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## **1961 EUROPEAN SOCIAL CHARTER**

29<sup>th</sup> National Report on the implementation of  
the 1961 European Social Charter

submitted by

**THE GOVERNMENT OF GERMANY**

(Articles 1, 9, 10, 15 and 18  
for the period 01/01/2007 - 31/12/2010)

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*CYCLE XX-1(2012)*

Berlin, December 2011

## **29th Report**

**of the Government of the Federal Republic of Germany for the period  
from 1 January 2007 to 31 December 2010 (Articles 1, 9, 10, 15 and 18)  
as well as Article 1 of the Additional Protocol of 1988**

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

In accordance with Article 23 of the European Social Charter, copies of the report are to be  
communicated to

the Confederation of German Employers' Associations (*BDA*)

and

the National Executive of the Confederation of German Trade Unions (*DGB*).

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## **Preliminary remarks**

The Federal Republic of Germany herewith submits the Fifth Report in accordance with the decision adopted at the 963rd meeting of the Committee of Ministers on 3 May 2006 in accordance with the new system for the submission of National Reports in domestic implementation of the European Social Charter.

This Report contains Thematic Group 1 (Employment, training and equal opportunities) with Articles 1, 9, 10, 15 and 18 (reference period 1 January 2007 to 31 December 2010).

The 29th Report borrows from the previous Reports of the Federal Government on the domestic implementation of the obligations set out in the European Social Charter. It details the individual provisions of the Charter only if either the observations of the European Committee of Social Rights (referred to in the Report for the sake of simplicity as “Committee of Experts”) contained in Conclusions XIX-1 give rise thereto, if the questionnaire so requires or if relevant changes in the factual and legal situation have taken place in the reference period.

## **Article 1 – The right to work**

### **Paragraph 1 – Full employment**

The labour market in Germany has become much more flexible as a result of the reforms which have been enacted in recent years. The starting point of the reforms on the labour market was the need to enhance the impact and the efficiency of employment policy and to improve the employment policy framework. The labour market is now better able than it was several years ago to react to changes in economic developments. This has been shown very clearly by the way in which it has developed under crisis conditions: The average annual number of unemployed was roughly 3.238 million in 2010, and hence approx 176,000 lower than in the crisis year 2009.

### **Impact of the financial and economic crisis**

The impact of the crisis on the labour market has been happily slight. Unemployment did increase as a consequence of the crisis, whilst employment fell. Despite the drastic fall in production (-4.7 percent), the rise in unemployment (+ 156,000) was much smaller in 2009 than had been anticipated, whilst at the same time the number of those in employment stagnated at around 40.3 million (+0.1 percent; national concept). This was achieved partly through enterprises' employment policy, i.e. the use of the possibilities offered to flexibly influence the deployment of labour. However, the main impact was also seen in the **massive use of short-time working**. In purely mathematical terms, it was possible to avoid unemployment for almost 300,000 workers in 2009, averaged over the year, by using short-time working. The rise in unemployment might have been twice as large without short-time working. Considering the extremely favourable situation on the labour market prior to the crisis, the German labour market absorbed the drastic fall in economic performance astonishingly well. The level of unemployment as it had been in 2007 was not reached at any time. The progress that had been made on the labour market since 2005 was hence not lost as a result of the crisis.

The considerable use of active employment policy did however also come at a cost. Expenditure on cyclical short time work allowance was Euro 4.6 billion in 2009, and expenditure on unemployment benefit increased by 3.4 billion to roughly Euro 17 billion.

All in all, developments in expenditure on employment policy (active and passive benefits) in **Book III of the Social Code (SGB III) (employment promotion)** were as follows:

Amounts in millions of Euro

2007	2008	2009	2010
36,195.9	39,407.0	48,057.3	45,212.6

The following amounts were spent in accordance with **Book II of the Social Code (SGB II) (basic security benefits for job-seekers)** on active and passive benefits of employment policy:

Amounts in million Euro

2007	2008	2009	2010
35,496	35,378	36,002	35,911

Additionally, funds were provided in 2007 and 2008 for the Federation's special "Alliances for Jobs for Elderly Persons" programme and in the "*Kommunal-Kombi*" project to support individual municipalities. Expenditure has been earmarked for these two special programmes in the integration budget of the Book II of the Social Code since 2009.

