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1961 EUROPEAN SOCIAL CHARTER

35th National Report on the implementation
of the European Social Charter
submitted by

THE GOVERNMENT OF GERMANY

- Article 2, 4, 5 and 6 for the period 01/01/2013 -31/12/2016)

- Complementary information on Article 18§1 and 18§3 (Conclusions 2016)

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Berlin, December 2017

35th Report

of the Government of the Federal Republic of Germany for the period 1 January 2013 - 31 December 2016

(Articles 2, 4, 5, 6 and 18 ESC).

To be submitted in accordance with the provisions of Article 21 of the European Social Charter, the instrument of ratification of which was deposited on 27 January 1965.

In accordance with Article 23 of the European Social Charter, copies of the Report shall be sent to the Confederation of German Employers' Associations and the Federal Executive Committee of the Confederation of German Trade Unions.

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Preliminary remarks

The **35th Report** builds on previous Reports of the Federal Government on the national implementation of the obligations set out in the European Social Charter. It does not refer to the individual provisions of the Charter unless either the remarks of the European Committee of Social Rights of the European Social Charter (hereinafter referred to as the “Committee”) in particular in the conclusions **XX-3 (2014) (Articles 2, 4, 5, 6) and XXI-1 (2016) (Article 18)** give grounds for this, the questionnaire makes this necessary or substantial changes in the factual and legal situation have occurred during the reporting period.

To the extent situations within Germany differ as a result of reunification, the **35th Report** also differentiates between the old and new Länder. The term "new Länder" covers the Länder of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt and Thuringia as well as the eastern part of the Land of Berlin.

Article 2

The right to just conditions of work

Paragraph 1 - Reasonable working hours

General legal framework

As regards the general legal framework, reference is made to the previous reports. No change in the Working Hours Act (Arbeitszeitgesetz, or ArbZG) applied to the area covered by paragraph 1 during the reporting period.

Offshore Working Time Ordinance

For workers performing offshore activities within the meaning of Section 15 (2a) of the ArbZG and for crew members within the meaning of Section 3 (1) of the Maritime Labour Act (Seearbeitsgesetz, or SeeArbG), the Ordinance on Working Time in relation to Offshore Work (Offshore-Arbeitszeitverordnung) entered into force on 1 August 2013. When it comes to building offshore wind farms and servicing them at sea, weather, wind and waves play a major role in planning work assignments. In addition, there are often long distances to the coast and a lack of space on the construction vessels, work platforms and wind turbines. By way of derogation from requirements of the ArbZG, the introduction of the Offshore Working Time Ordinance created the possibility of extending the daily working hours in the offshore sector to twelve hours (Section 3 Offshore Working Time Ordinance). This extra work needs to be compensated for by additional free days on land. This allows employees to spend more uninterrupted periods of free time in their private environment ashore, while the daily rest on the platform is primarily for physical recovery.

Issue of the European Committee of Social Rights

The Committee has deferred its conclusion on Article 2 (1) with the request for confirmation of its interpretation of the comments in the 31th Report.

The opinion of the Committee is correct that, despite the collectively agreed compensation periods of more than twelve months due to the provisions of Section 7 (8) ArbZG, the average number of 48 working hours within a twelve-month period is respected. The extended compensation period of more than twelve months compensates for a prescribed weekly working time of less than 48 hours.

With regard to the opinion of the Committee that the maximum weekly working time, including overtime, never exceeds 60 hours, the following should be noted:

Section 3 of the ArbZG states that without separate application, arrangement or collective agreement an extension of working hours, including overtime above and beyond ten hours putting the total thus over 60 hours per week, is not permitted.

Derogations are possible, for example, by means or on the basis of a collective agreement, if working hours are regularly and substantially on-call or standby duty (Section 7 ArbZG).

In collective agreements, the average weekly working hours for a full-time job in 2016 averaged 37.44 hours in the western part of Germany and 38.97 hours in the eastern part. This shows that the possibility of collective bargaining parties to exceed a weekly working time of 60 hours does not lead to inappropriate deployment of workers in practice. On the contrary, the average of collectively agreed weekly working hours is well under 48 hours.

The table below gives an overview of collectively agreed working hours (as of 31 December 2016):

Year	A regular weekly working time of ...																Average hours
	up to 34.0:	35.5	36.0	36.5	37.0	37.5	38.0	38.5	39.0	39.5	40.0	41.0	41.5	42.0	42.5	>= 43.0	
	applied to ...% of workers covered by collective agreements at the end of the year																
2016 West	21.4	-	3.2	0.5	5.9	13.7	7.1	23.8	15.9	0.2	8.3	-	-	-	-	0.1	37.44
2016 East	2.7	-	0.7	-	3.3	0.7	27.7	2.4	15.8	-	45.4	1.1	-	0.2	-	-	38.97

- = no information available / 0.0 = less than 0.05 Source: Federal Ministry of Labour and Social Affairs

In 2016, the general average weekly working time of employees
working full-time in Germany was 40.4 hours

(Source: Federal Statistical Office — Destatis, Labour Force Survey).

Public service

There has been no change compared to the previous report. Since 1 October 2005, the collectively agreed average working week in the public service has been 39 hours.

In its conclusions on the previous report, the Committee finds that for compensation periods of more than 12 months, the average number of 48 working hours is nevertheless respected within the 12-month period, and that the additional compensation is granted within the extended compensation period. It also finds that the maximum weekly working time, including overtime, never exceeds 60 hours. The Committee asks for confirmation that this interpretation is correct.

The collectively agreed arrangements of the Federal Government are all within the scope of the requirements of the ArbZG. It is noted that Section 7 (8) ArbZG clarifies that the extensions of working time allowed in accordance with Section 7 ArbZG may not result in working hours exceeding 48 hours on average over a period of 12 calendar months. This is in line with the requirement of Article 6 (b) 2003/88/EC of a maximum weekly working time of 48 hours. The case-law allows a mutually agreed settlement - expressis verbis - between employers and employees for a different, that is longer, compensation period than the collectively agreed one if there is an appropriate reason. This also applies to an extension of permitted working hours. The conclusion of such an agreement is not compulsory. Employers may not discriminate against employees because they do not declare their consent to extending the working hours or revoke their consent (Section 7 (7) 3 ArbZG).

Article 2 (2) - Public holidays with pay

Employees who have to work on Sundays and public holidays on the basis of an exemption (Section 12 ArbZG) receive their regular remuneration including all elements such as commissions, gratuities and bonuses. There is no legal entitlement to a public holiday supplement. However, such entitlements often result from collective agreements, company-level agreements or individual contract agreements.

At the end of 2016, supplements for work on Sundays and public holidays ranged from 65 to 151 percent of the collectively agreed pay.

In addition, employees who have to work on Sundays or public holidays are entitled to a compensatory rest day according to Section 11 (3) ArbZG.

As to the Committee request in the conclusions XX-3 (2014) for a clarification of section 8 of the collective agreement for the public service, it must be stated that an interpretation of provisions in collective agreements by the Federal Government cannot be made on the basis of the constitutionally guaranteed principle of free collective bargaining. An explanation of provisions in collective agreements can only be made by the collective bargaining parties themselves.

Due to difficulties in understanding the question, the question of the Committee cannot be answered as to whether there are collective agreements which provide for compensation on a public holiday in addition to the regular remuneration paid, which is less than double for work carried out on public holidays, irrespective of whether work is done on that day or not. Clarification is requested.

Public service

Compared to the previous report, there have been no changes. In its conclusions on this point, the Committee notes that, according to Section 8 of the collective agreement for the public service (TVöD), employees who work on public holidays receive a supplement of 135% if they do not claim compensation time, while with compensatory time the supplement is 35 % of the share allocated in the table for one hour. The Committee asks for clarification in the next report as to whether this means that an employee working on a public holiday is entitled to an additional day off or corresponding remuneration (100%) and to a supplement for the work carried out on that day (100 % + at least 35 %) in addition to the regular pay (100%), which is calculated either on a daily, weekly or monthly basis.

It also asks whether there are collective agreements which provide for compensation on a public holiday in addition to the regular remuneration, which is less than double for work carried out on public holidays, irrespective of whether work is done on that day or not.

The Federal TVöD stipulates that employees receive compensation for the actual work done on public holidays at a rate of 100% of the actual work as well as an additional supplement of 35% per hour worked, which is calculated on the basis of the collectively agreed remuneration. If employees are not compensated with time off, they are entitled to a salary supplement of 135% per hour worked, which is calculated on the basis of the collectively agreed remuneration. The Fedeal TVöD does not provide for any holiday supplements without actual work being done on a public holiday. There is no information available on other collective agreements.

Article 2 (3) – Holidays with pay

As regards the legal framework, reference is made to the previous reports. In the period under review the legal framework (Federal Paid Leave Act (Bundesurlaubsgesetz)) remained unchanged.

