

**Berlin, March 2006**

**24<sup>th</sup> Report**

**submitted by the Government of the Federal Republic of Germany  
for the period from 1 January 2001 to 31 December 2004**

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 this report shall be sent to

- the Federation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände)
  
- the Federal Executive Committee of the Confederation of German Trade Unions (Bundesvorstand des Deutschen Gewerkschaftsbundes)

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## **Preliminary remarks**

The 24rd report is a follow-up to earlier reports submitted by the Federal Government on the national implementation of the obligations laid down in the European Social Charter. It does not refer to the individual provisions of the Charter unless either the remarks of the European Committee for Social Rights of the European Social Charter (by way of simplification hereinafter referred to as "Committee") in the conclusions XVII-1 give reason for this, or the questionnaire makes this necessary or if relevant amendments in the material and legal situation have occurred.

## **Article 1 paragraph 4**

### **Vocational guidance, training and rehabilitation**

Concerning the Committee's question about the vocational rehabilitation of disabled persons, reference is made to the comments in Article 15, paragraph 1.

## **Article 2**

### **The right to just conditions of work**

#### **Paragraph 1 – reasonable daily and weekly working hours**

The provisions on working hours are key elements of all collective agreements. They are a means to use and extend the framework set by the Working Time Act. While the Working Time Act fixes the number of daily working hours for reasons of health, collective agreements lay down the number of weekly working hours, the possibility of introducing flexible working time arrangements and workers' rights in the case of overtime work. Generally, there is a higher remuneration for overtime than for normal working time. Supplements mostly amount to between 25% and 50% of the basic salary. Alternatively, many collective agreements provide for the possibility of compensating overtime by taking time off. There are collective agreements for economic branches employing about 90 percent of all workers.

The number of working hours varies, depending on the economic sector and mostly there is also a difference between western and eastern Germany, e.g. (as of 31 December 2004):

<b>Bargaining area</b>	<b>Western Germany</b>	<b>Eastern Germany</b>
Metal and electrical industry	35 hours	38 hours
Chemical industry	37.5 hours	40 hours
Construction industry	39 hours	39 hours
Public service	38.5 hours	40 hours

On average, weekly normal working hours laid down by collective agreements were 37.35 hours in western Germany and 39.0 hours in eastern Germany at the end of 2004. There is, however, a trend towards harmonisation.

During the reference period from 1 January 2001 to 31 December 2004, normal weekly working time provided for by collective agreements, decreased by 3 minutes on average in western Germany and by 7 minutes in eastern Germany.

As regards the classification of inactive on-call time as working time, the European Court of Justice's ruling of 9 September 2003, that inactive on-call time be considered working time within the meaning of the EC's Working Time Directive, required an amendment of the Working Time Act. According to the existing legislation at the time, only the actual working hours during the hours of on-call duty were counted as working hours but not the whole time of duty.

By the amendment of the Working Time Act, which took effect on 1 January 2004, the provisions on working time in the case of standby and on-call duty were revised. All hours of on-call duty are now counted in their entirety as working time. They are now also taken account of in the calculation of the maximum average working time of eight hours per day.

The Working Time Act does not contain a specific provision on the admissibility of overtime. There is no need for regulation since the above mentioned limitations to daily maximum working time (eight hours or respectively ten hours per weekday on a temporary basis, subject to adequate compensation) must not be exceeded even if extra hours are taken account of as well.

The Working Time Act guarantees adequate daily and weekly working times. The Act provides for a maximum working time of eight hours per day on a maximum of six weekdays which may only be exceeded if adequate compensation is granted. In this case,

prolonged working time must not exceed 10 hours. Extended working hours must be compensated (free time) within a period of six months.

German legislation is in line with the European Working Time Directive which allows a maximum of 13 working hours per day. Workers in Germany – also in view of the compensation period of six months provided by the law – are granted an even higher level of protection as laid down in the Directive. The current proposal made by the European Commission in the framework of the negotiations about the amendment of the Working Time Directive of 31 May 2005, shall give the Member States the opportunity to extend the compensation period to one year.

Almost all working time provisions laid down by collective agreements provide for the possibility of flexible working time arrangements. Traditionally, working hours can unevenly be distributed over days, weeks or seasons. The reference period for averaging of working hours is usually up to 12 months. This period is only exceeded in some bargaining areas and individual cases. Thus, for example, in the chemical industry the averaging may take place over a period of up to 36 months where project-oriented work is concerned. In the metal industry of Baden-Württemberg the reference period may – subject to the consent of the parties to collective bargaining - be extended to up to 24 months in certain non-recurring cases and up to 27 months in exceptional cases.

Where, as stated in the 20<sup>th</sup> Report, collective agreements provide for a reference period for averaging weekly working time of more than one year, these averages refer to the working time fixed by the parties to collective bargaining which in most cases is clearly below the statutory weekly working time of 48 hours.

Such provisions are designed to make working time more flexible. They contribute to securing jobs and are therefore in the interest of companies and workers, ensuring that the requirements of safety and health are fulfilled. So the amendment of the Working Time Act of 1 January 2004 clearly sets out that in cases where the reference period for averaging is extended by collective agreement, a weekly working time of 48 hours shall by no means be exceeded over an average of 12 calendar months. This provision takes account of the purpose of Article 2 paragraph 1 of the ESC which is the protection of workers' health and safety.

### **Paragraph 3 – Annual holiday with pay**

All collective agreements provide for longer periods of leave exceeding the statutory minimum leave. In 2004, average basic leave amounted to approx. 28.2 working days in western Germany and 27 working days in eastern Germany. The calculation is based on five working days per week. Provisions on minimum employment periods are contained in most collective agreements and in the Federal Annual Holiday Act.

### **Paragraph 4 – Reduced working hours or additional holidays for workers in dangerous or unhealthy occupations**

Unfortunately, the German government does not have an overview of collective agreements providing for reduced working hours or additional holidays in relation to certain types of work.

For sectors involving such types of work, collective agreements, however, generally provide additional holidays of up to five days per year where workers permanently or mostly have to perform hard or hazardous work (e.g. the General Collective Agreements for the hard-coal mining industry in western Germany, the ore mining industry in eastern Germany and the potash and rock salt mining industry in western Germany). Workers' rights are preserved.

Employees of the public service are entitled to additional holidays of up to four days – up to five days for older employees - per holiday year (section 48 of the Federal Collective Agreement for Employees (BAT)/section 48a of the Framework Collective Agreement for Wage Earners in the Public Service (MTArb)) if they perform alternate shift work, shift work and night work.

Workers performing work which poses great risks to health and who do this work most of their working time during a period of at least six months within one holiday year, are granted additional holidays of up to 5 working days per holiday year (section 49 of the MTArb). Civil servants are granted additional holidays if they perform shift work (section 12 of the Annual Holiday Ordinance).

### **Paragraph 5 – Weekly rest period**

In Germany, collective agreements are concluded – in deviation from section 11 para. 3 of the Working Time Act - for the purpose of agreeing the cancellation of compensatory days off for holidays falling on workdays or granting workers leave within a fixed reference period.

This is particularly the case in the hotel and restaurant industry. The German government, however, does not know the number of workers directly concerned.

### **Article 3**

#### **The right to safe and healthy working conditions**

#### **Paragraph 1 – Issue of safety and health regulations**

In addition to the Ordinances mentioned in the 20th German Report on Article 3, paragraph 1 ESC, the Ordinance concerning safety and health protection in the provision of work equipment and its use at work, concerning safety when operating installations subject to monitoring, and concerning the organisation of safety and health at work (Ordinance on Industrial Safety and Health - Betriebssicherheitsverordnung – BetrSichV) was adopted and became effective as of 27 September 2002 (BGBl. I S. 3777). The Ordinance on Industrial Safety and Health replaced the Ordinance on the use of work equipment which was adopted in 1997 to implement Directive 89/655/EC, and regulations concerning the operation of installations subject to monitoring which were contained in a number of different Ordinances.

The Ordinance on Industrial Safety and Health is applicable to all employees who have been provided with work equipment and who use work equipment at work or who may be exposed to risk due to the operation of equipment subject to monitoring. It does not apply in establishments which are subject to the Bundesberggesetz (Federal Mining Act) or to seagoing vessels sailing under a foreign flag or to seagoing vessels for which the Federal Ministry of Transport, Building and Housing Affairs has granted permission to fly the German flag only for the first transit journey to another port pursuant to section 10 of the



Flaggenrechtsgesetz (Flag Law Act). Furthermore, the Ordinance does not apply to certain installations subject to monitoring which are energy installations and have been erected on the premises of public gas supply companies and are operated by the same. In all cases where exemptions from the scope of application have been made, employees enjoy an equivalent level of protection under specific regulations.

In the 20th Report on Article 3 paragraph 1, ESC reference was made to the Ordinance concerning health and safety on construction sites. It should be mentioned that in the period under review the Federal Ministry of Economics and Labour published Rules concerning Safety and Health on Construction Sites (Regeln zum Arbeitsschutz auf Baustellen (RAB's)), reflecting the state of the art in the field of occupational safety and health on construction sites. They were drawn up by the Committee for Safety and Health on Construction Sites and will be continuously updated in accordance with new developments.

In reply to the Committee's question concerning the steps that have been taken as a consequence of the ruling of the European Court of Justice (ECJ) that Germany did not correctly transpose Council Directive 89/391/EEC (Safety and Health), the following information is provided: The ECJ stated that, taking account of the totality of German safety and health provisions (including the Arbeitssicherheitsgesetz (Occupational Safety and Health Act) together with the Unfallverhütungsvorschriften (Accident Prevention Regulations), it was ensured that all German employers were in possession of an assessment in documentary form of the risks to safety and health, and OSH measures required as a result. However, the Court found a violation of the Framework Directive 89/391/EEC insofar as section 14, paragraph 2 of the Arbeitssicherheitsgesetz (ASiG, Occupational Safety and Health Act) authorized the competent Ministry to permit, by statutory regulation, derogations from the provisions of the ASiG and the reporting obligation laid down by the Accident Prevention Regulations.

This permission of derogation by statutory regulation has now been abolished by Article 5a of the Third Act amending the Trade Regulation Act (Gewerbeordnung) and other Provisions governing Trade, Industry and Commerce, which was adopted to implement the ECJ ruling and which became effective on 24 August 2002 (BGBl. I, S. 3412).

Consequently, the possibility to allow exemptions from the documentation requirement for employers with 10 or fewer employees no longer exists.