**Expenditure on Alliances for Jobs for Elderly Persons:**

2007: Euro 164.4 million

2008: Euro 118.3 million

**Expenditure on *Kommunal-Kombi*:**

2007: Euro - million

2008: Euro 18.5 million

Moreover, the Federation spent Euro 71.8 million on the special programme entitled "Introductory Training for Youths" in 2007. This programme was transferred to the budget of the Federal Employment Agency.

**Challenges for employment policy in the current 17th legislative period**

Basic security benefits for job-seekers were to be designed in such a manner as to stand the test of the Constitution – the Federal Government has implemented the reorganisation of the

institutions providing basic security benefits. The Bundestag and the Bundesrat (lower and upper chambers of Parliament) have adopted the requisite draft Bills.

The Federal Government was obliged to implement the judgment of the Federal Constitutional Court on standard benefits in 2010. With the Act on the Determination of Standard Rates of Benefit and Amending Book II and Book XII of the Social Code (*Gesetz zur Ermittlung von Regelbedarfen und zur Änderung des Zweiten und Zwölften Buches Sozialgesetzbuch*), which was adopted in February 2011, and which applies retroactively to 1 January 2011, the standard rate was re-calculated in a manner that was transparent and comprehensible.

The ability of the Federal Employment Agency to act is also to be increased by virtue of the employment policy tools and programmes being put to the test. The goal pursued here is to make the employment services more efficient by reducing the number of tools and increasing the latitude for decision-makers to select and deploy suitable measures, whilst at the same time further expanding controlling.

Immigrant workers must be enabled to convert the qualifications that they have acquired abroad into suitable employment on the labour market – and this is why the procedures for the recognition of these vocational qualifications should be accelerated and designed much better and more reliably.

### **A major challenge: Demographic change**

Demographic change in Germany also has extensive consequences for the labour market. As the size of the population falls, the size of the working-age population drops in line with this development, i.e. the available supply of labour is reduced. As a result of the retirement of more populous age groups or cohorts, this fall will take place even more quickly in some cases in the coming years than the reduction in the residential population as a whole. What is more, the share of elderly persons within the working-age population will increase considerably.

These extensive demographic changes form the framework in which the labour market operates. These long-term developments are overlaid by cyclical and structural influences in the current employment situation.

Unemployment has fallen considerably in Germany in recent years. The global economic and financial crisis did lead to a short-lived increase in unemployment – especially in the first half of 2009 – but this only had a moderate impact on the German labour market in overall terms. Unemployment has been falling since the summer of 2009, when corrected for seasonal effects.



Thanks to the rapid, strong cyclical recovery, it was possible in 2010 to largely balance out the negative impact of the crisis on the labour market. Long-term unemployment also continued to fall in the crisis year 2009. A reduction of roughly 148,000<sup>1</sup> vis-à-vis 2008 was observed here, whilst unemployment as a whole increased by almost 156,000. This positive development was however briefly interrupted at the beginning of 2010 – not all individuals who lost their jobs during the crisis were able to find a new job within a year. The number of the long-term unemployed has once again been lower than the level of the previous year since the autumn of 2010.

Furthermore, gainful employment and employment subject to mandatory social insurance also continued to increase in a positive direction. A total of 40.5 million people living in Germany were in gainful employment on an annual average in 2010; 27.7 million of them were in employment subject to mandatory social insurance (as per 30 June 2010). Since March 2010, there have once more been more persons in employment subject to mandatory social insurance than in the same month of the previous year. After initially new, largely part-time, jobs had been created, full-time employment has increased more rapidly in absolute terms than part-time employment in August 2010 on a year-on-year basis. The upturn in employment was followed in 2010 by a strong cyclical recovery, through which the labour market increasingly became more dynamic.