All collective agreements provide for longer periods of leave than the statutory minimum paid leave. In 2016, average leave amounted to approx. 30.7 working days in western Germany and 30.6 working days in eastern Germany. The calculation is based on five working days per week. Provisions on minimum employment periods are laid down in most collective agreements and in the corresponding act (Bundesurlaubsgesetz).

Public service

In its conclusion on the previous report the Committee concludes that the situation in Germany is in line with Article 2 (3) of the Charter. In addition, since the 31th Report, the situation in the area of the federal public service has improved further. Trainees are now entitled to leave with continued payment of their training allowance, with the provision that the entitlement to leave amounts to 29 days per calendar year if the weekly working time is spread over five days in the calendar week.

Article 2 (4)
Elimination of risks in inherently dangerous or unhealthy occupations

With regard to the general legal framework and regulations in collective agreements, reference is made to the previous reports.

The Committee requests explanation of how it is ensured in practice through the organisation of working time that employees are not unduly exposed to residual risks associated with inherently dangerous or unhealthy occupations. In the meantime, it has deferred its opinion on these points.

Concerning the employment of night workers and shiftworkers, according to Section 6 ArbZG, the working time must be determined in line with the proven findings in the field of labour studies on how to structure work in such a way that it fits with what human beings

need. In addition, there are health and safety obligations on the part of employers. These are individually tailored to the workplace's requirements in order to avoid risks.

In line with Section 5 of the act that deals with safety and health at work (Arbeitsschutzgesetz - ArbSchG), employers must assess which occupational safety and health measures are required to protect workers from the risks associated with their work. One possible risk factor is the organisation of work processes and working hours. In line with Section 4 ArbSchG, residual risk remaining after all occupational safety measures have been exhausted must be kept as low as possible. Specific provisions are laid down in the occupational health and safety ordinances:

In the case of activities involving hazardous substances, the employer must ensure, in addition to comprehensive hygienic and technical protective measures, a suitable organisation of the work and a limitation of the duration and amount of the exposure of the employee to the hazardous substances (Section 8 Hazardous Substances Ordinance (Gefahrstoffverordnung)). In the case of activities involving biological agents, the duration and level of exposure must also be taken into account in the risk assessment and the protective measures (Sections 4, 5 and 6 of the Biological Agents Ordinance (Biostoffverordnung)). In addition, the occupational health and safety ordinances each contain requirements for minimization with regard to the respective hazards, so that risks are kept as low as possible (cf Section 2 of the Ordinance on Health and Safety Requirements for the Manual Handling of Loads at Work (Lastenhandhabungsverordnung) and Sections 7 and 10 of the Noise and Vibration Safety Ordinance (Lärm- und Vibrations-Arbeitsschutzverordnung)). In addition to the regulations on daily and weekly rest periods explained in the previous reports, these regulations mean that workers are not excessively exposed to residual risks associated with dangerous or unhealthy work.

Public service

In its conclusion on the previous report, the Committee requests the submission of updated information and confirmation that the established situation has not changed in which "under the relevant collective agreement, public service employees working in shifts are entitled to up to six days' additional leave."

In this regard, it is stated that in accordance with Section 27 TVöD employees who regularly work in changing shifts as per Section 7 (1) or permanently do shift work as per Section 7 (2) and who are entitled to receive the supplement in accordance with Section 8 (5) 1 or Section 8 (6) 1 in cases of

a) changing shift work for two consecutive months and
b) shift work for four consecutive months

receive an additional working day of leave; but only up to a total of six working days per calendar year.

Article 2 (5) - Weekly rest periods

General legal framework

As regards the general legal framework, reference is made to the previous reports. No change was made during the reporting period to the ArbZG in the covered area.

Offshore Working Time Ordinance

For offshore activities within the meaning of Section 15 (2a) ArbZG and for crew members within the meaning of Section 3 (1) of the SeeArbG, employment on Sundays and public holidays is permitted in accordance with Section 5 of the Offshore Working Time Ordinance. However, according to Section 11 (1) ArbZG, at least 15 Sundays a year must remain free of activity. The compensatory rest day for work done on a Sunday in the offshore area is to be granted within three weeks afterwards on land as per Section 7 (4) and (5) Offshore Working Time Ordinance, in derogation from Section 11 (3) ArbZG.

The prescribed daily rest periods ensure that employees can sufficiently recover from their daily work. The weekly rest day is not only for physical, but also mental recovery. The period in which the compensatory day for working on a Sunday must be taken allows workers to spend several consecutive days off in their normal social environment after working at sea or on a platform.

Issue of the European Committee of Social Rights

The Committee asks for clarification on how working time arrangements ensure the health and safety of workers if no rest day is granted for more than 12 consecutive days. In the meantime, it has deferred its opinion on these points.

Article 2 (5) of the ESC ensures a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest. This is implemented in Germany by Section 9 ArbZG, according to which employees are not allowed to work on Sundays or public holidays.

When applying derogations, the parties to the collective agreements must take account of the spirit and purpose of the ArbZG — the safety and health of workers. This is supported by the duty of care of the employer, which includes protection, due diligence and disclosure obligations. The duties of protection include, for example, the prevention of overburdening employees.

There is no statistical data on the percentage of workers affected with regard to deviations from the principle of weekly rest.

Public service

In its conclusion on the previous report, the Committee asks for clarification on how the working time arrangements will ensure the health and safety of workers if no day of rest is granted on more than 12 consecutive days. It asks for information as to which collective bargaining agreements provide for such deviations from the principle of weekly rest.

The TVöD contains no explicit rules on the constellation presented by the committee.

Article 4
Right to fair remuneration

Paragraph 1
Decent remuneration

With regard to the questions in the revised questionnaire on Article 4 (1), the following should be stated:

Question A:
Under the system of collective bargaining autonomy constitutionally guaranteed in Article 9 (3) of the Basic Law (GG), in Germany remuneration is determined autonomously by the parties to collective agreements. The state does not influence what parameters the collective

bargaining parties take into account when making their decisions or how they weigh them. This situation has not changed during the reporting period.

The vast majority of employment contracts continue to fall under collective agreements. In 2016, 59% of all employees in western Germany were employed in accordance with collective bargaining agreements (eastern Germany 49%). In addition, in western Germany, 21% of employees worked in companies with agreements that are based on the collective bargaining agreements (eastern Germany: 25 %).

Germany introduced a general statutory minimum wage of EUR 8.50 gross per hour on 1 January 2015, which was increased to 8.84 on 1 January 2017.

The future development of the level of the general minimum wage is decided by an independent commission of the collective bargaining partners with the aid of academic experts. In the context of an overall assessment, the Commission examines, for example, what amount of the minimum wage is appropriate in order to help ensure adequate minimum protection for employees. The Minimum Wage Commission uses the development of collectively bargained pay scales as the basis for its decisions. The Federal Government then decides whether this decision will be made binding by an ordinance. However, it cannot deviate from this decision in terms of content.

The general minimum wage is to be understood as the lowest possible amount. In addition, there are still sectoral minimum wages deriving from the Posted Workers Act, which are generally higher than the general minimum wage. Sectoral minimum wages are based on agreements concluded by the collective bargaining parties without state influence.
Question B:
See answer to question A.

Question C:
Almost all workers are already protected by the general minimum wage. Only young people without training and the previously long-term unemployed are excluded in the first six months of new jobs. It is not known how many people fall into that group. The exemption for the long-term unemployed was requested 3335 times in total from August 2015 to February 2017. It is not known whether wages actually below the minimum wage were paid in these cases. It is not known to what extent persons excluded from the Minimum Wage Act are protected by collective agreements.

Question D:
In April 2016, around 4.8% of all employment contracts paid a gross hourly wage of EUR 8.50.

Information on average net monthly earnings is no longer available. The Structure of Earnings Survey (Verdienststrukturerhebung, or VSE) only collects data on gross monthly earnings in companies in sectors A to S. Net wages cannot be deduced from that, because the tax deductions depend on the household constellation of the employees. The Structure of Earnings Survey (VSE) is a survey of employers in which only data on the gross earnings of employees are collected.