In reply to the Committee's question concerning the adaptation of regulations on the protection against noise, vibration and biological agents, the following information is provided:

The Federal Government intends to transpose Directive 2002/44/EC on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (vibration) and Directive 2003/10/EC (noise) together in a single Ordinance. In a second stage the transposition of Directive 2004/40/EC on electromagnetic fields and of the Directive on artificial sources of optical radiation (still under discussion at EU level) will follow without delay. The aim is to combine legal instruments based on a similar approach and dealing with related issues in one legal document in the interest of more transparent and user-friendly legislation. As the transposition of the Directives will not be completed in the current reporting period and considering that a description of the entire process would seem useful in view of the intended single transposition law, more detailed information will be provided in the next German report.

The Committee rightly indicates that safety and health regulations have to reflect the latest technical developments. In the context of the German Biostoffverordnung (Ordinance on Biological Agents) this requirement is fulfilled by the work of the Committee on Biological Substances (Ausschuss für biologische Arbeitsstoffe ABAS). It has i.a. the task of proposing regulations taking account of the state of the art in science, technology and medicine, thus ensuring that rules and regulations are continuously adapted to the latest scientific findings.

In reply to the Committee's question concerning the protection of non-permanent workers the following information is provided:

Experience has shown that non-permanent workers are exposed to higher risks than workers constantly working in a familiar work environment because non-permanent workers change jobs frequently, and are therefore facing different job requirements and changing work processes. This requires intensified efforts in implementing safety and health regulations.

This is why measures to improve the health and safety of temporary agency workers are always addressed to both the agency and the host employer. The temporary work agency has to assess the generic and abstract risks arising for hired-out employees, irrespective of the specific workplace to which they are assigned, and the agency has to provide appropriate training for them. At the beginning of a temporary worker's assignment and in

cases where changes in his area of work are being introduced, the host employer must inform the temporary agency worker about the potential hazards he may be exposed to in the assigned workplace, and must inform and instruct him about measures and precautions taken to prevent these hazards. Moreover, the hiring employer must inform the agency worker if particular qualifications or professional skills are required for the job and if special medical surveillance is necessary. The agency worker must also be informed of any site-specific serious hazards he may be exposed to at the workplace. At the request of the temporary agency worker, the agency and the host employer must give him the opportunity to undergo regular medical checkups, except in cases where, on the basis of risk assessment and due to the safety measures taken, health impairments are not to be expected. If in the host company factory agreements on occupational safety and health have been concluded between the employer and the works council, these agreements are as a matter of principle also applicable to agency workers assigned to the company.

#### Self-employed workers:

Safety and health promotion for self-employed workers requires differentiated analysis. Self-employed workers may always, on a voluntary basis, avail themselves individually of the safety and health provisions which are applicable both to the employer and the workers. Entrepreneurs have access to a large number of training schemes enabling them to meet their obligations in respect of the safety and health of their employees. Eventually this is also to the benefit of their own safety.

However, this does not mean that self-employed workers are generally covered by the provisions on occupational safety and health, because the legal status of self-employed workers cannot imply the same duty of care as that of employees. In Germany the legitimate interests of self-employed workers in safety and health protection is taken into account by differentiated sectoral regulations. For example, under the Ordinance on Biological Agents (Section 2, para. 8 BioStoffV) and the Ordinance on Dangerous Substances (Section 3, para. 5 GefStoffV) entrepreneurs without employees are treated in the same way as employers. Provisions concerning self-employed workers are also contained in the Construction Sites Ordinance (Baustellenverordnung BaustellV; Section 6 BaustellV).

## **Paragraph 2 – Provisions for the enforcement of safety and health regulations by measures of supervision**

The number of visits carried out by public supervisory authorities and accident insurance institutions and the figures concerning enforcement measures imposed in the period 2001 to 2003 are listed in the Federal Government Report on the State of Safety and Health at Work and Accidents and Occupational Diseases in the Federal Republic in 2003 (Bundestags-Drucksache 15/4620).

Relevant extracts from the Report are attached as **Annex 1**.

## **Article 4**

### **The right to a fair remuneration**

#### **Paragraph 1 – Adequate remuneration -**

The German government has no knowledge of lowest wages paid to workers who are not covered by collective agreements.

In compliance with the system of autonomy of social partners guaranteed by the German Constitution in Article 9 para. 3 of the Basic Law, it is the social partners who are responsible for fixing wages without the government interfering.

Collective agreements on minimum wages are part of the system of autonomy of social partners. In the period under review, such collective agreements were for example concluded for the construction sector, the crafts covering electricians, roofers, painters and vanishers, and for the demolition and wrecking industry. There are collective agreements for sectors which together accounts for about 90 percent of total employment.

There are different ways of being bound by collective agreements.

According to the Collective Agreements Act (TVG), collective agreements are directly and peremptorily binding

- if the employer is a member of the association which concludes the collective agreement or a party to a company-wide collective agreement or if the employee is a member of the trade union which concludes the collective agreement (sections 3, 4 para. 1 of the Collective Agreements Act) or
- if the collective agreement has been declared generally binding (section 5, para. 4 of the Collective Agreements Act).

In both cases the respective employment relationship must fall within the scope of the collective agreement.

In addition, the application of a collective agreement can also be agreed in a separate contract between employer and employee.

Concerning the actual coverage of collective agreements, a survey made by the Institute for Employment Research of the Federal Employment Agency for the year 2004 (Establishment Panel of the Institute for Employment Research - IAB Betriebspanel – see WSI/ Institute of Social and Economic Research in the Hans Böckler Foundation Journal 2005, p. 398) provided the following information:

- In western Germany 61 percent of employees work in companies bound by industry-wide collective agreements and 7 percent in companies with company-wide collective agreements.
- In eastern Germany 41 percent of employees work in companies bound by industry-wide collective agreements and 12 percent in companies with company-wide collective agreements.

Thus, 68 percent of all workers in western Germany and 53 percent in eastern Germany – which equals a total of 65 percent for all of Germany – are employed by employers bound by collective agreements.

Moreover, the Establishment Panel of the Institute for Employment Research of 2003 reveals that companies which are not bound by collective agreements and employ about 17 percent of all workers are geared to industry-wide collective agreements.

As regards the harmonisation of public service wages between East and West in the period under review, the facts are as follows: In line with the intended gradual adaptation of eastern wages to the western level, wages of civil servants were raised to 91 % of western wages on 1 January 2003 and to 92.5 % of western wages on 1 January 2004. The same applies to the wages of employees covered by collective agreements.

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

On 1 January 2001, the Act on part-time work and limited employment (TzBfG) entered into force (Federal Law Gazette I [2000] p. 1966). This Act implemented Council Directive 97/81/EC of 15 December on part-time work. The prohibition of discrimination of part-time workers laid down by the Act on Part-Time Work supplements the requirement of equal remuneration for women and men (section 612 para. 3 of the Civil Code) which prohibits employers from paying different wages for the same work or work of equal value for reasons of gender.

According to section 4 para. 1, sentence one of the Act on Part-Time Work and Limited Employment, a part-time worker shall not be treated more unfavourably than a comparable full-time worker, unless there are objectively justified reasons for different treatment (section 4, para. 1, sentence 1 of the Act on Part-Time Work and Limited Employment). The prohibition of discrimination applies to employers, company partners and parties to collective agreements. This means that part-time workers shall not be discriminated against for reasons of their working part-time, both in agreements on work contracts and collective agreements and with regard to company agreements or other measures taken by the employer.

The principle of equal treatment is supplemented by the so-called pro-rata-temporis principle of section 4, para. 1, sentence 2 of the Part-Time Work Act. The provision defines the equal treatment principle, ruling that on a regular basis employers can reduce wages or other apportionable benefits in monetary value for part-time workers only in proportion to their reduced work load compared to full-time workers. They shall not, however, pay lower wages to workers for reasons of part-time work in general.

Under section 4, para. 1, sentence 2 in connection with sentence 1 of the Act on Part-Time Work and Limited Employment, a part-time worker shall at least be paid a remuneration which corresponds to the proportion of his working time to that of a comparable full-time worker (pro-rata-temporis principle), unless different treatment is justified by objective reasons.

Part-time blue-collar workers are thus generally entitled to the same hourly wages as full-time blue-collar workers, part-time white-collar workers to a remuneration that in proportion to their reduced working time corresponds to the remuneration of a comparable full-time white-collar worker and part-time workers receiving performance-oriented remuneration are entitled to remuneration which is calculated according to the same principles that apply to full-time workers. The same applies to other apportionable benefits in monetary value, such as functional allowances, special benefits (e.g. Christmas bonus, holiday bonus), employee discounts, use of staff cars and generally also for benefits from complementary insurance systems provided by the employment contract, such as company pension provisions.

Where pay increases with the length of service, a part-time worker is also entitled to remuneration in proportion to that of a comparable full-time worker with the same length of service under section 4, para. 1 of the Act on Part-Time Work and Limited Employment.

Where the length of service is irrelevant for the level of remuneration, part-time workers shall be granted the same bonuses as full-time workers, e.g. anniversary bonuses paid for loyalty to the company, security and hardship allowances, supplements for alternating shift-work, late and night work, provision of working clothes, child supplements.

Different treatment of part-time and full-time workers shall be admissible where

- different treatment is not due to part-time work but to other reasons such as performance, qualifications, experience on the job,
- different treatment is justified by objective reasons, e.g. different job requirements which can only be fulfilled by full-time workers.

In reply to the question whether it is possible to look outside the establishment for elements of wage comparison in order to determine whether work is equal or of equal value and to be able to compare remunerations, provisions are as follows:

Looking outside the establishment for elements of wage comparison is possible under German legislation and expressly regulated for the comparison between part-time and full-time workers by section 2, para. 1 in connection with section 4, para. 1 of the Part-Time Act. In cases where it is not possible to make a comparison within an establishment because there are no workers that could be compared, a comparable worker can be

determined through the application of the respective collective agreement; in other cases account may be taken of who usually performs comparable work in the respective sector.

In reply to the Committee's question of whether the victim of wage inequality in addition to back pay may claim any form of compensation or whether in such cases the employer may be liable to sanctions, either criminal or administrative, the following is pointed out:

Where unequal treatment also constitutes an invasion of the victim's personal privacy, he or she, in addition to be paid back the wage difference, may be entitled to claim compensation under section 611a of the Civil Code. There are no provisions for the imposition of criminal or administrative sanctions on the employer.

In reply to the Committee's question what factors are taken into account by the courts when determining whether there has been a violation of the right to equal pay for work of equal value, reference is made to the answer to the first question in this context. The factors mentioned there can be used by the courts for assessment.