The number of jobs reported with the Federal Employment Agency, which only included the unpromoted vacancies on the so-called first labour market, was roughly 359,000 on an annual average in 2010, and hence roughly 19.5 percent above the previous year's level.

The Institute for Employment Research (IAB), furthermore, surveys the entire vacancies on the first labour market four times per year, that is also those vacancies which are not registered with the employment agencies. A notable increase, of 17.1 percent, can also be observed here vis-à-vis 2009.

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<sup>1</sup> not including data from licensed local authority agencies (*zkt*)

Developments in vacancies (on the first labour market) in 1,000s

Germany Year under report (annual average)	Vacancies on the first labour market				
	Vacancies in entire economy*	Vacancies reported to the Federal Employment Agency			
		Total	including mandatory social insurance		
			Total	Full-time	Part-time
	in 1,000s				
2007	1,085	423	389	336	38
2008	913	389	361	312	39
2009	701	301	274	228	40
2010	821	359	326	275	43

\* average of quarterly values

Source: IAB German job vacancy survey (EGS),  
Statistics from the Federal Employment Agency

Whilst the current situation on the labour market largely depends on cyclical influences, the labour market of the future will also be strongly influenced by the consequences of structural and demographic change. Structural change is already causing shifts between sectors of the German economy, and these will be amplified in future. Industrial mass production will become less significant, whilst the share of gross domestic product contributed by high-value goods and knowledge-intensive services with a high research and development requirement will increase. Whilst this knowledge-based change will primarily influence the demand for labour (there will be a demand for labour with a much higher level of skills), demographic change will primarily change the supply of labour.

**Situation of the supply of labour**

The changes in the supply of labour resulting from demographic change have been tangible for quite some time. The size of the population in Germany has been falling moderately but constantly since 2003. The population size has fallen by roughly 460,000 persons since 2000. The size of the working-age population – aged from 15 to 64 – fell by as many as three times as much in this period, that is by roughly 1.9 million persons.

## The population and the labour market

Germany

Year under report (annual average)	Population <sup>1)</sup>		Gainfully-active persons (domestic concept) <sup>2)</sup>	Unemployed <sup>3)</sup>
	Total	aged 15 to 64		
in 1,000s				
2007	82,218	54,417	39,791	3,760
2008	82,002	54,134	40,290	3,258
2009	81,802	53,878	40,311	3,415
2010	...	...	40,506	3,238

1) Federal Statistical Office, *Fortschreibung des Bevölkerungsstandes* (updated population size); values as per 31 December of the year

2) Federal Statistical Office, *Erwerbstätigenrechnung* (gainfully-active persons account), preliminary results

3) Statistics from the Federal Employment Agency

Despite these demographic framework data, the number of workers increased by almost 1.1 million in the same period (2000 to 2009). The cause of this was primarily the fall in unemployment and an increased workforce participation of the population. The changes in employment conduct are shown above all in those groups of individuals whose potential for providing gainfully-active persons has not yet been fully exhausted. These particularly include elderly persons, women, lone parents, as well as persons with a migration background.

The fall in unemployment averaged over the year fell somewhat more rapidly among men in 2010 than among women. Unemployment among women has fallen on an annual average by 5 percent as against 2009, whilst that of men has reduced by 6 percent. Given that men were particularly badly affected by the economic crisis, they are now benefitting more from the upturn. The female unemployment rate (related to the total civil economically-active population) has fallen by 0.4 percentage points to 7.5 percent and remains lower than that for men, which has also fallen by 0.4 percentage points, to 7.9 percent. The fall in unemployment in the age group of 15- to under 25-year-olds was the most pronounced in relative terms in a breakdown according to age. Averaged over the year, their number among the unemployed fell by 13 percent to reach 325,000, and their unemployment rate (related to the total civil economically-active population) fell by 1.0 percentage points to 6.8 percent. Its rate was hence far below the total unemployment rate (7.7 percent). An increase of 2 percent in the number of unemployed persons is shown for elderly persons aged from 50 to under 65. The fact that, at the same time, their unemployment rate fell by 0.2 percentage points to 8.4 percent is connected with the fact that the number of gainfully-active persons in this age group rose more markedly than that of the unemployed. Moreover, with regard to the increase in the unemployment of elderly persons, it should be taken into account that early retirement-like arrangements which had previously statistically reduced unemployment among elderly persons expired at the end of 2007.