The table below lists the 20 occupations with the lowest average gross monthly earnings and their share of total employment figures as well as the average gross monthly earnings of all full-time employees in sectors A to S:

Gross monthly earnings of full-time employees by occupation
Structure of Earnings Survey 2014 (classification of economic activities A to S)

Occupations by ISCO-08	Employees	Gross monthly earnings
	Share	Average (EURO)
514 Hairdressers, Beauticians and Related Workers	0.29%	1,587
941 Food Preparation Assistants	0.38%	1,787
921 Agricultural, Forestry and Fishery Labourers	0.36%	1,846
513 Waiters and Bartenders	0.72%	1,848
832 Car, Van and Motorcycle Drivers	0.39%	1,860
612 Animal Producers	0.09%	1,878
911 Domestic, Hotel and Office Cleaners and Helpers	0.72%	1,936
933 Transport and Storage Labourers	0.79%	1,966
523 Cashiers and Ticket Clerks	0.22%	2,004
524 Other Sales Workers	0.15%	2,024
613 Mixed Crop and Animal Producers	0.16%	2,028
512 Cooks	0.61%	2,059
932 Manufacturing Labourers	0.89%	2,064
912 Vehicle, Window, Laundry and Other Hand Cleaning Workers	0.14%	2,066
815 Textile, Fur and Leather Products Machine Operators	0.25%	2,081
622 Fishery Workers, Hunters and Trappers	0.00%	2,155

962 Other Elementary Workers	0,62%	2,183
751 Food Processing and Related Trades Workers	0.33%	2,184
516 Other Personal Services Workers	0.15%	2,202
532 Personal Care Workers in Health Services	0.64%	2,226
Average monthly gross earnings of all employees		3,441

Source: Federal Statistical Office: Structure of Earnings Survey

The figures above are not comparable with those supplied for the 31th Report on the implementation of the European Social Charter. Compared to the information contained in the 31th report, the VSE has been extended to include employees in economic sectors from A to S and also includes companies with fewer than 10 employees.

Salaried public service employees

In its conclusion on the 31th report on the implementation of the European Social Charter, the Committee requests a description of how a decent standard of living is guaranteed by the average wage of single, full-time employees without training working in the manufacturing or service sectors in the eastern German Länder.

For salaried federal employees, the new national minimum wage of EUR 8.84 per hour per hour, applicable nationwide from 1 January 2017, is unlikely to have any practical effect because the standard hourly wages, calculated in accordance with Section 24 (3) 3 TVöD, are above the minimum wage of a gross hourly wage of currently EUR 8.84; according to Annex 1, "hourly wages TVöD Bund" from the circular letter of 11 July 2016 - D5-31002/42#9, the lowest possible hourly wage has been EUR 10.33 since 1 February 2017.

Remuneration of civil servants (Beamte)

Furthermore, in its conclusion on the 31th report the Committee found that the situation in Germany is not in line with Article 4 (1) of the ESC, since the lowest paid wage does not guarantee a decent standard of living. The Committee therefore requests information about the pay of civil servants.

The remuneration of civil servants is regulated by law. The constitutional basis of the remuneration is the obligation of a public employer to provide for the welfare of civil servants derived from Article 33 (5) of the Basic Law as an established principle of permanent civil service. According to this, the legislator is obliged to track the development of general

economic and financial conditions as well as the general standard of living and to adjust the remuneration accordingly. In particular, the development of public service wages, the nominal wage index and the consumer price index are to be used in making the decision.

In line with the above-mentioned parameters and the respective office conferred on the civil servant (in terms of legislation regarding the level), the basic salary increases in several steps (pay grades) during the period of service. The average gross monthly salary of the approximately 130,000 civil servants (full-time equivalent) of the Federal Government in June 2014 amounted to EUR 3,937, in June 2015 to EUR 4,016 and in June 2016 to EUR 4,086.

Paragraph 2
Increased rate of remuneration for overtime work

The requirements of the ArbZG on the daily and weekly maximum working hours generally apply to all employment relationships. Overtime must also be done within the framework set out by the ArbZG. Within this framework, flexible working time arrangements such as working time corridors can be agreed. For overtime worked, the contracting parties may agree on the payment of supplements.

At of end 2016, collectively agreed overtime supplements ranged from 24% to 43.5 %.

Paragraph 3
Non-discrimination between men and women workers with respect to remuneration

With regard to conclusions XX-3 (2014) of the Committee - protection against reprisals - the following should be noted:

We cannot accept the Committee's view that in cases where an employment relationship is terminated in accordance with Sections 9 and 10 of the Protection against Dismissal Act (KSchG), the courts can decide freely on the amount of compensation for the termination.

As explained in detail in the previous report (31th report), the Federal Government takes the view that with the principle of safeguarding existing employment relationships (Bestandsschutzprinzip) German legislation fully complies with Article 4 (3) of the ESC. If an employer terminates an employment relationship because an employee is lawfully exercising a legal right, including the right to non-discrimination with regard to pay, the is deemed a

disciplinary or retaliatory dismissal, which is prohibited and invalid pursuant to Civil Code (BGB) Section 612a in conjunction with Section 134. The employer's obligation to continue the employment relationship and to retroactively pay any unpaid salary or wages provides full compensation for the damage suffered by the employee as a result of an invalid dismissal.

The possibility to file a request for termination of employment by way of court decision in return for severance pay (Section 9 KSchG) despite the court's finding that the dismissal is invalid is an additional option granted to employees.

In these cases severance pay fixed by the court has the character of compensation and reparation for the socially unjustified loss of employment. The severance pay serves as an equivalent to replace the continuation of employment. The amount of severance pay is to be fixed by the court after due consideration of the circumstances of the individual case. A limit on the amount of severance pay is important for reasons of legal certainty and legal equality. Leaving the amount of severance pay entirely to the court's discretion would permit inequalities which would be difficult to justify. The courts already have a wide margin of discretion.

Moreover, it should be noted that Sections 9 and 10 KSchG only apply to severance pay fixed by court decision. The provisions do not apply to individual contractual agreements. The limits set out in Section 10 KSchG may be exceeded in judicial or extrajudicial settlements or in termination agreements. As it is up to the employee to file an application with the court for termination of employment, they can also decide whether in return for the termination of employment they receive severance pay negotiated individually or severance pay fixed by court decision.

In addition, Germany agrees with the dissenting opinion of Ms Monika Schlachter.

As for the questions of the Committee on how to ensure the application of the principle of equal pay for work of equal value and on the progress made in applying this principle, the following information is provided:

The Federal Government relies on a strategy for overcoming the pay gap that is appropriate to the cause, and it has taken various legislative and substatutory measures during the reporting period:

1.) New legal regulations

In relation to the legal framework described in the 27th report on the General Equal Treatment Act (AGG), no new legal provisions have been introduced during the reporting period. In this regard, reference is made to the previous reports, in particular the 27th report.

In addition, the following new legal regulations were introduced during the reporting period, which have positive effects on the gender pay gap:

a) Act on the Equal Participation of Women and Men in Management Positions

The act on women and men participating equally in management positions in the public and private sectors came into force on 1 May 2015 (Act of 24 April 2015, Federal Law Gazette (BGBl. I-2015, P. 642). The aim of the act is, above all, to significantly and sustainably increase the proportion of women in management positions in the private and public sectors.

Since 1 January 2016, a fixed gender quota of 30 percent applies for all new appointments to supervisory boards of publicly listed companies with obligations for full employee co-determination. The proportion of women on the supervisory boards of the 105 listed and co-determined companies is now 27.3 percent. From 30 September 2015 until 30 June 2017, companies listed or subject to compulsory employee co-determination have for the first time had to set targets for the supervisory board, the management board and for the first and second levels of management under the board. Despite the positive development on the supervisory boards, the proportion of women in the management boards of companies continues to stagnate at 6.1 percent. Nearly 70 percent of companies that have set themselves a target for their management boards have set a target of zero.

In addition, since 1 January 2016, a quota of 30 percent has applied to the filling of seats in supervisory board committees in which the Federation has at least three seats. In the main bodies, the Federation must work towards creating or maintaining equal representation for women and men. In significant bodies, the seats to which the Federation is entitled are almost equally distributed between men and women at 41.8 percent. In this area, too, it is becoming clear that binding requirements lead to significant results.

In the public service, women account for almost 33 % of management positions across the country. However, the higher up the management ladder you go, the lower this proportion is.

b) Introduction of a general statutory minimum wage

Since 1 January 2015, employees in Germany are entitled to a general statutory minimum wage (Act regulating a general minimum wage of 11 August 2014, BGBl. I-2014, P. 1348). In the reporting period, the minimum wage amounted to EUR 8.50 gross per hour from 1 January 2015 to 31 December 2016 (Section 1 (2) MiLoG). It is mostly women who have benefited from the introduction of the cross-industry, statutory minimum wage (Destatis, Press Release No. 097 of 16 March 2016).

c) Childcare Funding Act (Kinderförderungsgesetz)

On 1 August 2013, a legal entitlement to a place in a nursery or daycare centre for all children over the age of one was introduced in Germany (Act on the funding of childcare for children under three years in nurseries or daycare centres), BGBl. 2008-I, p. 2403). This was a milestone in family policy. It complements the existing legal entitlement to care from the age of three until the age of compulsory schooling. Through the nationwide expansion of child daycare, parents in Germany are able to pursue gainful employment and better reconcile family and work.

