for the creation of new positions. A close cooperation between GEW and NGAWiss could go some way towards ensuring that this issue is addressed, but local initiatives will also have to find ways of collaborating across status groups.

Second, a key question remains whether to bank on a traditional model of unionisation as pursued by GEW or to create networks that do not follow a trade-union model, as NGAWiss does. Despite all efforts thus far, no large movement has emerged, and there is room for experimentation and perhaps different strategies. Undoubtedly, it is positive that there is cooperation across different activist platforms. Nevertheless, there may be competing claims and strategic choices, and the different organisations have to find ways of dealing with these differences in a constructive manner – one that does not compromise the joint project of driving back precarious work in academia.

Third, it appears obvious that fundamental change does not just

require changing working conditions, as they are enshrined in collective bargaining agreements and legal regulations, but democratising the institutions of self-administration that underpin the status quo. As long as full professors are privileged through these institutions vis-à-vis all status groups, fundamental change is hard to envisage. Consequently, the fight against precarity is also a fight for democratisation, as both GEW and NGAWiss highlight in their demands.

Obviously, the campaigns and interventions of GEW and NGAWiss are only first steps in preparing the ground for a broader movement. And to some, it may seem inconceivable that things will change fundamentally in the near future. But it is important to note that in recent years higher education in Germany has been the site of a major victory over promoters of the “entrepreneurial university” and the neo-liberalisation of higher education. In the mid-2000s, seven federal states of Germany introduced tuition fees; in 2014, Lower Saxony was the last state to abolish fees again, which means that higher education is free once more in the entire country.⁹ Part and parcel of the process were several waves of student protest. Obviously, the conditions of struggle for academic workers are fundamentally different from those of students, but the example shows that there can be unexpected changes.

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⁹ This claim needs to be qualified somewhat. Free higher education is available all over the country for students from Germany and the EU who are studying for the first time for an undergraduate or graduate degree. In some federal states, there are fees for students who study a second time, and the state of Baden-Württemberg decided in 2017 to introduce fees for international students who are not from the EU.

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