Unemployment among Germans fell by 5 percent and that among foreigners fell by 4 percent. Foreigners however remain much more frequently affected by unemployment than Germans. At 15.7 percent, their unemployment rate (related to the total civil economically-active population) was more than twice as high on average as that of Germans, at 7.0 percent.

Number of unemployed persons by selected groups of individuals

Characteristic	Number of unemployed persons – selected groups of individuals			
	2010	2009	2008	2007
	1	2	3	4
<b>Germany</b>				
<b>UNEMPLOYED</b>				
- Number	3,238,421	3,414,545	3,258,451	3,760,072
incl.: 54.3% men	1,759,672	1,862,689	1,662,820	1,893,289
45.7% women	1,478,749	1,551,856	1,595,622	1,866,710
10.0% 15 to under 25	325,378	375,801	338,525	402,544
28.8% 50 to under 65	931,049	914,380	858,823	984,134
15.5% foreigners	500,831	522,031	495,384	555,867
84.4% Germans	2,732,199	2,886,318	2,757,894	3,198,095
5.4% persons with serious disabilities	175,254	167,116	163,654	176,392
<b>UNEMPLOYMENT RATES related to</b>				
- total civil economically-active population	7.7	8.1	7.8	9.0
men	7.9	8.3	7.4	.
women	7.5	7.9	8.2	.
15 to under 25	6.8	7.8	7.0	.
50 to under 65	8.4	8.6	8.4	.
foreigners	15.7	16.6	15.8	.
Germans	7.0	7.4	7.1	.
<b>Western Germany</b>				
<b>UNEMPLOYED PERSONS</b>				
- number	2,227,041	2,313,786	2,138,336	2,474,928
incl.: 54.1% men	1,204,967	1,262,047	1,085,741	1,240,542
45.9% women	1,022,074	1,051,739	1,052,585	1,234,345
10.0% 15 to under 25	223,219	255,000	216,020	259,801
27.8% 50 to under 65	619,100	591,056	541,335	625,944
19.2% foreigners	428,597	448,273	421,907	474,239
80.6% Germans	1,794,448	1,860,252	1,712,181	1,995,588
5.0% persons with serious disabilities	129,174	121,210	116,779	126,192
<b>UNEMPLOYMENT RATES related to</b>				
- total civil economically-active population	6.6	6.9	6.4	7.5
men	6.7	7.0	6.1	.
women	6.5	6.7	6.8	.
15 to under 25	5.8	6.6	5.6	.
50 to under 65	7.1	7.1	6.8	.
foreigners	14.8	15.7	14.8	.
Germans	5.8	6.1	5.6	.
<b>Eastern Germany</b>				
<b>UNEMPLOYED PERSONS</b>				
- number	1,011,380	1,100,759	1,120,115	1,285,144
incl.: 54.8% men	554,705	600,642	577,079	652,747
45.2% women	456,675	500,117	543,036	632,365
10.1% 15 to under 25	102,159	120,802	122,505	142,743
30.8% 50 to under 65	311,949	323,324	317,488	358,190
7.1% foreigners	72,234	73,757	73,477	81,628
92.7% Germans	937,751	1,026,065	1,045,713	1,202,506
4.6% persons with serious disabilities	46,080	45,908	47,075	50,200
<b>UNEMPLOYMENT RATES related to</b>				
- total civil economically-active population	12.0	13.0	13.1	15.0
men	12.5	13.5	12.9	.
women	11.4	12.4	13.4	.
15 to under 25	11.1	12.6	12.4	.
50 to under 65	13.2	14.1	14.1	.
foreigners	24.3	25.7	25.8	.
Germans	11.5	12.5	12.7	.