Concerning the Committee's conclusions regarding "retaliatory dismissal", the following information is provided:

If an employer terminates the employment relationship because employees legitimately exercise their rights, this shall be considered an inadmissible reprisal of the employee under section 612a of the Civil Code. Where such dismissals are null and void, the working relationship continues and the employee is entitled to claim continued payment of wages for the time following the dismissal (default of acceptance by the employer). Employees, however, are not entitled to claim a compensation.

Under section 9 of the Employment Protection Act (Kündigungsschutzgesetz) a judicial dissolution of an employment relationship upon the request of either employer or employee on condition that a compensation be paid, shall only be possible if a socially unjustified dismissal is null and void under section 1, para. 2 and 3 of the Employment Protection Act. In cases where dismissals without prior notice or unlawful dismissal are null and void, termination of an employment relationship against the payment of a compensation can only be granted by the courts upon request of the employee (section 13, para. 1 and 2 of the Employment Protection Act).

Section 9 of the Employment Protection Act does not, however, apply to dismissals which are null and void for reasons other than mentioned under section 1, para. 2 and 3 of the



Employment Protection Act. These also include dismissals violating the prohibition of reprisals laid down in section 612a of the Civil Code. The statutory determination of maximum amounts of compensation in section 10 of the Employment Protection Act exclusively refers to the entitlement to “adequate compensation“ set out in section 9 and section 13, para. 1 of the Employment Protection Act. Since the law does not provide for an entitlement to compensation if a dismissal is null and void on account of section 612a of the Civil Code being violated, section 10 of the Employment Protection Act which fixes the maximum amount of compensation, will not be applied. The dismissal is null and void and the employment relationship continues.

Concerning the Committee’s request for further information on the subject of men and women holding jobs in so-called “low-wage groups”, the following is pointed out: The principle of equal pay for men and women has been embodied in the German legislation for decades. According to the principle of equality between men and women, laid down in Article 3, para. 2 of the Basic Law (Grundgesetz), paying lower wages to women than to men for the same work or work of equal value is prohibited. A similar provision is contained in paragraph 3 which was added to section 612 of the Civil Code in 1980, setting out that it does not matter whether wage discrimination is contained in a collective agreement, in a company agreement or in an individual contract and whether it is direct or indirect.

The principle of wage equality applies to all sectors of industry and activities. When working out collective agreements, trade unions and employers’ associations have to comply with this principle. This also applies to company agreements concluded by employers and works councils and individual work contracts concluded by individual employers. By the abolition of wage reductions for women, wage equality has been embodied in collective agreements for more than 30 years. Being parties to collective agreements, trade unions as employee representatives have played a major role in the implementation of this principle. Continuous observation of the collective agreements by the German government has not shown any discrimination against women or men.

However, there are actually still considerable inequalities as far as remuneration of women and men is concerned.

In Germany, women earn approximately 78 % (2002) of men’s wages (76 % in western and 92 % in eastern Germany – source: 1. Data Report on Equal Opportunities for Women

and Men in the Federal Republic of Germany, Federal Ministry for Family Affairs, Women, Senior Citizens and Youth, 2005).

- see Annex 2: Kommentierter Datenreport 2005 “Erwerbseinkommen von Frauen und Männern“ (“Earned incomes of women and men“) (Brochure in German only)

Since the legal situation is clear, there is rarely any direct wage discrimination against women, but, like in other countries, too, there are many hidden reasons, which are difficult to prove.

Although the German government is not directly responsible for the regulation of wage-related matters – for this is the responsibility of the parties to collective agreements – it has set itself the goal to contribute as much as possible to reducing wage and income differences between women and men. The federal government uses the existing framework to actively bring about the application of the principle “equal pay for men and women” not only for the same work but also for work of equal value (Art. 141 of the EC Treaty).

In April 2002 the German government presented a comprehensive report on equal pay and on the economic situation of women.

see Annex 3: "Bericht der Bundesregierung zur Berufs- und Einkommenssituation von Frauen und Männern" vom 24. April 2002" (in German only)

The report explains in detail the possible reasons for wage differences, for example the gender-related distribution of jobs and training places, fewer career opportunities for women, and comparisons between individual economic sectors. In addition, the report highlights and documents the main reasons for direct and indirect gender-related wage discrimination. It reveals three distinctive reasons for existing inequalities:

- Gender-related dividing lines on the labour market that continue to exist in companies. Above all, the career choice is an important reason here, but also the career mechanisms in companies.
- Gender-related division of labour in connection with child-raising and insufficient infrastructure for the support of families.

- The evaluation of women's work and mechanisms of potential discrimination. Important in this regard is the fact that activities which are mainly performed by women are undervalued in collective and company regulations and practices.

It is the task of the parties to collective agreements to develop wage structures that comply with the principle of "equal pay for work of equal value". The government can only be supportive here. Together with the trade unions and co-financed by the EU, the federal government has implemented a number of initiatives and projects designed to raise the awareness of wage discrimination in the public and amongst all those in positions of responsibility, to spread positive examples and develop political perspectives and strategies. In June 2002, for example, the international conference "Equal Pay" offered the opportunity to exchange best practices for the evaluation of wages and experience gained in connection with forward-looking political strategies with other countries. A documentation of the conference which was held in co-operation with the partner countries Netherlands, Ireland and Austria, the Confederation of German Trade Unions and ver.di, and which was co-funded by the EU, is available. The German government has set itself the goal of inciting the parties to collective agreements to implement joint initiatives and promoting the systematic review and reform of collective agreements. In November 2002, the government therefore presented a guide to the application of the principle of equal pay for women and men for work of equal value.

see Annex 4: "A Code of Practice on the implementation of equal pay for work of equal value for men and women - equal pay" (in German and English)

The guide is a tool for employers' associations and trade unions, individual employers and heads of personnel which can make it easier for them to ensure that the basic right of wage equality will be embodied in collective agreements, company agreements and individual agreements. At the same time, the guide provides orientation for interested persons and advisers as well as for persons who may be affected by wage discrimination themselves.

The German government as employer contributes to removing wage discrimination. Within the framework of the discussions on the modernisation of the law concerning collective bargaining, the Federal Collective Agreement for Employees (BAT) is presently being reviewed with regard to discrimination potentials. After the conclusion of the collective

bargaining round 2005, negotiations on the pay schedule have been resumed and shall be concluded by 2007.

In Germany, the trade unions' campaigns have already made important contributions, including a "checklist for collective agreements to prevent gender-related discrimination" which shall serve as a guide to action for collective bargaining.

The equality policy of the German government aims at improving the opportunities of women on the labour market, thereby also reducing wage gaps between women and men. Although today women are trained better than ever before, there is still a clear gap between women's qualifications and the levels they occupy on their jobs. Moreover, work is unevenly distributed among the sexes. Conditions for women on the labour market which are free from discrimination, gainful employment of women which secures their livelihoods and better compatibility of family and work for women and men are current and central objectives of equality policy.

In view of the future demographic development which will be accompanied by a shortage of manpower, gainful employment of women will be increasingly important. The German government is promoting enhanced integration of women in the economy. The major objectives are to increase the proportion of women in gainful employment on the whole, to increase their proportion in future-oriented jobs and in expert and leading positions.

Equality policy is characterised by a multidimensional approach intended to further reduce still existing career disadvantages and wage gaps. In this connection, the government pursues the double approach of gender mainstreaming and the specific promotion of women.

## **Article 9**

### **The right to vocational guidance**

Vocational guidance is an ongoing and essential task of the Federal Employment Agency, the execution of which is ensured by the Agency's nationwide network of 178 employment agencies as well as 650 local offices. Vocational guidance is an inherent element of public basic services and is provided free of charge by all employment agencies. In addition vocational guidance can also be provided by private service providers and by certified municipal bodies in the framework of the basic provision of services for jobseekers (Book II of the Social Code).

Vocational guidance as a statutory core task of the employment agencies pursuant to sections 29 to 31 of Book III of the Social Code, is available for everybody – irrespective of their age, training level and personal vocational and living situation - who wishes to participate actively in working life and needs guidance in vocational matters, be it with regard to taking up initial vocational training or continuing vocational training or in the event of retraining due to unemployment or when seeking a new job. In this context the guidance-seeker's interests, abilities and performance as well as regional and interregional employment opportunities are taken into consideration; the employment agency is also making use of its knowledge of the labour markets in the European Economic Area. Nature and length of the guidance talks depend on the individual person's need for guidance.

Apart from the individual guidance for guidance-seekers and the placement activities for persons seeking a training place, vocational guidance institutions organised all in all about 230,000 vocational orientation seminars and programmes for pupils, students, parents, teachers and other target groups in the year 2002/2003 (latest available statistics).

In reply to the Committee's question whether pupils are free to follow the advice received through guidance the following applies: Book III of the Social Code does not provide for sanctions in case of non-compliance.

Since January 2002 the employment agencies can promote 'in-depth' job orientation programmes going beyond the ordinary vocational information service, provided third parties assume at least 50 per cent of the costs (Book III, section 33 of the Social Code). The background for this new employment promotion instrument is the generally accepted

need for a more timely, more intensive and more practice-oriented preparation of the choice of the right occupation of school leavers so as to ensure more reasonable vocational and career choices, to prevent or minimise the risk of young people dropping out of their training course and to satisfy the employers' need for qualified labour. As the preparation of the right choice of one's future occupation is a task for society as a whole, in which employment agencies, schools, the business community, parents and youth assistance institutions must cooperate, the legislator has stipulated that third parties have to cofinance these programmes.

The necessity of working in networks has been increasingly recognised in recent years. The following three important networks are mentioned by way of example: The Network "How to become a university student?" ["Wege ins Studium"] as a joint initiative by the Federal Employment Agency, Federal Parents Council, Federal Ministry of Education and Research, Confederation of German Trade Unions, Deutsches Studentenwerk, German Rectors' Conference and the Education and Cultural Affairs Ministries of the Länder strive to remove obstacles that stand in the way of taking up university studies. The network organises educational and labour market information for school leavers with A-levels and promotes regional cooperation in terms of the choice of study course and occupational orientation.

Through its innovative concepts the programme "Transition from school to work" ["Schule/Wirtschaft"] contributes to a practice-oriented occupational orientation. This includes manifold activities like company visits and open house events, company internships for pupils and teachers, the assignment of mentors, i.e. people who are employed with a company and have practical work experience, support for companies and projects run by pupils as well as the provision of information about work profiles and requirements in the various occupations.