Furthermore, nurseries and daycare centres are places where early education takes play, and they foster children's growth in cognitive, motor-skills and emotional terms.

d) Draft legislation on greater gender equality in terms of wages

In the reporting period, legislation was also drafted for more equal pay between men and women (which entered into force on 6 July 2017 as the Gesetz zur Förderung der Transparenz von Entgeltstrukturen (Act to Promote Transparency of Remuneration Structures) of 30 June 2017, BGBl. I-2017, p. 2152). The deliberations concerning the act had not been completed by the end of the reporting period on 31 December 2016.

In the coalition agreement for the 18th legislative term (2013-2017), the CDU, CSU and SPD explicitly stated that the existing pay gap between women and men cannot be accepted. The coalition agreement states: “In order to better realise the principle of “equal pay for equal or equivalent work”, we want to establish greater transparency, by amongst other methods, obliging companies with more than 500 employees to comment on the promotion of women and equality of remuneration under legal criteria in the management report in accordance with Section 289 of the German Commercial Code (HGB). Building on this, an individual right to information for employees is to be defined. Companies will be called upon to take responsibility for eliminating identified remuneration discrimination with the help of binding processes and by working together with their workforce, with the

involvement of stakeholders in the company.” (coalition agreement between the CDU, CSU and SPD for the 18th legislative period, p. 103).

The goal of the Entgelttransparenzgesetz (Equality of Pay Act) is to strengthen enforcement of the principle of "equal pay for equal or equivalent work" for women and men in practice.

2.) Further (substatutory) measures to reduce the gender pay gap

In order to reduce the gender pay gap between women and men in manner that is appropriate to its causes, the Federal Government, working together with the relevant actors, took a number of substatutory measures during the reporting period. The goal of equal pay for women and men for work of equal value is often achievable only by working with civil society actors (trade unions and employers' associations, women's and business organisations) and with all other levels of government, that is to say the Länder and municipalities.

The intention of the Federal Government is therefore to bring together these various actors, so that they all take action where they can make a difference. The following measures and actors should be mentioned here:

a) improving framework conditions through family policies and promoting re-entry into the labour market

In Germany, family-related career interruptions and career cut-backs are a particularly significant cause of pay inequality. A comparison with other countries shows quite clearly that the higher participation rates of women they have and their social infrastructures for reconciling work and family responsibilities have reduced the gap between the average pay of men and women. Better opportunities for combining family and career help women to have uninterrupted careers and forms of employment that provide a stable, decent living.

It is therefore of vital importance to create the appropriate framework conditions for mothers and fathers. With its family and gender policies the Federal Government has taken decisive steps in the right direction. The **expansion of child-care facilities**, particularly for children under 3, the improved tax **deductibility of child-care costs**, the provision of **parental allowances and the related partner months, parental allowance "Plus", and the partnership bonus as wage replacement** are policies that make it easier for women and

men to reconcile family commitments and work and enable mothers and fathers to share the childcare obligations.

Many senior managers in industry have recognised that it is in their own interest to promote gender equality at work and to reconcile work and family life. When framework conditions are family-friendly there are fewer conflicts of time for parents and a higher degree of company loyalty and satisfaction. When companies invest in such measures and have a family-friendly company culture, substantial returns are possible, for example, through less absenteeism, staff turnover and earlier return to the workplace. In order to raise awareness concerning the benefits of a family-friendly personnel policy in companies, the Federal Government has been working for years in close cooperation with the umbrella organisations of Germany's business sector (Confederation of German Employers' Associations (BDA), Association of German Chambers of Commerce and Industry (DIHK), German Confederation of Skilled Crafts (ZDH) and German Trade Union Confederation (DGB)) in the **corporate programme "Erfolgsfaktor Familie"** (Success Factor Family) to establish a family-conscious working environment in Germany. These joint activities are a success. More than 6,600 employers are already members of the associated network of company, which is the nation's largest platform for reconciliation of work and family life.

In September 2015, the partners developed a forward-looking consensus with a **memorandum "Familie und Arbeitswelt – Die NEUE Vereinbarkeit"** (Family and the World of Work - The NEW Compatibility". The memorandum states “that career and family responsibilities exist side by side and are of equal value”. It contains ten guiding principles which oblige policy-makers, businesses and trade unions to commit themselves to improving the compatibility of work and family life for women and men, e.g. by flexible working time models. The memorandum provides both the basis as well as orientation for further activities of the partners to promote a family-friendly working environment.

An important additional step is the **Federal Government's programme "Perspektive Wiedereinstieg" (Prospects for Vocational Reintegration)**, which was launched in March 2008. This programme and its various components are meant to help women and men who have interrupted their careers for reasons of child care and/or caring for family for several years and who wish to return to work. This broad initiative which is implemented in cooperation with the Bundesagentur für Arbeit (Federal Employment Agency) supports local agencies in their efforts to develop networks of support for those returning to work and to achieve a sustainable return after periods of family-related absence which is commensurate with their qualifications. Another objective of the programme is help those returning to work

qualify for employment with social insurance coverage in the field of household-related services. This is a possibility to give low-skilled re-entrants job prospects that will enable them to build up provision for their retirement.

In addition to the existing support, tests have been running of "blended learning scenarios" for skills-building for re-entrants since June 2013 in a joint pilot project with the Federal Employment Agency. These e-learning offerings will be expanded in the current ESF funding period (2014 - 2020) and the use of online media will be increased. The topic of "re-entry into the labour market and caring responsibilities" is another focal point.

b) changing role stereotypes and increasing the percentage of women in executive positions

In view of future shortages of specialist and executive personnel it is important for industry to overcome gender segregation in the labour market on the one hand and also to increase the proportion of women in leadership positions and male dominated professions. Traditional role stereotypes are a significant reason for the limited spectrum of occupational choices for women and for the obstacles they encounter in their career. Therefore, the Federal Government's gender equality policies are essentially aimed at expanding the occupational choices of both men and women and at improving their employment and career opportunities in general.

Examples of existing initiatives of the Federal Government on these topics are the projects **Girls' Day and Boys' Day** (since 2011), the nationwide project **"Neue Wege fürs Jungs" (New Paths for Boys)** (since 2005), the **Nationalen Kooperationen zur Berufs- und Studienwahl frei von Geschlechterklischees (National Cooperation on Making Vocational and University Course of Study Choices Free of Gender Clichés)** since 2016 (www.klischee-frei.de) or the initiative **"MINT Zukunft schaffen (Creating MINT Future"** (MINT: Mathematics, computer science, natural sciences, technology), and also the **TOTAL-E-QUALITY** label. The projects that the Federal Government launched in cooperation with various partners are aimed at motivating girls and young women to expand their career opportunities by choosing occupations that are not typical for women and until now have hardly been taken into consideration. On the other hand, boys should be motivated to consider professions in the social field.

The campaign **“Zielsicher – Mehr Frauen in Führung" (On Target — More women in leadership positions)** ran from March 2015 to August 2017. The main objective of the programme was to assist companies in the practical implementation of the Gesetz für die

gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst (Act on the Equal Participation of Women and Men in Executive Positions in the Private Sector and Public Service). It helped companies with developing and implementing company-specific targets for women in leadership positions and promoted dialogue between policymakers and the business community. As part of this campaign, a practical guide for companies was created and workshops were held to facilitate exchanges of ideas between companies. In addition, an advisory council was set up, which has provided constructive support for the project with representatives from policy making, companies, and trade unions and employers' associations.

In order to prepare the ground for the Act on the Equal Participation of Women and Men in Executive Positions in the Private and Public Service, the Federal Government provided support from 2012 to 2015 to public and private companies in 10 municipalities and districts in the framework of the **"Regionale Bündnisse für Chancengleichheit" (Regional Alliance for Equal Opportunities)** initiative to help promote more women into leadership positions and create structures for more equal opportunities in the economy with the help of voluntary commitments. Important synergies between policymakers and the business community have emerged in the ten participating regions and the companies involved have actively pursued their goals of filling more leadership positions with women. In most regions, the cooperation between the region's businesses, municipalities, economic development networks and diverse alliance partners is being continued. Networking meetings will continue to promote exchanges between regions.

c) companies

In the reporting period, **Logib-D** offered employers an opportunity to address the issue of equal pay in their own workplaces. The registered trademark Logib-D stands for "Lohngleichheit im Betrieb – Deutschland" (Equal pay in the workplace - Germany). Using Logib-D, employers with and without binding collective bargaining agreements can identify internal factors influencing the gender pay gap and develop measures to ensure a gender-equitable compensation structure in their workplaces. Logib-D is a proven instrument that the Federal Government makes available to companies to enable them to identify the existing gender pay gap at their company, identify its causes and develop ideas on how it can be overcome. As part of the final evaluation in 2015, it was found that the programme's website www.Logib-D.de has been accessed more than 211,000 times since 2010.