Source: Statistics of the Federal Employment Agency

The average completed duration of unemployment was roughly 34.3 weeks in 2010.

Duration of unemployment <sup>1)</sup>

Time	average completed duration in weeks
2007	41.3
2008	38.1
2009	33.4
2010	34.3

Source: Statistics of the Federal Employment Agency

1) The durations are based exclusively on data from the previous, additive specialist IT procedure of the Federal Employment Agency, not including licensed local authority agencies.

**Developments in gainful employment**

The data of the Microcensuses from 2007 to 2010 were used for the developments in gainful employment. This is the only source of data which is able to illustrate all forms of work in a manner that is methodically comparable. The Microcensus is a random survey the results of which are available in each case as annual average values.

According to the 2010 Microcensus, the employment rate totalled 71.0 percent, so that it rose by 2.1 percentage points vis-à-vis 2007.

Population broken down by participation in working life, as well as the labour force participation rate and the employment and unemployment rates aged from 15 to under 65

Results of the Microcensus

Germany

Year	Population	Gainfully-active persons	Labour force participation rate	Gainfully-active persons	Employment rate	Unemployed persons	Unemployment rate	Persons not gainfully active
	1 000	% 1)	1 000	% 2)	1 000	% 3)	1 000	
<b>male</b>								
2007	27,533	22,462	81.6	20,522	74.5	1,940	8.6	5,071
2008	27,457	22,472	81.8	20,786	75.7	1,686	7.5	4,985
2009	27,308	22,391	82.0	20,556	75.3	1,835	8.2	4,917
2010	27,202	22,333	82.1	20,637	75.9	1,696	7.6	4,869
<b>female</b>								
2007	27,016	18,707	69.2	17,046	63.1	1,661	8.9	8,309
2008	26,936	18,754	69.6	17,305	64.2	1,449	7.7	8,181
2009	26,795	18,829	70.3	17,438	65.1	1,392	7.4	7,966
2010	26,701	18,882	70.7	17,633	66.0	1,249	6.6	7,819
<b>Total</b>								
2007	54,549	41,170	75.5	37,568	68.9	3,601	8.7	13,380
2008	54,393	41,226	75.8	38,091	70.0	3,135	7.6	13,166
2009	54,103	41,220	76.2	37,994	70.2	3,226	7.8	12,883
2010	53,902	41,215	71.0	38,270	71.0	2,944	7.1	12,687

1) Share of gainfully-active persons per gender

2) Share of gainfully-employed persons per gender

3) Share of unemployed persons per gender

from 2005 by ILO def. (immediately available)

According to information from Eurostat, the employment rate of 20- to 64-year-olds to be used for achieving the EU 2020 goals totalled roughly 74.9 percent; that of women was 69.6 percent and that of men 80.1 percent.

Employment rates 20 to 64 years - annual averages

Germany

	Employment rate (20 to 64)			
	2007	2008	2009	2010
Total	73.4	74.6	74.8	74.9
Men	79.2	80.2	79.7	80.1
Women	67.5	69.0	69.8	69.6

Source: Eurostat

The evaluations of the Federal Statistical Office regarding normal employment relationships and atypical employment relationships are carried out on the basis of the Microcensus for the group of so-called core gainfully-employed persons. These include all workers aged from 15 to 64, not including persons in education or training, and not including fixed-term volunteer and career soldiers or those completing their statutory period of military or civilian service. The survey only covers in detail the nature of the activity for the main activity. Moreover, the following analyses are to observe that overlaps can take place between the individual forms of atypical

employment – for instance a person can be in both temporary and part-time employment at the same time.