In 2004 the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany and the Federal Employment Agency have reformed and further developed the framework agreement on their cooperation that has been in place since the 1970s. The agreement describes in greater detail the specific contributions to be made by schools and the Federal Employment Agency with the aim that the preparation of the choice of occupation includes not only the interests and talents of young people but also the future requirements of working life and the situation in the training places and labour market. The aim of this programme is to help young people to

make job and career decisions independently and responsibly and to implement these decisions, which includes that they make use of modern media.

Traditionally, vocational guidance used to concentrate overwhelmingly on *national* education, training and further training opportunities. Today, innovative, demand-oriented vocational guidance must make transnational developments and opportunities of training and further training, as well as the European labour market and occupational career opportunities more and more transparent and provide the corresponding information material. In order to comply with this requirement the vocational counsellors of the Federal Employment Agency have established a Vocational Guidance Centre (Europäisches Berufsberatungszentrum (EBZ)) in respect of every EU Member State and every candidate country. These centres have the task to cooperate intensively with the respective guidance services in the other country, to exchange information, to implement common projects as well as place young people into training places abroad; they also provide information about training and study opportunities.

In the framework of the organisational restructuring of the employment agencies, so-called "youth teams" (U25 teams) are being established which focus on guidance and placement of young people under 25 years. By setting up such teams that consider the special wishes and needs of young people with regard to their appropriate choice of occupation and/or with regard to their search for a training place or job, an efficient and sustainable integration of young people into training and work is to be achieved, at the same time future spells of unemployment or long-term unemployment are to be prevented. These teams bundle and process the wishes of young people with respect to placement into a job or a training place and they act as a „gatekeeper“. Upon arrival at the employment agency, the clients are directed to the right expert depending on the type of information, guidance and placement request they have.

Vocational guidance includes comprehensive statutory instruments from Book III of the Social Code in order to promote vocational integration. This applies equally to funds providing basic services for jobseekers in the framework of Book II of the Social Code. Apart from occupational reorientation measures, occupational preparation measures, psychological and medical examinations, young people need above all supportive measures with regard to their vocational training including vocational training assistance for young people with learning disabilities or young people who are socially disadvantaged. All of these measures pursue the aim of helping disadvantaged youth to obtain a first vocational qualification.

In the framework of the "National Pact for Training and Young Skilled Staff" („Nationaler Pakt für Ausbildung und Fachkräftenachwuchs in Deutschland“) which was adopted in the year 2004 and will be operational for three years, the Federal Employment Agency undertook to continue its programmes for training promotion at least to the same extent as in 2003.

The Federal Employment Agency supports the choice of the student's future career by making a differentiated, target group specific selection of media available. There are e.g. reference books such as "What's new in trades and occupations?" ("Beruf aktuell") or "University studies and/or choice of occupation" ("Studien- und Berufswahl") which provide concise information about all recognised trades and occupations as well as university study courses, there are also extensive descriptions of specific occupations, periodicals for junior and senior high school students as well as for university students, and there is special educational material for school classes "GET IT RIGHT" ("MACH'S RICHTIG"). In addition the Federal Employment Agency publishes special brochures and media for particular target groups (foreign pupils, pupils from schools for pupils with special needs etc.). All brochures are supplemented by online information on the Internet.

Without prior appointment or waiting time and without having to register their names or announce their requests, young people and adults can find information about a huge range of questions related to training and further training, university studies, choice of occupation and the labour market at the so-called self-information centres of the Federal Employment Agency.

The total public expenditure towards the Federal Employment Agency's vocational guidance service was as follows (the amounts have been rounded):

2001 222 million €

2002 202 million €

2003 199 million €

2004 197 million €.

(These are the costs for the vocational counsellors on the basis of the average staff costs including staff overhead costs and the lump sum amount for workplace equipment including EDP).



In the period from 1 January 2001 to 31 December 2004 the experts with the vocational guidance services in the Federal Employment Agency (per 1 May of any year) were assigned to different tasks in the following way:

Vocational counsellors for initial counselling (general vocational guidance and professional guidance for school leavers with A-levels and university students):

2001 3,113

2002 2,860

2003 2,817

2004 2,796.

The vocational counsellors have a broad professional background (they are e.g. educationalists, economists, business management experts, lawyers, psychologists) and participate in job-related further qualification programmes on an ongoing basis.

In the reference period from 1 January 2001 to 31 December 2004 the number of guidance seekers went down from 2.2 to 2.1 million (the women's share was 49 %). It turned out that more and more young adults and persons who are no first entrants into the labour market, make use of vocational guidance services. Apprentices, potential university or apprenticeship dropouts, students wishing to change their study course, young workers and unemployed persons or persons who want to or have to make a fresh start in another occupation, are increasingly contacting the vocational guidance services. The age of those seeking guidance is constantly increasing: 32 per cent are 20 years and older (10 years ago the figure was 23 per cent only). By 2004 roughly 14 per cent of the guidance seekers did not have a school leaving certificate, about 67 per cent had a school leaving certificate corresponding to 0-levels, approximately 17.5 per cent had a school leaving certificate entitling them to enrol at a university and about 1.5 per cent had already got a degree from a university of applied sciences (Fachhochschule) or a regular university.

All people residing lawfully in Germany have equal access to vocational guidance, also to the special offers for people with a disability.

## **Article 10**

### **The right to vocational training**

#### **Paragraph 1 – Promotion of technical and vocational training**

The dual system of vocational training mostly takes place in companies and enterprises providing vocational training. According to a survey conducted by the Federal Institute for Vocational Training (BiBB), companies' net expenses spent on the vocational training of some 1.56 million trainees amounted to 14.66 billion Euros in 2004. In the same year, the Länder spent some 2.814 billion Euros on part-time vocational schools, attendance of which is compulsory for trainees.

In recent years, the number of young people and young adults attending full-time vocational schools which are exclusively funded by the Länder, has considerably risen. With more than 6 billion Euros, the Länder's total expenditure on vocational schools thus clearly exceeded expenditure on the school-part of the system of dual vocational training.

In addition, both the German government and the governments of the Länder spent some 200 million Euros to establish special programmes for the supply of additional training places. Moreover, the German government allotted some 67 million Euros for the support of inter-firm training centres – in the crafts sector above all – and the attendance of training courses offered by the centres.

In 2004, approximately 2.17 billion Euros were spent on the promotion of vocational training under Book Three of the Social Code. Of these, 712 million Euros were earmarked for vocational training grants and the costs for disabled and non-disabled participants in pre-vocational training programmes, 919 million Euros for extra-company training, 165 million Euros for support for apprentices alongside training and 370 million Euros for other allowances for basic vocational training. In 2001, the total volume of assistance amounted to roughly 1.82 billion Euros. Between 2001 and 2004, the total number of persons entering pre-vocational training programmes and disadvantaged persons receiving assistance (without allowances for basic vocational training) for the first time rose slightly from 265,000 to 266,000.

In reply to the Committee's request for a detailed description of the entire education and training system on the basis of the requirements made on pages 28 and 29, reference is made to the

diagramme in Annex 5 "The Education System in the Federal Republic of Germany 2003" published by the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK).

## **Paragraph 2 – Promotion of apprenticeship**

### Trend on the training place market 2003 and 2004:

After a decline in the number of newly concluded training contracts in 2003 (557,634 new training contracts were recorded; this was a decline of 14,689 compared to 2002), the number of new training contracts could be increased again in 2004 for the first time after several years. By 30 September 2004, 572,980 training contracts had been concluded nationwide. This is an increase of 15,346 contracts (+2.8%). According to calculations of the Federal Institute for Vocational Training, approximately 519,000 company training contracts were concluded throughout Germany which is an increase by some 22,000 or 4.4% compared to the previous year. Non-company training places were intended to be utilized only on a subsidiary basis to compensate for an insufficient supply of in-company training places; some of the places were not filled until after the 30 September cut-off date. In view of the difficult conditions prevailing at the beginning of the year – the number of training places registered with the Federal Labour Agency continued to decline with the number of applicants exceeding the number of offers by 20,000 – this is an encouraging result.

### Activities of the federal government to ensure a sufficient supply of training places

In light of the marked decline in the number of newly concluded training contracts – a drop of about 53,000 in-company training contracts was posted between 1999 and 2003 alone – and the ongoing decline in the number of available training places registered with the Federal Labour Agency, the German government and the national organisations of the employers' associations concluded a "National Pact for Career Training and Skilled Manpower Development in Germany" on 16 June 2004 for a period of three years. In close co-operation with the Länder, the parties mutually undertook a binding obligation to offer a training opportunity to every young person who is willing and able to undergo training.

Placement in in-company training continues to have priority in this context. Through the new instrument of company-based introductory training, moreover, young people with limited prospects for placement are to be afforded an additional chance to gain entry into vocational training and hence into working life.

Each year for the three-year duration of the Training Pact, the employers' associations have promised to mobilize 30,000 new training places as well as an additional 25,000 places for company-based introductory training (EQJ places). The material and personnel costs of these introductory training places are borne by the companies themselves. The Federal Government has launched a special programme under which the Federal Employment Agency pays companies grants to help cover the young people's living expenses (a financial contribution of up to € 192 per month towards their introductory training allowance) and covers the overall social insurance contribution (at a flat rate of € 102 per month). The minimum duration of company-based introductory training is six months, support is provided for a maximum of 12 months per participant. The parties to the Pact fulfilled and in some cases significantly exceeded their commitments. In 2004, 59,500 training places and 31,000 introductory training places were created. By the end of 2004, it had been possible to reduce the number of unplaced applicants for training places compared to the preceding year. There are also signs for this positive trend to continue in 2005.

In 2003 and 2004, the German government, in addition, started various activities in the framework of the training campaign, aimed at assisting enterprises with their efforts to provide training places. The top priority was to kindle or rekindle the interest of business enterprises in the dual system of vocational training and thus tap new sources of additional training places. Attention was thereby focused on specific groups of people, selected sectors and regions with special problems. Two years ago, moreover, the Federal Ministry of Education and Research took the five programmes designed to improve vocational training structures and consolidated them under one roof in order to enhance their effectiveness and promote cooperation among the programmes and activities.