The website is scheduled to be shut down at the end of 2017. However, workplaces will continue to be able to carry out a structural analysis of earnings with a “monitor pay transparency” tool. The monitor pay transparency tool is a free online offering that helps employers to implement the Equality of Pay Act and enables them to conduct operational audit procedures under the act.

d) social partners form management and labour

Another important aspect is the cooperation with trade unions and employers' associations.

For example, in a partnership with the German Trade Union Confederation (DGB) the Federal Government supported the **"Familienernährerinnen (Women Breadwinners)"** project until 2014. In almost one-fifth of German multi-person households women are the main breadwinners. Half of these women are single parents, the other half usually have a partner with a low income or a partner who is in need of care or unemployed. Therefore, women breadwinners often have to take on a double burden: they have the responsibility as the main income earner and are in charge of raising the children. The project seeks to raise awareness of these women and contribute to political mobilisation for their needs.

Since September 2014, as part of the cooperation with the DGB the Federal Government has been supporting the follow-up project "**Was verdient die Frau? – Wirtschaftliche Unabhängigkeit!**" (What do women earn? - Economic Independence!), which aims to strengthen the economic autonomy of women. It wants to make a contribution to reducing the gender pay gap. Young women in particular are made aware of the mechanisms that lead to unequal earnings structures for women and men over the course of their careers One focus of the project is the development of web-based elements for communication and the use of social media. For example, women can use the web quiz "Die Generalprobe - In welcher Rolle bestreitest Du das Leben?" (The dress rehearsal - what role do you play in life?) to examine the financial impact of decisions over the course of a lifetime.

In addition to **drafting the Equality of Pay Act,** the Federal Government has launched a **social partner dialogue** with employers' associations and trade unions. At the substatutory level, measures for fair income prospects are being discussed with employers' associations and trade unions.

e) publicity campaign

The **Equal Pay Day** is a day promoting equal pay for women and men, which has been held in Germany since 2008 at the initiative of the Business and Professional Women e.V Germany. The Equal Pay Day symbolically marks the day of the year until which women work for free - while men have been paid for their work since the beginning of the year. Numerous events take place on this day throughout Germany in order to raise public awareness of the pay gap between women and men. Since 2011, the "Geschäftsstelle Forum Equal Pay Day" (Equal Pay Day Forum Office) has been funded by the Federal Government to significantly strengthen the initiative of the Equal Pay Day with a year-round commitment beyond the day it is held. The office provides guides for events and promotional and information material on equal pay and is a central point of contact for companies and citizens on all questions related to the gender pay gap. The focus of its work is the preparation and implementation of the Equal Pay Day Forums as a year-round event series for sponsors and supporters, people who spread the word and other interested parties.

With financial support from the German government, the Deutsche LandFrauenverband has been training women as "**equal pay advisors**" since 2013. As its previous project „LandFrauenStimmen" demonstrated, women in rural areas face particular challenges in terms of the extent and quality of their participation in the labour market due to a lack of infrastructure and to traditional role models. In rural areas in particular, the advisors explain topics such as mini-jobs, part-time employment and long career breaks and provide information about equal pay in cooperation with regional business associations, business chambers and municipalities in schools and other educational institutions.

f) the Federal Anti-Discrimination Agency

With the entry into force of the "Allgemeinen Gleichbehandlungsgesetz (AGG)" (General Equal Treatment Act) in August of 2006, the Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes, ADS) began its work. It is an independent contact point for persons who feel discriminated against under the terms of the General Equal Treatment Act. In case of dispute, the ADS can offer victims of discrimination free counselling, refer them to counselling centres, if necessary, or initiate an out-of-court settlement between the parties involved. Since the start of the ADS' operation, counselling has been provided in a total of 303 cases of gender-based wage discrimination.

Since 2013, the ADS has been helping to promote the "**eg-check**" analysis tool, which was developed in 2010. This equal pay checking tool helps to evaluate the main elements of remuneration (monthly base salary, performance bonuses, overtime pay, additional pay for special challenges) by offering three separate tools: statistics, process analysis and peer comparisons. In a pilot project, 16 employers reviewed their remuneration system and received a corresponding certificate from the ADS: www.eg-check.de

Since 2017, the ADS has also offered companies an equality check (gb-check), which allows them to assess gender equality in working life. It was developed in 2016 together with the Berlin School of Economics and Law (Hochschule für Wirtschaft und Recht Berlin). The gb-check is an analytical toolkit that helps employers and advocacy organisations identify discrimination, prevent inequality, and take action to increase equal opportunities through statistics, process analysis, and peer comparisons. The tool is used in the areas of job postings, personnel selection, working and employment conditions, in-service training, assessments and working hours: www.gb-check.de.

g) the Länder

The Länder support the Federal Government's initiatives to eliminate the gender pay gap with a great variety of their own measures. At the annual Conference of Gender Equality and Women's Ministers and Senators of the Länder (GFMK), participants regularly call upon the Federal Government to take specific action to reduce the gender pay gap that also exists in the public service. The 23rd GFMK in 2013 decided to set up a temporary working group open to all Länder on "equal pay" under the auspices of Hesse and Saxony-Anhalt. At the 25th GFMK (2015) this working group on equal pay presented a comprehensive retrospective and made concrete legislative and substatutory proposals.

3.) Continuation of statistical data series

The most recent statistical surveys on the earnings gap between men and women are available on the homepage of the Federal Statistical Office: https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdiensteArbeitskosten/VerdiensteVerdienstunterschiede/VerdiensteVerdienstunterschiede.html#Tabellen.

According to this, in 2016, the average gross hourly earnings of women (EUR 16.26) were 21 percent lower than those of men (EUR 20.71). In the previous two years, 2014 and 2015, the gender pay gap had been 22 percent. As before, Germany has one of the highest

earnings gaps in Europe. The figures for eastern and western Germany showed hardly any changes either. In 2016, the unadjusted gender pay gap was 23% in the former territory of the Federal Republic and 7% in the new Länder.

More in-depth statistical analysis of the pay gap is possible every four years on the basis of the Structure of Earnings Survey. The most recent findings available are for 2014. They show that about three fourths of the unadjusted gender pay gap can be attributed to structural differences. The differential in average gross hourly pay is mainly due to the fact that women and men tend to work in different sectors and occupations and that job requirements in terms of executive functions and skills are unevenly distributed. In addition, women are more likely than men to work part-time or in marginal jobs.

The remaining quarter of the pay gap cannot be explained by the characteristics relevant to the workplace. For Germany as a whole this adjusted gender pay gap was 6% in 2014 (unadjusted gender pay gap in 2014: 22%). This means that women with comparable qualifications and jobs earn 6% less than men on average per hour worked. It should be noted, however, that the adjusted gender pay gap would possibly be lower if further factors impacting on wages had been available for analyses. For instance, there was no data on individual behaviour in wage negotiations or on family-related career interruptions. This statistically unexplained part of the earnings gap, or the adjusted gender pay gap, cannot be equated with pay discrimination based on gender. Nevertheless, the explained part of the earnings gap is not non-discriminatory.

The results of the Federal Statistical Office show a slight decrease over time in both the adjusted and unadjusted gender pay gap. Women are slowly catching up in terms of their earnings.

The reasons for the pay gap are complex: In addition to the different career choices - women often work in social or personal services that are paid less than, for example, technical occupations - one reason in particular is the (longer) family-related career breaks and the subsequent re-entry into the labour market in part-time and mini-jobs: Forty-five percent of women in jobs with compulsory social insurance coverage work part-time. Also, 3.4 million women are employed exclusively in so-called mini jobs.

In addition, women still have worse career opportunities: Women are under-represented in leadership positions, especially the top positions Leadership positions are rarely filled part-time. Role stereotypes and gender-specific attributions still have an influence on job

evaluations, performance appraisals or recruitment and can lead to – usually indirect – discrimination.

Continuation of the detailed statistical series of pay differentials between men and women who do not work for the same employer - broken down by industry and skill level and other relevant factors:

Unadjusted earnings differential by personal characteristics in 2014				
Variable	Gross hourly earnings			Earnings differential
	Total	Women	Men	
	Euro			%
Total	17.78	15.44	19.87	22
Age				
under 25	9.10	8.80	9.35	6
25 to 29 years	14.39	13.68	15.04	9
30 to 34 years	17.36	16.02	18.42	13
35 to 39 years	18.76	16.61	20.47	19
40 to 44 years	19.57	16.70	22.11	24
45 to 49 years	20.22	16.80	23.41	28
50 to 54 years	19.75	16.40	22.93	28
55 to 59 years	19.67	16.38	22.86	28
60 to 64 years	20.07	16.84	23.00	27
65 years and older	13.09	11.67	14.06	17
School graduation (activity code 2010)				
1 Without graduation	11.48	10.00	12.69	21
2 Graduation with Haupt /	14.58	12.15	16.14	25

Unadjusted earnings differential by personal characteristics in 2014				
Variable	Gross hourly earnings			Earnings differential
	Total	Women	Men	
	Euro			%
Volksschulabschluss (lower secondary school)				
3 Mittlere Reife (intermediate graduation certificate) or equivalent	15.94	14.41	17.64	18
4 Abitur / Fachabitur (qualification for university entrance/including vocational variant)	23.48	19.67	27.05	27
Vocational qualification (activity code 2010)				
1 without vocational training qualification	10.73	10.06	11.39	12
2 recognised vocational qualification	16.41	14.75	17.95	18
3 master, technician, technical college degree	22.57	17.85	24.38	27
4 Bachelor	19.43	16.50	22.44	26
5 Diplom / Magister / Master / Staatsexamen (graduate degree)	29.05	24.39	32.78	26
6 Doctorate / Habilitation	40.78	33.45	44.75	25

Source: Federal Statistical Office, Structure of Earnings Survey 2014
https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdiensteArbeitskosten/VerdiensteVerdienstunterschiede/Tabellen/GPG_Persoenlich.html.

Unadjusted earnings differential by workplace characteristics in 2014				
Specification	Gross hourly earnings			Earnings differential
	Total	Women	Men	
	Euro			%
Total	17.78	15.44	19.87	22

Unadjusted earnings differential by workplace characteristics in 2014				
Specification	Gross hourly earnings			Earnings differential
	Total	Women	Men	
	Euro			%
Territory				
Western Germany	18.31	15.73	20.58	24
Eastern Germany	14.16	13.52	14.78	9
Occupational groups				
Employees in managerial positions	36.36	30.02	39.57	24
Employees in key positions	25.64	23.04	27.40	16
Specialist employees	16.60	15.62	17.48	11
Semi-skilled employees	13.14	12.05	14.06	14
Unskilled employees	11.38	11.04	11.83	7
Type of employment				
Full-time	19.76	16.99	21.07	19
Part-time	14.24	14.24	14.23	0
Full-time civil servants	25.79	24.27	27.27	11
Part-time civil servants	25.26	25.02	27.39	9
Partial retirement	36.18	30.10	40.26	25
Marginal employment	9.27	9.27	9.27	0
Trainees	4.83	4.97	4.71	-6
Type of employment contract				
Contracts for an indefinite term	19.01	16.35	21.28	23

Unadjusted earnings differential by workplace characteristics in 2014				
Specification	Gross hourly earnings			Earnings differential
	Total	Women	Men	
	Euro			%
Fixed-term contracts	13.76	12.95	14.67	12
Trainees	4.83	4.97	4.71	-6
Years worked				
Less than one year	12.48	11.32	13.49	16
1 to 2 years	13.31	11.96	14.57	18
3 to 5 years	15.62	13.70	17.37	21
6 to 10 years	18.43	15.78	20.75	24
11 to 15 years	20.53	17.48	23.28	25
16 to 20 years	21.91	18.84	24.59	23
21 to 25 years	22.92	20.00	25.45	21
26 to 30 years	24.84	21.31	27.38	22
31 and more years	24.83	21.78	27.29	20

Source: Federal Statistical Office, Structure of Earnings Survey 2014

https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdiensteArbeitskosten/VerdiensteVerdienstunterschiede/Tabellen/GPG_Arbeitsplatz.html.

In response to the question asked by the Committee as to whether the principle of equal pay for equivalent work applies to all workers, the following information is provided:

The AGG prohibits wage discrimination based on sex under Sections 1, 2 (1) 2, 3, 7 (1), and 8 (2). The personal scope of application of the AGG covers employees, employees who are employed for vocational training as well as employee-like persons; the latter group

also includes persons engaged in homework and their equals (Section 6 (1) 1 (1-3) AGG). Pursuant to Section 24 (1) 1 and 2 AGG, the provisions of this Act shall apply accordingly to civil servants of the Federation, the Länder, the municipalities, the municipal associations and other public-law corporations, institutions and foundations under federal or Länder supervision and for judges of the Federation and the Länder - taking into account each particular legal status.

The principle of equal pay for equivalent work applies in particular to employees in both the private and the public sectors and to civil servants in bodies governed by public law.

The full application of the principle is based on the case-law of the European Court of Justice on Article 157 (1-2) TFEU (ex Article 141 TEC, ex Article 119 EEC). Workers who fall within the definition of employed persons under this primary legislation may have direct recourse to the law before a German court (established case-law since the ECJ judgment of 08 April 1976 in Case C-43/75 [Defrenne case]).

35th Report on the implementation of the social partners

Employers may not have a pregnant or breastfeeding woman over the age of 18 do work that has to be done for more than 8.5 hours a day or 90 hours a fortnight. Employers may not have a pregnant or breastfeeding woman under 18 years of age do work for more than 8 hours a day or 80 hours a fortnight.

With regard to the rules governing working time, adjustments were made in 2017 in the context of the legislative procedure for a new regulation of maternity protection.

Now employers may not have a pregnant or breastfeeding woman work to an extent that exceeds the contractually agreed weekly working hours on the average of a month. If there are multiple employers, the working hours must be added together. This will ensure that women in part-time employment cannot be disproportionately obliged to work overtime in comparison to women in full-time employment, as measured by the working time agreed in the contract.

For employment between 8 pm and 10 pm, a special administrative procedure has been introduced for all occupational groups.

These new rules will enter into force on 1 January 2018.

Article 5
The right to organise

During the reporting period, there were no fundamental legislative or judicial changes in relation to the right to organise as compared to the previous reports.

The Committee recognises the information contained in the German report, which refers to the previous reports. It concludes that there have been no fundamental changes during the reporting period to the right to organise (the organisation of trade unions and employers' organisations, freedom to belong to a trade union or not, trade union activities, representativeness and personal scope), which it had previously found to be in line with Article 5 of the ESC.

The report emphasises that civil servants have the right to organise (in accordance with Article 9 (3) GG) and that they have the right to establish trade unions or professional associations (in accordance with Article 116 (1) of the Bundesbeamtengesetz, (Federal Civil Service Act (BBG)) and Section 52 of the Beamtenstatusgesetz (Act on the Status of Civil Servants (BeamtStG)).
The Committee asks Germany for a complete description of the relevant legal provisions and their practical implementation.

Section 116 BBG and Section 52 BeamtStG also stipulate that civil servants have the right to "organise in trade unions and professional associations". This means that the constitutionally granted right to organise, derived from the right to organise under Article 9 (3) 1 GG, which applies to everyone and for all professions, is expressly confirmed for civil servants of the Federation and the Länder.

In addition, this right is further specified in both legal provisions: "No civil servant may be officially reprimanded or disadvantaged for activity for a trade union or professional association."

On the basis of that, it is further reasoned that civil servants need not obtain authorisation to take up a post in a trade union or professional association. (This exception to the general authorisation requirement for secondary employment is regulated for federal civil servants in Section 100 (1) 4 BBG, for example).

That civil servants in Germany actually make us of their right to organise is also demonstrated by the membership figures for trade unions or professional associations: In the two main umbrella organisations of the relevant trade unions alone (according to their statements) more than 1.3 million civil servants are members.

Article 6

The right to bargain collectively

Paragraph 1 – Joint consultation

The following information is provided in regard to the request of the Committee to provide a complete description of the relevant legislation and its practical implementation in the next report:

The right to organise, which is protected by Article 9 (3) GG, guarantees organisations the right to "the specific activities of organising". It therefore protects activities aimed at safeguarding and promoting working and economic conditions. This may include joint consultations not necessarily aimed at concluding collective agreements. The right to organise is simply not further elaborated in law. For example, consultations between trade unions and employers can take place in the legislative process. In accordance with Section 47 of the Gemeinsame Geschäftsordnung der Bundesministerien (Joint Rules of Procedure of the Federal Ministries (GGO)), the timely consultation of central and collective organisations of workers' and employers' organisations is stipulated for all legislative measures. This is also done in practice on a regular basis.

Paragraph 2 - Machinery for negotiations

In the period from 1949 to the end of 2016 a total of 418,000 collective agreements were concluded, of which about 73,000 were still in force at the end of 2016.
The number of companies with company agreements amounted to approximately 11,100 at that point in time. In the period from 1 January 2013 to 31 December 2016 a total of about 21,600 new collective agreements were entered in the register of collective agreements. This included about 14,000 company agreements.

Otherwise, there were no fundamental legal or judicial changes in the reporting period compared to the previous reports.

Paragraph 3 - Machinery for conciliation and arbitration

In the reporting period, no normative amendments or new elements were introduced into the system of agreed and public conciliation and arbitration.