The programmes concerned were "STARegio" to promote collaborative training ventures, training networks and external training management in western Germany, "KAUSA" to persuade foreign-owned companies to offer in-company training, "Regio-Kompetenz-Ost" to further the development of training networks and collaborative training ventures in eastern Germany, "Training Place Developers - East" to mobilize additional training employers and

training places in eastern Germany, which was expanded to include a component for western Germany, and the "Training Sponsorship Programme" to mobilize sponsors and pave the way for training sponsorship commitments, which was broadened to include the new subject area of foundations. Responsibility for overall coordination of the activities lies with KAUSA. Under this arrangement the programme implementation agencies coordinate their annual work plans and cooperate more closely at the federal and regional operational levels, for example. At the third funding round of the STARegio programme, for instance, the selection of the projects to be funded was governed by the criteria "initiation of collaborative training ventures involving foreign-owned companies" and "mobilizing companies for the training of disadvantaged young people and migrants".

The aim of the STARegio programme to improve vocational training structures is to approach business enterprises, i.e. companies that already provide in-house vocational training and companies that do not yet (or no longer) do so, through targeted regional projects and measures to persuade them to offer additional in-company training places. Measures in this context include the organisation and coordination of new collaborative training ventures and the expansion of existing ones, targeted coaching of training initiatives, and advisory services and support for companies through external training management activities.

Resources totalling approximately € 37 million, including resources from the European Social Fund, have been made available up to the year 2007 for the programme. Support for the given regional projects is provided in the form of grants by the Federal Institute for Vocational Education and Training (which is responsible for the implementation of the programme) on the basis of specific published guidelines. As things stand now, on the basis of the funding limit of € 250,000 per project specified in the guidelines, it will probably be possible to fund a total of up to 70 projects. The individual projects run for a period of 18 months and may be renewed for up to another 18 months under certain conditions. During the previous four funding rounds a total of more than 330 project applications were submitted, 74 of which were selected for support. On 2 August 2005, the new funding guidelines for the fifth funding round were published in the Federal Gazette and on the Internet sites of the Federal Ministry of Education and Research and the Federal Institute for Vocational Education and Training.

In light of the still difficult situation in eastern Germany, an agreement was reached in 2003 and 2004 between the federal government and the governments of the new Länder to fund 14,000 additional training places. The Federation has allocated resources totalling approxi-

mately € 95 million to finance these special programmes. The new Länder and Berlin will contribute funds totalling at least this amount.

Access to vocational training is generally open to young people of both sexes. This applies to training under the dual system in one of the approximately 350 recognized training occupations pursuant to the Vocational Training Act or the Crafts Code and full-time vocational school training courses.

In Germany, there has long been an increased share of girls and young women enrolled in full-time vocational training courses. This applies to caring professions, professions in social education or logopedics, where 80 % of the students are female. Over the last years, an average of 40 to 50 % of all trainees in the dual system where, except for the growing service sector, the focus is still on technical occupations in industry, have been female.

Since the year 2002 it has also been possible to generate gender-specific figures from the results of the survey on new training contracts conducted by the Federal Institute for Vocational Education and Training. These show that in the year 2003, 14,689 fewer contracts were concluded than in 2002. This decline above all affected young women: the number commencing vocational training dropped by 12,691.

When the number of training contracts rose again in 2004, by contrast, young women benefited only to a limited extent. Of the 15,346 additional training contracts registered in the year 2004, 12,053 (78.5%) were concluded with young men; only 3,293 (21.5%) were concluded with young women. Young women were particularly affected by the decline in the number of newly concluded contracts in the independent professions, for about 95 % of all beginning trainees in this sector are female. Of all the young people commencing vocational training within the dual system, the percentage of young women has declined since 2002 from 43.4% to 41.8%, even though the survey of school leavers conducted in the fall of 2004 indicated inter alia that girls seeking training places are not only more flexible but also more mobile. The decline in the percentage of young women participating in the dual system of vocational training can also be attributable to a variety of causes that lie outside the dual system: The percentage of young women undergoing school-based vocational training at full-time vocational schools and schools of public health is still disproportionately high and young women also remain strongly inclined to pursue higher education.

In 2003, "management assistant for retail services" was the occupation chosen by the majority of trainees. As regards distribution by gender, priorities have been different, since under that aspect, occupations preferred by men on the one hand and women on the other, come into the fore more strongly. Occupations mainly chosen by women belong to the commercial service sector. So, for example, the occupation chosen by the majority of women is office clerk, followed by management assistant for retail services and hairdresser. Occupations in the health sector, such as physician's assistant and dental assistant also play a major role.

Young women's choice of career still largely follows traditional patterns.

In order to extend young women's options for career choice, the German government has established the following measures which include:

- Development and establishment of the Centre of Competence "Women in the Information Society and Technology",
- "Girls' Day – Mädchen-Zukunftstag", as a nationwide measure to extend the options for career choice (since 2001 a total of some 386,000 participants in more than 17,400 events),
- "JobLab", multimedia-based planning game for career finding,
- Improvement of curricula by development of robot courses (ROBERTA).

Public funds for private apprenticeship training:

Private apprenticeship training can be supported by assistance during training (section 241, para. 1 of Book III of the Social Code). The annual average of participants declined from approximately 64,000 participants in 2001 to approximately 54,000 participants in 2004.

Assisted are educationally handicapped and socially disadvantaged young people of both sexes.

In reply to the Committee's question concerning the length of apprenticeship, selection of apprentices and trainers, the following information is provided:

The length of an apprenticeship in a recognized training occupation pursuant to the Vocational Training Act (BBlG) and the Crafts Code (HwO) is fixed by the training regulation of the respective occupation. It varies between two and three and a half years, depending on the occupation. Pursuant to section 8 of the Vocational Training Act, the period of initial training can furthermore be reduced upon joint application by the trainee and the training employer, if it is likely that the purpose of training will be achieved in the

shorter period. This possibility is, for example, frequently used by students having passed the Abitur (university entrance qualification) who have started training as bank business management assistants or training in other commercial occupations. Under section 8, para. 2 of the Vocational Training Act, the period of initial training may also be extended in exceptional cases.

As far as training under the dual system is concerned, no minimum qualification is required with regard to the kind of school. As a fact about one third of trainees have completed lower secondary or secondary education, about 15 % have passed the university entrance qualification.

Training employers are generally free in their selection of the young people they train. Young people are equally free in their search of a training company, they are, however, often assisted by the placement services of the Federal Labour Agency.

If a training contract is concluded in a recognized training occupation pursuant to the Vocational Training Act/Crafts Code, both partners shall observe the provisions of the Vocational Training Act.

Training employers shall also give evidence of their specialized and personal training qualifications and the suitability of the training premises. In the crafts sector, training in some occupations can only be provided if the training employer has passed the master craftsman's certificate; the instructor aptitude examination which was formerly obligatory, was suspended by the German government from 1 August 2003 to 31 July 2008. On 31 December 2004, there was a total of some 790,000 training employers in all training sectors throughout Germany.

### **Paragraph 3 – Vocational training and retraining of adult workers**

With the First and Second Act on Modern Public Services in the Labour Market which entered into force on 1 January 2003, the promotion of continuing vocational education and training pursuant to Book Three of the Social Code (SGB III) underwent a re-orientation process so as to improve effectiveness, quality and economic efficiency of continuing vocational education and training. Essential elements of this reorientation process are

- the introduction of a training voucher which allows the participants to choose freely from among all education or training providers,



- Referral of the certification procedure for funds and measures from the employment agencies to external knowledgeable agencies. The details are governed by an ordinance on the recognition and certification of further training.

By introducing training vouchers, competition between education and training providers and the participants' personal responsibility for their continuing training programmes have been strengthened. The new rules for the certification procedure pursue the objective to sustainably improve the quality of continuing vocational training. The certification of further training courses as well as the provision of training vouchers is only possible with regard to training targets where it is highly likely that those who have completed this course can be expected to become integrated into the mainstream labour market.

The training voucher is valid for 3 months, specifies, as a rule, the training goal, qualification focus and the maximum training course length. The training voucher can only be used within a day commuter's area if the required training programmes are available in this area. The participant can make use of this voucher with a training provider of his personal choice who offers the certified training goal. Pursuant to the Act on Reforming Labour Market Policy Instruments (Job-AQTIV Act) which entered into force on 1 January 2002, training and education providers are obliged to support the participants in their efforts to find a job.

Workers are entitled to special continuing training allocations if the continuing education or training is necessary in order to integrate them into the labour market in the event of unemployment or to prevent that they become unemployed, or because they have never completed any vocational training before. Those who are in principle entitled to support also include unskilled workers who have completed vocational training in the past but who have worked for four years or more as semiskilled or unskilled workers and who can probably not be placed into a job for which they were trained. In order to facilitate the qualification of workers working in a job for which they have not been trained, the First Act on Modern Public Services on the Labour Market which entered into force on 1 January 2003, reduced the period during which a worker must have been employed in a job for which he was not trained, from six to four years. As a rule, workers must have received guidance by the employment agency before enrolling in a training programme and any evidence that the prerequisites for the receipt of allowances payable to participants in the programme have been fulfilled must be certified by means of a training voucher.

With the entry into force of the so-called Job-AQTIV Act on 1 January 2002 new instruments have been introduced in order to promote the upskilling of employed workers:

- Employers who grant their employees time off in order to complete schooling in day or evening classes, can obtain wage subsidies. These subsidies can be in the same amount as the wage itself, including the employer's share in the overall contribution towards the social insurance. The wage subsidy is meant to be an incentive for employers to support their employees' continuing vocational training efforts. The purpose with this programme is to provide an upskilling of adult employees and to prevent unemployment by means of early qualification activities.
- Employers who give time off to their workers who risk to become unemployed, to participate in a training programme, aptitude test or continuing vocational training and who continue to pay wages to workers during such periods, can receive wage-cost subsidies. These subsidies can be paid in the amount of the wage that is payable while the qualification programme is attended including the employer's share in the overall contribution towards the social insurance. Workers who have a fixed-term employment contract or who have already been given notice are the target group for this programme.
- With supportive measures for workers aged 50 plus towards continuing vocational education in companies with up to 100 employees, continuing vocational education for older workers is to be facilitated. By acquiring labour market skills, skill-related dismissals of workers can be prevented. Older workers can receive an allowance if they participate in an educational programme recognised by the employment agency, provided that their employers give them time off for their participation in continuing education measures. The employment agency refunds the worker his further training costs and pays a supplement towards the necessary accommodation away from home.
- In the framework of the promotion of job rotation schemes, employers facilitating their workers' participation in a continuing training measure and who substitute this worker temporarily by an unemployed person with a fixed-term contract of employment can get a subsidy towards the wage of the substitute worker. This subsidy is to increase the employers' readiness to give their workers time off for continuing vocational education and training.

The idea is, that additional employment opportunities are thus provided for unemployed persons, whose chances to re-enter the job market are thus improved.