Paragraph 4 - Collective action

The following information is provided in regard to the question of the Committee as to whether the criteria set out in German case-law that must be met by a trade union in order to enjoy the protection afforded by Article 9 (3) GG are still applied, including the right to take collective action, as summarised by the Committee in the attached Conclusions XVI-2 (2001):

The criteria set out in German case-law that a trade union must fulfill in order to invoke Article 9 (3) GG, which guarantees the right to collective action, are still applicable.

Under German law, a workers' association must be able to enter collective bargaining agreements in order to be able to call for a strike. They must first satisfy the minimum constitutional requirements for a coalition under Article 9 (3) GG, but they must also comply with the requirements for collective agreements derived by the Federal Labour Court (Bundesarbeitsgericht (BAG)) from Section 2 TVG. This requires that the coalition be freely constituted, uncontested, independent and organised on a supra-company basis and recognise the applicable collective bargaining law as binding. In its statutes the coalition must have set itself the task of promoting the interests of its members in their capacity as employees and be willing to enter into collective agreements. It must also be able to be sufficiently assertive with respect to the opposite side in collective bargaining agreements and have a functioning organisation (BAG, decision of 28.3.2006 - 1 ABR 58/04; BAG, decision of 5.10.2010 - 1 ABR 88/09).

According to the established case law of the BAG, the assertive ability of the workers' association is necessary to ensure that the opposite side in collective bargaining agreements cannot reject offers of negotiations. An adequate and socially acceptable balancing of interests can only be achieved if the workers' group can at least put so much pressure on the employers' side that it must engage in negotiations for a collective agreement on working conditions. The workers' association must be taken seriously by its opposite number so that working conditions are not determined unilaterally by the employers' side, but rather actually negotiated. Whether a workers' association is able to be assertive in this way must be determined on a case-by-case (BAG, decision of 14.12.2004 - 1 ABR 51/03).

However, no requirements are imposed on the ability to enter into collective bargaining agreements that have a significant impact on the formation and operation of a coalition, disproportionately restricting it, and thus undermining the free establishment and activity of

coalitions guaranteed by Article 9 (3) GG. The ability of the workers' coalition to assert itself regarding its opposite number in order to participate in a meaningful ordering of work, may therefore not mean that the workers' coalition must have a chance for a complete victory. It must only be possible to expect that it will be taken seriously by the other side, so that the regulation of working conditions is not dictated by one party to the collective bargaining agreement (BVerfG, Decision of 20.10.1981 - 1 BvR 404/78). According to the case law of the BAG, the number of members is of crucial importance for the case-by-case assessment of the assertiveness and functioning of a workers' association. The number of organised workers determines the financial resources of a workers' coalition. The number is crucial to its organisational functioning and also to whether a workers' association is in a position to bear the financial and staffing burdens involved in concluding collective agreements (BAG 28. 3. 2006 – 1 ABR 58/04). In particular, the number of members in the freely chosen scope of competence and geographical area provides information on whether a workers' union, taking into account its organisational structure, is in a position to put sufficient pressure on the other side to force negotiations on the conclusion of a collective bargaining agreement. This ability may also be based on the fact that workers organised in it are specialists in key positions, which can be difficult to replace in the short term by the employer in case of a labour dispute (BAG, decision of 05.10.2010-1 ABR 88/09).

The requirements placed on the collective-bargaining ability of a workers' coalition ensure the autonomy of collective bargaining and are constitutionally unobjectionable in terms of this regulatory objective. Autonomy in collective bargaining is granted constitutionally only to those coalitions that are able to meaningfully influence how work is structured in the parameters set by the scope of the legal system through collective agreements. A prerequisite for this is the unity of the organisation and its ability to assert itself regarding its opposite number (BVerfG, decision of 24.2.1999 - 1 BvR 123/93). Without this ability, the workers' association would be dependent on the goodwill of the employers' side and other workers' coalitions and could not adequately fulfill the tasks of collective bargaining autonomy (BVerfG, decision of 20.10.1981 - 1 BvR 404/78).

Concerning the Committee's request for further information on the subject of strikes and lockouts, reference is made to the following table:

Number of working days lost due to strikes and lockouts in Germany

	strikes	lockouts	total
2013	149,584		149,584
2014	154,745		154,745

2015	1,092,121		1,092,121
2016	209,435	382	209,817

Source: *Statistics of the Federal Employment Agency*

With regard to Article 6 (4), the Committee concludes that the situation in Germany is not in line with the Charter because the conditions which a group of workers must comply with to form a trade union in order to be able to call for a strike represented a severe restriction of the right to strike.

With regard to the conclusions of the Committee on the lack of right to strike for civil servants, it should be noted that the German legislator has linked public service with the institutional guarantee of career civil service. The regulation of public service law must take into account the traditional principles of the career civil service. One pillar of this is the ban on civil servants taking part in strikes. The "right to strike" is incompatible with the relationship of service and loyalty and contradicts the structural decision that the civil service relationships are regulated by the legislator. Compensation for the ban on striking comes through various rights and principles, such as the obligation of public service employers to provide for civil servants' welfare (see above, remarks on remuneration in Article 4 (1), the subjective-legal character of Article 33 (5) GG as a fundamental right, rights of the umbrella organisations of the trade unions and professional associations concerning participation in the legislative process, as well as other participation rights in the Länder.

The Bundesverfassungsgericht (Federal Constitutional Court) will make a decision in the coming months on the question of the strike ban for teachers who are civil servants. Germany will keep the Committee informed on the progress of the proceedings.

As regards the Committee's request for information on the right to strike of post and railway employees with civil servant status, it should be added that the decision of the Bundesverwaltungsgericht (Federal Administrative Court) (dated 7.6.2000, ref. 1 D 4/99, paragraph 19) refers only to civil servants who have been granted leave to enable them to establish an employment contract with a private-sector company. These civil servants have the same coalition rights under Article 9 GG as other workers during the period of leave of absence, including the right to strike.

Article 18

The right to engage in a gainful occupation in the territory of other Parties

Paragraph 1 – Applying existing regulations in a spirit of liberality

In its conclusions on the 33th report the Committee was unable to establish that the existing rules are being applied in a spirit of liberality and asks for information on the number of authorisations both granted and refused in comparison with the number of applications, in particular for nationals of those Parties that are not members of the European Economic Area (EEA), and for information on the grounds of refusals. The following information is provided on this issue:

On 30 June 2016 there were 8,972,100 foreign nationals living in Germany. This corresponds to a total share of 10.9 percent of the total population.
Information on the number of foreign nationals residing in Germany for the purpose of employment can be found in the statistics on residence permits for employment purposes, the EU labour permits issued through 30 June 2015 to Croatian nationals, and the labour market authorisations for third country nationals.
For the reporting period, the statistics show the following figures for the above-mentioned approval areas:

Table 1

	Work permits EU for nationals from Croatia		Residence permits issued to third-country nationals for gainful employment		
	Work permits granted	Work permits denied	Residence permits granted for employment	Residence permits granted for self-employment	Residence permits denied **
2014	23,247	5,063	65,978	4,773	not recorded *
2015*	14,632	2,433	72,116	4,661	
2016	-	-	88,153	4,967	

** Note: Since 1July 2015, Croatian nationals in Germany have had full freedom of movement for workers in accordance with Article 45 TFEU. The figures included in the table for 2015 relate to work permits granted through 30 June 2015.*

*** Note: As a result of the federal administrative structure in Germany the responsibility for implementing the legislation on aliens is not centralised at the national level, but mainly decentralised in the 16 Länder. The granting of residence permits takes place at the municipal level, also decentralised, at around 620 local competent foreigners authorities. Applications for and denials of residence permits are, however, not recorded for*

statistical purposes at the municipal level, at the Länder level or the national level. The introduction of a nationwide regular survey of applications for and refusals of residence permits for third-country nationals for employment or self-employment in Germany would, if at all possible, be accomplished only by expending considerable technical, financial and human resources, whereby such expenditure would be out of proportion to the expected value, especially in view of the fact that these data have no bearing on the development of the migration policies of the Federal Republic of Germany.

The main instrument of labour market management in Germany is the granting of labour market authorisations to third-country nationals which are subject to an internal approval procedure for the granting of residence permits for employment. For certain occupations - for example, for highly qualified people with German university degrees - no labour market authorisation is required. The number of approvals and denials for nationals of Charter countries and, for comparison, approvals and denials for all third-country nationals are shown in Tables 2 and 3 for the years 2014 to 2016.