In reply to the Committee's request to receive more detailed information on educational programmes offered to the long-term unemployed and on programmes which are being considered in order to increase the corresponding activation rate, reference is made to the comments on Article 1 in the 23rd German report on the national application of the ESC and to the comprehensive explanation of German labour market policy in the National

Action Plans on Employment 2003 and 2004 (NAP Employment). This explanation is fully in conformity with the objectives laid down in the corresponding employment guidelines of the EU.

Pursuant to the guidelines, until the year 2010 25 per cent of the long-term unemployed will participate in an activating programme involving training, retraining, acquiring vocational experience or participation in another employment programme. There are different activation indicators for young people and adults, which have been agreed upon at the EU level. In 2002 the indicator showed an activation rate of 42.8 per cent for young people and of 24 per cent for adults. In 2003 the rates were 41.7 per cent for young people and 16.4 per cent for adults, respectively. As for the future it can be assumed that the implementation of the Fourth Act on Modern Public Services in the Labour Market will lead to a higher activation rate also for adult long term unemployed persons.

In reply to the Committee's question whether legislation provides for the possibility of leave for training on an individual basis, the answer is as follows:

There is no general, statutory, individual entitlement to continuing education after having completed one's first training. Continuing education of workers is governed by Continuing Education Legislation in the Länder, collective agreement provisions, company agreements or individual agreements between employers and employees.

#### Legal provisions

Leave for education and training and/or legislation governing leave for training, which stipulate an entitlement to being given time off for continuing education exist in twelve federal states (but not in the federal states of Baden-Württemberg, Bavaria, Saxony and Thuringia). When on leave for training the worker has time off from work while continuing to receive his wage or salary. He is as a rule entitled to five days per calendar year. As a matter of fact this entitlement is hardly ever used. In Germany, less than 1.5 per cent of the entitled persons have made use of this right so far. Half of all participants used their leave for vocational continuing education. The indirect costs incurred because of the continued payment of wages are as a rule assumed by the employer. The employees on leave for training contribute to the costs by assuming the direct costs for fees, learning material etc.

Entries into continuing vocational education programmes based on selected training objectives in 2004:

Type of programme		<b>Entries into continuing vocational education programmes 2004</b>	
Education objective		<b>Men and women</b>	
	No.	Absolute figures	in %
Total figure	1	185,041	100.0
<b>Incl. (line 1) in Programmes</b>			
7,810 office clerks, general	1	32,141	17.4
2,410 welders, general	2	8,456	4.6
8,614 geriatric nurses m/f	3	8,168	4.4
7,140 drivers, unspecified	4	5,727	3.1
7,720 accountants, general	5	4,614	2.5
7,911 security staff in comp.	6	3,772	2.0
7,144 prof. drivers (freight traffic)	7	3,121	1.7
7,410 warehouse staff, warehouse caretaker, unspecified.	8	2,884	1.6
2210 turners, general	9	2,862	1.5
7,740 electronic data processing clerk, unspecified	10	2,559	1.4
6,010 machine engineering	11	2,517	1.4
3,230 metal workers, unspecified	12	2,397	1.3
7,744 computing centre experts	13	2,297	1.2
7511 entrepreneurs, managing directors	14	1,975	1.1
2700 locksmiths, unspecified.	15	1,939	1.0
7742 applications programmers	16	1,848	1.0

Where the participant- and programme-specific requirements for assistance towards the organisation of a further training programme have been fulfilled pursuant to Book Three of

the Social Code (SGB III) a decision on the payment of benefits is taken at the employment agency's discretion.

With regard to an increasingly effectiveness-oriented labour market policy it is the aim of the Federal Employment Agency to integrate more people into the labour market at lower costs. In the context of the new steering and controlling system pursued by the Federal Employment Agency binding target agreements are being concluded between the head office of the regional directorates and between the regional directorates and the employment agencies which are also involved in the promotion of vocational continuing education.

In principle subsidies are only to be paid provided a more rapid integration into the labour market can be achieved in this way. With the new orientation of subsidies towards continuing education the Federal Government and the Federal Employment Agency have reacted to excessive spending and an ineffective use of funds. And some progress has been made. The length of any spell of unemployment before entering the continuing education programme has been reduced to approximately 7 months and the training costs went down, too; the drop-out rate has been halved and stands now at about 10% and it was possible to improve the integration rate.

Continuing vocational education programmes incl. funding on the basis of Book Three of the Social Code:

year		Total number of entries	including	
			Cont. education	retraining
2001	West	242,012	181,356	60,656
	East	199,895	170,000	29,895
	total	441,907	351,356	90,551
2002	West	259,166	194,249	64,917
	East	195,533	165,287	30,246
	total	454,699	359,536	95,163
2003	West	161,042	114,671	46,371
	East	93,676	70,975	22,701
	total	254,718	185,646	69,072
2004	West	123,952	96,846	27,106
	East	61,089	46,371	14,718
	total	185,041	143,217	41,824

In the period 2001 to 2004 all in all 1.336,365 participants entered into continuing vocational training measures pursuant to Book III of the Social Code.

In reply to the Committee's request concerning the total number of employable persons who have completed a training programme we can provide the following data:

From the reporting system on further training it is possible to establish the numbers of participants in continuing vocational training programmes for the data collection years 2000 and 2003. The statistics prove that 40 per cent of all people aged 19 to 64 gainfully employed in 2000 participated in vocational further training courses, i.e. 12.8 million people (7.8 million women, 5.0 million men). For the year 2003 the participation rate for formally organised further training was 11.7 million gainfully employed persons, i.e. 6.4 million men and 5.3 million women. Taking into account informal continuing vocational training the number of participants is even higher. In 2003 for example, a total of 67 per cent of the gainfully employed population aged 19 to 64 participated in some form of vocational further training, i.e. approximately 22.8 million gainfully employed persons, among them 13 million men and 9.8 million women. No such detailed statistics are available for the year 2000.

In order to increase women's employment potential, in particular of those returning to the labour market after a number of years absence, further amendments to employment promotion legislation have been introduced through the Job-AQTIV Act. In line with the EU's employment guidelines, Section 1 paragraph 1 third sentence of Book Three of the Social Code (SGB III) has been amended so that equal opportunities for men and women are accepted as the basic principle in respect of the implementation of the statutory provisions on active employment promotion. Moreover, the provision governing special support to women (section 8 para. 2 of Book Three of the Social Code) has been formulated more precisely so as to ensure that women can participate in proportionate numbers in employment promotion programmes. They shall be at least represented in line with the total numbers of unemployed women and the female unemployment rate. The introduction of the new section 8a of Book Three of the Social Code is also taking into account that the reconciliation of work and family must be facilitated. As a consequence active employment policies should be organised in such a manner that the time schedules, curriculum and overall organisation take account of the obligations and daily duties in the lives of women and men who raise underage children and care for them, or who are the carepersons for family members in need of longterm care or who wish to return to their job after such a period. This means e.g. that some programmes must also be offered on a part-time basis.

With the Third Act on Modern Services in the Labour Market of 13 December 2003 and Section 8b of the Book Three of the Social Code a special provision for people returning to their jobs (more than 98 per cent of whom are women) was introduced into Book Three of the Social Code. Pursuant to this provision people returning to the labour market shall have access to active employment policies which they need to return to the labour market while taking into account their personal situation and skills. These policies include in particular placement and guidance activities as well as a promotion of continuing vocational training by assuming the related training costs.

In 2003 and 2004 the women's participation rate in active labour market policies was always a little higher than the targeted rate of 40.8 or 40.7 per cent nationwide. In particular with regard to continuing vocational training (almost 51 per cent) women were disproportionately represented. Among the people with a special need for help (people returning to the labour market, the long-term unemployed) the women's share was higher than for men if one compares the figures with the total number of women obtaining help (2004: 60.2 per cent, 2003: 57.8 per cent).

In order to improve women's employment chances the Federal Employment Agency has continued its commitment by means of many initiatives and projects. For the year 2004 the initiative "Women give a new impetus to technology" and the campaign "Women online" can be mentioned by way of example. These two nationwide activities are just two examples from the broad range of programmes organised by the regional directorates and the employment agencies.

Apart from these mainstream programmes Book Three of the Social Code also provides for additional benefits and services for the integration of people with (severe) disabilities into the labour market so as to compensate for disadvantages experienced by the disabled in the labour market. Especially the instruments from Book Nine of the Social Code shall help to integrate people with (severe) disabilities into the labour market (see the comments on Article 15 for further details.)

In principle men and women with unrestricted access to the labour market and a consolidated residential status are entitled to help in respect of their participation in further training pursuant to Book Three of the Social Code under the same conditions as Germans.

In order to improve the qualification of workers of foreign origin the following information can be provided: people with a migratory background are rather more often affected by

unemployment than Germans. The main reasons for this are mostly the lack of language skills and of vocational qualification.

Against this backdrop the Federal Government issued the guideline on special measures to promote vocational integration of persons with a migratory background which entered into force on 4 November 2004. On the same day an administrative agreement was signed by the Federal Government and the Federal Employment Agency by which the implementation of the task was transferred to the Federal Employment Agency. The target pursued is the development of guidance and qualification networks. With these measures a newly conceived, project based approach for the integration of migrants is being pursued which focuses on the setting up and development of education and qualification networks and of special counselling centres. These centres shall reduce information and guidance deficits as well as increase the integration chances into the labour market by qualification policies.



## Article 15

### **The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

#### **Paragraph 1 – Vocational training arrangements for disabled persons**

According to the Statistics on Severely Disabled Persons the situation in the Federal Republic of Germany at the end of 2003 was as follows:

	Severely Disabled Persons of those	male	female	total
1.1		3,485,341	3,153,551	6,638,892
1.2	Share of resident population (Federal Area as a whole 82.531.671) Status as of: 31.12.03)			8.04%
1.3	Age stratification of severely disabled persons (December 2003) Age from to under years of age			
	under 15		123,985	1.87%
	15 - 18		40,471	0.61%
	18 - 25		106,209	1.60%
	25 - 35		210,406	3.17%
	35 - 45		476,492	7.18%
	45 - 55		770,516	11.61%
	55 - 60		568,325	8.56%
	60 - 62		319,984	4.82%
	62 - 65		596,952	8.99%
	65 and over		3.425.552	51.60%

According to the Federal Labour Office approximately 1.05 million severely disabled persons were available for placement in the general labour market in 2003. These are persons who are able to be employed under regular labour market conditions. Some 2 million of severely disabled persons, who in terms of age would be able to participate in

working life, are not available for the regular labour market. In 2003, 884,882 severely disabled persons were employed in commercial establishments and administrations in the general labour market. In the same year, 167,856 severely disabled persons were unemployed. This corresponds to a “specific” unemployment rate of 17.6 per cent. In 2004, 245.798 persons with disabilities were, moreover, employed in 671 workshops for the disabled.

The same reliable information on persons whose disabilities are not defined as “severe” is not available.

In answer to the Committee’s question of whether it is planned to move toward the ICF definition of disability the following information is provided:

The concept of disability was re-defined in Book IX of the Social Code in order to take account of the International Classification of Functioning, Disability and Health, which is focussing on the participation of persons with disabilities in the various areas of life.

A national working group comprising representatives of the organisations of persons with disabilities discussed the concept of „disability“ on the basis of the ICF. The working group noted that essential elements of the ICF, i.e. the concept of participation, are reflected in the German definition of disability. No agreement was reached in the working group about a closer alignment with the ICF.

The primary objective of vocational training for people with disability is to provide training leading to a qualification in a recognised occupation.

The ratio of applicants who have not been placed into training by the Federal Employment Agency at the end of a vocational guidance year is significantly lower for disabled than for non-disabled young people (2003/2004 2,6 per cent vs. 6,2 per cent), and also the training quota is higher (2003/2004 72,9 per cent vs. 48,1 per cent). However, (too) often the training of young people with disabilities takes place in specialised vocational training centres.

To ensure the same participation rights for young people with disabilities as for non-disabled people, a co-ordinated package of measures is aimed at increasing companies’ willingness to provide training places.

The Act to Promote Training and Employment for Persons with Disabilities (Gesetz zur Förderung der Ausbildung und Beschäftigung schwerbehinderter Menschen), most parts of which entered into force on 1 Mai 2004, contains provisions improving the training situation for young people with disabilities. The aim is to motivate companies to offer more training

places to young persons with disabilities and to align training in specialised training centres more closely with workplace practices.

To ensure successful transition from school to work, which is particularly difficult for young people with disabilities, specialised integration services have been put in place in accordance with Section 110, paragraph 2, No. 1a of Book IX of the Social Code. Their task is to support the Federal Employment Agency in the provision of vocational guidance and counselling services for schools, and to support young people with severe disabilities, in particular psychological and learning disabilities, during their period of vocational training in a company, as provided for in Section 110, paragraph 2, No. 1b of Book IX of the Social Code.

In addition, Section 72, paragraph 2, sentence 2, of Book IX of the Social Code requires employers offering training places to consult the Works Council or Staff Representation and the representative body for disabled employees on possibilities of filling the vacancies with young severely disabled persons, and to make use of the possibility of concluding an integration agreement with the employees' representation on matters concerning the training of young persons with disabilities.

Moreover, there is the possibility for employers providing training for young persons with disabilities to receive bonuses and subsidies toward the cost of vocational training. The target group of this provision are young persons with disabilities, who for the duration of training in a company or administrative service are considered to be severely disabled, even though their actual or recognised degree of disability may be less than 30 per cent.

In cases where employers without employment obligation provide training for young persons with particularly severe disabilities, the integration offices may also grant subsidies toward the charges which are due when training is carried out.

Under Section 76, paragraph 2, sentence 1 of Book IX of the Social Code, employers have always had the option of having one severely disabled apprentice counted as two jobs under the quota they are required to fill. In cases where young persons have particular difficulties of being placed into vocational training on account of the nature or severity of their disability, they may even be counted as three quota jobs. Under the new legislation there is now the additional possibility of continuing multiple counting for another year after

the completion of vocational training, provided the young person was retained by the same employer or has taken up employment with another employer.

To improve job prospects of young people with disabilities after completion of vocational training, companies are to be more actively involved in the training activities of specialised training centres. Therefore, Section 35, paragraph 2 of Book IX of the Social codes provides for the possibility of combining in-company and extra-company training. Thus, young people with disabilities participating in a training course offered by a specialised training centre (e.g. Berufsbildungswerk) may undergo part of their training in a company or administration.

During their spell of in-company training the young disabled persons continue to be rehabilitees of the specialised training centre. Responsibility for the practical implementation of the training remains with the institution, which is the training provider obliged to support employers in training and advising trainees. Consequently, the cost of training during this period is assumed by the rehabilitation provider. In the host companies or administrations the disabled or severely disabled trainees are counted as two full-time quota jobs during the period of training.

Information on the impact of the new provisions is currently not available.

## **Paragraph 2 – Placement arrangements for disabled persons**

To enhance the integration of people with severe disabilities in the general labour market, the law governing assistance was simplified by the Act to Fight Unemployment among Persons with Severe Disabilities of 29 September 2000.

Integration subsidies (direct wage cost subsidies) may be granted for a period of up to three years. In cases where unemployed persons with severe disabilities aged 50 or 55 and over are hired, the integration subsidies may be paid for a period of up to five or eight years respectively. Apprenticeship pay may generally be subsidised up to a level of 80 per cent of the amount paid in the last year of training, in exceptional cases the subsidy may be 100 per cent of the apprenticeship pay.

For the payment of integration subsidies and apprenticeship pay subsidies, 350 million DM (179 million Euro) have been allocated to the Federal Employment Service from equalisation levy revenues (equalisation fund) in 2001. In 2002 and 2003, the allocation was 180 million and 170 million respectively.<sup>1</sup> In addition to these amounts, the Federal Employment Service used funds from its own budget. Support financed from the equalisation fund in the years 2001 to 2004 is listed below.

Integration subsidies paid in respect of particularly affected men and women with severe disabilities (Section 222a SGB III) and apprenticeship pay subsidies for persons with severe disabilities (Section 235a SGB III) were as follows:

Reporting Period	Total number of persons with severe disabilities receiving support		Of those					
			Integration subsidies for particularly affected persons with severe disabilities (Section 222a SGB III)		Apprenticeship pay subsidies for persons with severe disabilities (Section 235a, para. 1 SGB III)		Integration subsidies in cases where persons with disabilities were retained as employees after training or further training (Section 235a, para. 3 SGB III)	
	Total	Women	Total	Women	Total	Women	Total	Women
	1	2	3	4	5	6	7	8
2001	17.441	6.378	16.610	6.025	785	332	46	21
2002	19.507	7.414	18.546	6.961	902	432	59	21
2003	17.591	6.545	16.509	6.085	1.026	438	56	22

<sup>1</sup> The reduction of the allocation in 2003 is due to lower equalisation levy revenues in 2002 as compared with 2001 (Section 41, paragraph 1, Sentence 2 of the Equalisation Levy Ordinance as applicable until 31 December 2003)

The following additional spending on integration subsidies for the hiring and employment of people with disabilities was exclusively funded from the budget of the Federal Employment Agency:

<b>Integration Subsidies ( Eingliederungszuschuss EGZ)</b>								
	People with severe disability, total	during job familiarization	in the case of difficult placement	for older workers	for labour market returnees	for workers with placement obstacles	for people with disabilities	for workers over 50
2001	5.397	62	3.807	1.520	7			
2002	2.663	60	1.631	968	4			
2003	1.759	42	1.045	665	7			
2004	1.137	13	401	364		210	145	3

Source: Federal Employment Agency

Since the entry into force of the Third Act for Modern Services in the Labour Market (3. Gesetz für moderne Dienstleistungen am Arbeitsmarkt) in January 2004, integration subsidies have been included in other categories of support measures.

Besides the wage cost subsidies, individual benefits payable to employers are of considerable importance. Often, new jobs and training openings adapted to the needs of people with disabilities would not be created, and adaptations of existing jobs would not be made without financial support. Benefits to compensate for extra efforts also contribute effectively to the maintenance and protection of jobs. Here, significant increases have been registered in the past few years, both in terms of the number of cases in which support was granted and the amount of spending. Benefits payable to employers are listed in the following table.

## Benefits payable to employers 2001 - 2003

	2003		2002		2001	
	Million Euro	Number of cases	Million Euro	Number of cases	Million Euro	Number of cases
Creation of jobs and training places	49,36	4.148	47,87	3.734	47,51	3.716
Installation of jobs and training places adapted to the needs of people with disabilities	34,46	9.616	35,40	8.759	33,39	8.234
Benefits to compensate for extra efforts	77,79	18.967	68,82	18.625	63,64	16.961
Special Programmes within the meaning of Section 16 of the Equalisation Levy Ordinance (SchwbAV)	32,35	3.115	33,17	4.814	26,77	2.578
Total (excluding support in the context of integration projects)	193,97	35.846	185,26	35.932	171,31	31.489

### Present status of anti-discrimination provisions:

According to the provisions of Book IX of the Social Code (Section 1 in combination with Section 4 SGB IX), persons who are physically, mentally or psychologically disabled, or who are in danger of becoming disabled, are granted, regardless of the cause of their disability, the assistance which is required to avert, eliminate, alleviate the disability or to prevent its aggravation or to reduce its effects, so as to enhance their self-determination and equal participation,

- to avoid, overcome or alleviate reductions in earning capacity or the need for long-term care or prevent an aggravation or to avoid the early receipt of other social benefits or reduce the current receipt of social benefits,
- to secure permanent participation in working life in accordance with their inclinations and abilities,
- to promote their personal development and enable or facilitate their participation in the life of society and a living as autonomous and self-determined as possible, and
- to prevent disadvantages linked to disability.

These provisions represent not only the basis for the interpretation and application of social law but are also recognised generally as the guiding principle for rehabilitation and

disability policy in Germany. Of the principles derived from this, the following require special emphasis:

- the aim of self-determined and self-responsible participation of people with disabilities in the life of society, particularly also in working life,
- the principle of finality according to which the necessary assistance must be offered to every disabled person or person who is in danger of becoming disabled, regardless of the cause of their disability, even when responsibility for this assistance is held by a number of different funds and institutions whose eligibility requirements for the provision of assistance vary,
- the principle of intervention at the earliest possible stage in order to minimise the degree and effects of disability, and to compensate as far as possible for unavoidable effects, and
- the principle of individual assistance, which must be tailored to the actual needs of each individual person with a disability or person who is in danger of becoming disabled, and which must meet these needs by suitable means.

Germany has a comprehensive and differentiated system of social benefits for persons with disabilities. To realise the most far-reaching and effective participation in society possible, these benefits and other assistance need to be supplemented by

- a focus on the individual abilities of persons with disabilities,
- a disability-suited design of environments to which persons with disabilities are exposed and with which they have to cope (e.g. in transport or when communicating with others) in such a way that their specific needs are met, and by developing goods according to the universal design,
- sufficient willingness on the part of people with disabilities on the one hand, and of society on the other, to do everything they can to ensure integration.