Table 2

Labour market authorisations granted to nationals of European Social Charter Member States			
	2014	**2015**	**2016**
Albania	816	3,480	7,593
Armenia	308	639	1,248
Azerbaijan	242	449	889
Bosnia-Herzegovina	2,741	4,872	16,997
Georgia	1,130	1,627	2,448
The former Yugoslav Republic of Macedonia	1,060	1,808	6,380
Moldova	142	147	165
Montenegro	38	209	1,272
Russian Federation	1,803	2,445	3,349
Serbia	1,334	2,981	11,436
Turkey	1,299	1,981	3,176
Ukraine	2,544	3,724	4,893
Labour market authorisations for third country nationals from around the world (including European Social Charter Member States)			
	2014	**2015**	**2016**
	67,795	105,993	215,045

Labour market authorisation can be obtained in advance from the Bundesagentur für Arbeit (Federal Employment Agency) before applying for the visa or the residence permit (pre-

approval procedure). However, in some cases no application is made for a residence permit or visa following the pre-approval procedure. Sometimes the applications are made in the following year. The number of labour market authorisations for a given year is therefore not the same as the number of visas or residence permits issued that year for employment.

Table 3

Denied labour market authorisations for nationals of member states of the European Social Charter									
	Denials on account of labour-market priority tests			**Denials on account of labour-market priority tests and non-comparable employment conditions**			**Denials for non-comparable employment conditions**		
	2014	**2015**	**2016**	**2014**	**2015**	**2016**	**2014**	**2015**	**2016**
Albania	316	1,278	1,172	118	412	412	69	304	554
Armenia	63	73	58	13	30	25	14	64	121
Azerbaijan	69	59	42	29	19	21	20	54	78
Bosnia-Herzegovina	150	195	1,560	65	77	395	81	124	663
Georgia	45	80	50	16	21	19	13	53	72
The former Yugoslav Republic of Macedonia	295	342	978	116	136	350	89	157	405
Moldova	14	18	17	9	8	7	11	8	9
Montenegro	5	90	219	4	9	53	-	12	54
Russian Federation	114	85	74	72	31	42	70	127	196
Serbia	246	365	1,256	72	89	289	72	180	487
Turkey	353	354	238	217	169	128	120	334	377
Ukraine	69	283	132	42	126	53	69	165	178
Denials for third country nationals from around the world (including states of the European Social Charter)									
	2014			**2015**			**2016**		
	26,408			36,593			48,446		

Paragraph 2 - Simplifying existing formalities and reducing dues and taxes

In Germany the "one-stop-government" introduced on 1 January 2005 continues to be in use. It replaced the previous parallel application for work and residence permits with a single

residence permit. Reference is made to the relevant passages in the 25th and 33th reports on the application of Article 18.

Since 1 July 2015, all Member States of the EU have enjoyed full freedom of movement for workers. The transitional arrangements for Croatia restricting the freedom of movement for workers expired on 30 June 2015.

Paragraph 3 – Liberalising regulations

During the reporting period there were some changes to the law on the employment of foreign workers. In particular:

In October 2016, Germany introduced a special temporary employment scheme for citizens of Albania, Bosnia-Herzegovina, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro and Serbia set to expire in 2020. Nationals from these countries may take up employment in Germany if they apply for a work visa at the German diplomatic missions in their country of origin and have not received any benefits under the Asylbewerberleistungsgesetz (Act on Benefits for Asylum Applicants) within the last 24 months prior to the application (Section 26 (2) Beschäftigungsverordnung (Employment Ordinance)).

In addition, access to the labour market for asylum-seekers and refugees whose deportation has been temporarily suspended has been made easier.

- Asylum seekers and those who are refugees whose deportation has been temporarily suspended no longer need labour market authorisation for internships in pre-employment training, training programmes or study placements.

- In 123 out of 156 agency districts of the Federal Employment Agency the labour-market priority test for asylum seekers and refugees whose deportation has been temporarily suspended has been suspended.

- Employment as a temporary agency worker has been authorised in 123 out of 156 agency districts of the Federal Employment Agency, as it has for employment as a skilled labourer, as part of a vocational training programme or after 15 months of residence in the other agency districts.

- These last two changes are valid until 5 August 2019.

For information purposes, it is also to be noted that in 2017, the Act to Transpose the EU Mobility Directive (Gesetz zur Umsetzung der EU-Mobilitäts-Richtlinie) has further liberalised the rules. The Act transposes the following Directives into national law:

1. Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers,

2. Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, and

3. Directive 2016/801//EU of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing

Since 1 August 2017, a new residence permit, the ICT (Intra Corporate Transfer) card, Section 19b of the Aufenthaltsgesetz (Residence Act), is available for management-level staff, specialists and graduate trainees being posted to Germany within an internationally active company headquartered outside the EU. With this ICT card, workers can also be posted to other EU Member States. The Act also regulates how workers who are already working for their employer in another EU Member State may be transferred to Germany for a short or medium term posting.

The Act also establishes new conditions for researchers and students, cf. Section 16 ff. Residence Act. In the future, they will be able to easily participate in cross-border projects and degree programs, because the German residence permit also entitles them to mobility within the EU. According to Section 16 (5), Section 20 (7) and Section 20b of the Residence Act, they also have the right to extend the stay after completing their research project or studies in order to seek a job in Germany. In the future, they will be entitled to a residence permit if they meet the requirements. Until now the issuing of a residence permit was at the discretion of the authorities.

The Act also modifies the rules on the use of seasonal workers from outside the EU in accordance with the requirements of the Seasonal Workers Directive.

Concerning Article 18 (3) the Committee also requests information on the conditions under which nationals from Parties to the Charter that are not members of the EEA may work or be self-employed in Germany, when they are subject to a labour-market priority test and when they have unrestricted access to the labour market. The following particulars apply:

Nationals of non-EEA contracting parties are third-country nationals who need either a visa or residence permit authorising employment or an EU Blue Card in order to take up employment. Please refer to the comments in the 33th Report on the conditions of residence. In summary, third-country nationals have access to the labour market for jobs requiring a German academic degree or a recognized foreign academic one, at least two years of German vocational training, or comparable, recognised foreign qualifications. The EU Blue Card will only be awarded to college graduates. Third-country nationals can only take up employment without fulfilling the requirement of having vocational training qualifications or an academic degree in exceptional cases, for example, if they come from certain countries (Section 26 Beschäftigungsverordnung (Employment Ordinance) or if the work is only temporary (for example au pairs). A residence permit for the purpose of employment is only granted if there is a job offer.

For a residence permit for employment, the approval of the Federal Employment Agency is usually obtained in an internal procedure. The Federal Employment Agency determines whether a German jobseeker with preferential labour-market access is available for employment (labour-market priority test) and whether the terms of employment correspond to those of comparable German employees. Some jobs requiring qualifications (such as is the case for the EU Blue Card for STEM shortage occupations or jobs requiring German or recognised foreign vocational training qualifications) do not require a labour-market priority test. For an EU Blue Card, the Federal Employment Agency’s approval — and therefore a labour-market priority test — is not required if the person receives a gross annual salary of at least two-thirds of the contribution assessment ceiling of the pension insurance scheme (2017: EUR 50,800). The same applies to residences permit for employment requiring occupational qualifications for persons with a German academic degree.

Third-country nationals have unlimited access to the labour market under the following conditions:

- Having a residence permit for family reasons.
- Having a residence permit for humanitarian reasons as a rule.
- Having the right of permanent residence, i.e. permission to settle or the right to permanently reside in the European Union.
- As family members of Union citizens entitled to free movement.

Concerning the 33rd Report the Committee also asks what conditions would need to be met when converting a work permit to a self-employment permit.

Third-country nationals entering the country for the purpose of employment have residence permits that do not permit self-employment.

To qualify for self-employment, it is therefore necessary to have a residence permit for self-employment.

This can be granted under the conditions of Section 21 (1) of the Residence Act. This states that foreigners may be granted residence permits for the purpose of self-employment, if

1. there is an overriding economic interest or regional demand,
2. the work is expected to have positive effects on the economy and
3. the funding of the implementation is guaranteed through (personal) equity or an approved loan.

Assessment of the prerequisites according to sentence 1 depends in particular on the viability of the underlying business idea, the entrepreneurial experience of the foreigner, the amount of capital, the impact on the employment and training situation and its contribution to innovation and research. In determining this, knowledgeable bodies where intended activity will be carried out, the responsible trade supervisory authorities, the representative bodies of public-sector professional groups and the competent authorities regulating admission to professions are to be involved.

An easier transition is set out for researchers and academics who have a residence permit under Section 18 or Section 20 according to Section 21 (2) a of the Residence Act. They may be granted a residence permit for the purpose of self-employment by way of derogation from paragraph 1. The intended self-employment activity must be linked to their activity as a researcher or academic.

In addition, an easier change of purpose of residence is possible in the residence permit for freelance work. To receive the required residence permit, it is not necessary that the requirements of Section 21 (1) of the Residence Act be fulfilled.

Without further examination or approval by the authorities, it is possible to take up self-employment if the employee doing so has a permanent residence permit in the form of a settlement permit or permanent right to reside in the EU. The former may be granted after a period of employment of 21 months to five years, depending on the employment carried out.

Article 18 (4) Leaving the country for the purpose of gainful occupation in another country

Reference is made to the comments of the 33rd Report.