Benefits for rehabilitation and participation in working life are given precedence over pension benefits if, by successfully applying participation-oriented benefits, payment of a pension can be avoided or expected to be delayed. The same is true if by granting participation-oriented benefits, the need of constant care can be avoided, overcome or reduced or its aggravation can be prevented.

In keeping with the mainstreaming principle, measures for people with disabilities lie within the responsibility of the respectively competent bodies. Where public responsibilities are concerned, competence is divided among the federal government, the states and municipalities. At federal level - and also in relation to the states- the competent Federal



Ministry has a coordinating function. The Ministry is supported by the Advisory Council for the Participation of People with Disabilities, and consults other Ministries where necessary. The Advisory Council is composed of representatives of workers, employers, disability organisations, the federal states, central associations of municipalities, integration offices, the Federal Employment Agency, health funds, the statutory pension insurance, the statutory industrial accident insurance, social assistance institutions, welfare organisations, medical and vocational rehabilitation centres and the German Medical Association. Meetings are held as needed, in general several times a year.

Coordination is also the task of the Commissioners for Persons with Disabilities appointed at federal level and in many of the Länder. The federal Commissioner for the interests of the disabled serves as the central contact point in the government for people with disabilities and their families, and for disability organisations and associations. The office of the federal Commissioner for the disabled has been embodied in the Act on Equal Opportunities for People with Disabilities which entered into force on 1 May 2002. It is the federal Commissioner's task to ensure that the federal government fulfills its responsibility to provide for the same living conditions in all areas of social life for people with disabilities as for non-disabled people.

In this context it is important to take account of the different living conditions of disabled women and men and to eliminate gender-specific discrimination. The federal ministries are required to involve the federal Commissioner for the interests of the disabled in the preparation of all laws and regulations relating to the integration of people with disabilities. All federal ministries and other federal agencies are obliged to provide support to the federal Commissioner.

The Commissioner thus acts an intermediary between people with disabilities and authorities, rehabilitation providers and other bodies. His interdepartmental role, which consists primarily in raising awareness, giving advice and making proposals, helps to ensure that the manifold interests of people with disabilities are considered in different activities and policy fields. Moreover, the Commissioner has the task of making the government's disability policy transparent and to increase its acceptance among people with disabilities and non-disabled people. The main objective is to raise awareness of the problems of disabled citizens in the society as a whole, thus contributing to a general willingness to help compensate disability-related disadvantages at all levels.

There are regular discussions between the federal Commissioner and State Disability Commissioners, including also representatives of the federal Study Group for Rehabilitation (Bundesarbeitsgemeinschaft für Rehabilitation), focussing on cooperation in the area of common interest, i.e. further development of rehabilitation and social integration of people with disabilities.

Wages of persons with disabilities employed in sheltered workshops:

Sheltered workshops are institutions ensuring the participation and integration in working life for persons with disabilities who, because of the nature or severity of their disability are unable to participate (again) in the general labour market. They are designed for people with disabilities who, with suitable preparation such as vocational training, are able to participate in working life, but because of their disability can do so only in a sheltered workshop.

On nationwide average, about four disabled people out of 1.000 inhabitants are employed and assisted in a sheltered workshop. Approximately 10 per cent of all employees (about 0.4 per 1000 inhabitants) are employed in the assessment and training section, approximately 85 per cent (about 3.3 per 1000 inhabitants) are employed in the work section. Persons with disabilities who are not yet able to participate in working life, even under the special conditions of sheltered workshops, are placed in workshops run by affiliated day care centres (0.2 per 1000 inhabitants).

Persons with disabilities who are placed in the work section of a sheltered workshop are employed on the basis of a workshop contract in a quasi-employment relationship. Sheltered workshops are obliged to remunerate persons with disabilities for the work they have performed. To be able to pay disabled persons wages commensurate with their performance, workshops are required to aim at an economically viable operating result. The term operating result is defined in Section 138 of Book IX of the Social Code and in the Sheltered Workshop Ordinance (Werstättenverordnung) as the difference between earnings and the necessary costs of running operations in the workshop's work section. Remuneration paid by the rehabilitation funds in the phase of assessment and vocational training are not included in the operating result.

The term „necessary costs“ has also been re-defined in the law on the basis of an exhaustive list. The rules defined in the Sheltered Workshop Ordinance are aimed at improving the level of wages paid to people with disabilities.

### Development of Wages in Sheltered Workshops

2001	2002	2003	2004
148,80	159,81	159,13	154,36

In addition to performance-based wages, people with disabilities receive subsistence guarantee benefits. Persons with disabilities employed in a sheltered workshop are insured in the statutory pension insurance, health insurance, long-term care insurance and industrial accident insurance. Their contributions to the health insurance, long-term care insurance and pension insurance are not based on the actual wages they have earned, but on the basis of minimum assessment. They amount to 20 per cent in the case of health and long-term care insurance (in 2004 = 483 Euro) and 80 per cent of the reference wage for the purposes of social insurance in the case of the pension insurance. (2004 = 1.932 Euro in eastern and 1.624 Euro in western Germany). This ensures that people with disabilities employed in sheltered workshops are eligible for retirement pensions or pensions on account of total reduction of earning capacities and do not have to depend on social assistance. A pension on account of total reduction of earning capacity may be paid after a period of employment of 20 years in a sheltered workshop, which corresponds to a qualifying period of 240 calendar months.

Sheltered workshops are encouraging the transition of disabled people from sheltered employment into the general labour market. They are obliged to do so in accordance with the Act to Fight Unemployment among Persons with Severe Disabilities (2000). Suitable measures to promote transition include the setting up of transition groups qualifying for special support or temporary employment in jobs which have been outsourced to companies and administrations in the general labour market. When measures facilitating transition are planned and implemented in sheltered workshops, Book IX of the Social Code provides for an extended involvement of the expert committees on rehabilitation. The influence of rehabilitation funds on promotion of transition to the general labour market has thus been strengthened. At the same time, rehabilitation funds are under the explicit obligation to continue the payment of wages during this period.

Sheltered workshops are obliged to involve the Federal Employment Agency and its local branch offices in their efforts to place disabled people in the general labour market. The relevant legislation also stipulates that specialised integration services may be involved in the placement activities.

Further improvement were introduced by the Act to Enhance the Training and Employment of Persons with Severe Disabilities. Employers hiring former workshop employees may be granted a special subsidy to make allowance for reduced performance of people with disabilities and to compensate for extra efforts required for their support. Moreover, there is a legal provision to the effect that sheltered workshop employees may be included in the company's disability quota.

Role of the trade unions:

Since 1980 sheltered workshops have been under the obligation to provide for an appropriate representation of people with disabilities in all matters affecting their interests. (Section 14 of the Sheltered Workshops Ordinance). Detailed participation modalities were not specified in the initial regulations. On 25 June 2001, the Workshop Participation Ordinance was adopted by the Federal Ministry of Labour and Social Affairs and entered into force together with Book IX of the Social Code on 1 July 2001. The first workshop council elections on the basis of the new Ordinance were held between 1 October and 30 November 2001. The term of office of previously existing workshop councils ended on 30 November 2001 at the latest. The Workshop Participation Ordinance defines a multitude of tasks to be exercised by workshop councils on behalf of all employees. All workshop employees are entitled to vote and to be elected if they meet the requirements of Sections 10 and 11 of the Workshop Participation Ordinance (WMVO). Candidates may be proposed by all employees with voting rights.

In reply to the Committee's request to be kept informed of the success of the measures to reduce unemployment among disabled persons, the following information is provided:

On annual average 1998, the number of unemployed persons with severe disabilities and persons of similar status was 189,633. In 1999, this figure increased once more to 193,236 on annual average. Thanks to the set of instruments for labour market integration which was introduced by the Act to Fight Unemployment among Persons with Severe Disabilities, the number of unemployed disabled persons was successfully reduced to 184,089 by the end of 2000. On annual average 2001, unemployment among persons with severe disabilities was down to 171.325.

By October 2002 the number of unemployed persons with severe disabilities amounted to 144,292, which is a decline by 23.9 % compared with October 1999. This indicates that efforts to bring down unemployment among people with severe disabilities were successful

despite weak economic development and irrespective of the situation of the global economy and the trend of unemployment in general. This indicates a trend reversal in the continuously rising unemployment among people with disabilities which had been registered since the 1980s. From winter 2002/2003 to February 2004 unemployment among people with disabilities increased again in line with increasing general unemployment. In October 2004 the total number of unemployed people with severe disabilities was 172,516, their share in the total unemployment figure was 4.1 %. The statistical outflow from unemployment to employment for people with disabilities and the development of placements on the basis of offerings and selection by the Federal Employment Agency have to be evaluated against the background of an increasingly difficult labour market situation in the past few years.

Despite a weak labour market situation the number of unemployed people with severe disabilities taking up employment increased again after a slight decline in 2002.

	2003	2002	2001	2004
Employment	56.598	55.413	56.405	59.423
Training	11.208	25.195	18.880	35.820

Irrespective of the statistical outflow into employment as a whole, evaluation has to take account of dismissal and re-hiring practices in individual sectors of the economy. Increasingly, companies tend to lay off their employees after short periods of falling incoming orders and to re-hire them when orders pick up again. There are, however, no sustainable data on the effect of these “multiple hirings”.

## **List of Annexes**

### **Annex 1**

Re: Article 3, para. 2 of the ESC

Federal Government Report on the State of Safety and Health at Work and Accidents and Occupational Diseases in the Federal Republic in 2001 to 2003 (Bundestags-Drucksache 15/4620).

Annexes 2 to 4 re: Article 4, para. 3 of the ESC

### **Annex 2**

Kommentierter Datenreport 2005: "3. Erwerbseinkommen von Frauen und Männern"  
(Brochure in German only)

### **Annex 3**

"Bericht der Bundesregierung zur Berufs- und Einkommenssituation von Frauen und Männern vom 24. April 2002"  
(Brochure in German only)

### **Annex 4**

"Leitfaden zur Anwendung des Grundsatzes der Entgeltgleichheit für Männer und Frauen bei gleichwertiger Arbeit - equal pay" (German version)  
und  
"A Code of Practice on the implementation of equal pay for work of equal value for men and women - equal pay" (English version)

### **Annex 5**

Re: Article 10, para. 1 of the 1 ESC

Diagramme: "The Education System in the Federal Republic of Germany 2003"