Core gainfully-employed persons<sup>1)</sup> by type of employment relationship

Result of the 2010 Microcensus  
in 1000s

	Total	Self-employed		Persons in dependent employment						
		Together	including with no employees	Together	Normal workers	persons in atypical employment				
						Together	Persons in fixed-term employment	Persons in part-time employment	Persons in marginal employment	Temporary workers
<b>2010</b>	34,973	3,917	2,169	30,904	23,069	7,835	2,761	4,929	2,517	742
<b>2009</b>	34,629	3,877	2,137	30,582	22,990	7,592	2,640	4,901	2,574	560
<b>2008</b>	34,734	3,820	2,103	30,650	22,929	7,721	2,731	4,903	2,578	612
<b>2007</b>	34,321	3,843	2,116	30,175	22,492	7,683	2,659	4,946	2,772	615

Source: Federal Statistical Office

1) Gainfully-employed persons aged from 15-64, not including persons in education or training and not including fixed-term volunteer and career soldiers as well as those completing their statutory period of military or civilian service

/ = no information since figures not sufficiently secure



## Core of gainfully-employed persons by type of employment relationship, sector and sociodemographic characteristics – percentages

Results of the Microcensus 2010

Self-employed Persons in dependent employment

Persons in atypical employment  
incl.

Total together incl. together together together in time- in part- in marginal temporary  
with no normal together limited time employment employment workers workers  
employees

Ergebnis des Mikrozensus 2010  
in % aller Kernerwerbstätigen

	Insgesamt	Selbstständige				Abhängig Beschäftigte				
		zusammen	darunter ohne Beschäftigte	zusammen	Normalarbeitnehmer/-innen	atypisch Beschäftigte				
						zusammen	darunter			
							befristet Beschäftigte	Teilzeitbeschäftigte	geringfügig Beschäftigte	Zeitarbeitnehmer/-innen
<b>Total</b>	<b>100</b>	11,2	6,2	88,4	66,0	22,4	7,9	14,1	7,2	2,1
of whom aged from...to										
15-25	100	2,1	1,6	97,7	60,9	36,8	27,3	9,4	8,0	4,3
25-35	100	7,1	4,7	92,6	68,2	24,5	13,2	10,6	5,7	3,0
35-45	100	12,2	6,8	87,5	65,1	22,4	6,1	15,8	7,2	2,2
45-55	100	12,9	6,8	86,6	66,9	19,7	4,8	14,7	7,1	1,7
55-65	100	14,4	7,5	84,8	64,9	20,0	3,9	15,7	8,9	1,1
<b>Men</b>	<b>100</b>	14,2	7,2	85,6	73,3	12,3	7,0	3,6	3,1	2,7
<b>Women</b>	<b>100</b>	7,7	5,0	91,5	57,5	34,1	8,9	26,3	12,0	1,5
<b>Former Federal territory (not incl. Berlin)</b>	<b>100</b>	11,1	6,0	88,4	65,2	23,2	7,3	15,5	7,5	2,1
<b>New Länder (incl. Berlin)</b>	<b>100</b>	11,6	7,1	88,2	68,9	19,3	10,4	8,5	6,1	2,2
<b>Economic activities (WZ2008)</b>										
Agriculture, forestry and fishing(A)	100	39,9	24,4	47,0	35,0	12,0	5,5	6,9	5,6	/
Mining and quarrying, Manufacturing (B,C)	100	3,9	1,5	96,0	82,0	14,0	5,3	6,1	3,4	3,4
Electricity, gas, steam and air conditioning supply, Water supply, sewerage, waste management and remediation activities (D,E)	100	2,7	1,5	97,3	83,6	13,7	6,5	4,0	1,9	5,2
Construction (F)	100	19,5	9,6	80,3	67,4	12,9	4,8	6,8	3,8	1,5
Wholesale and retail trade; repair of motor vehicles and motorcycles (G)	100	12,1	5,6	87,5	61,4	26,0	7,0	19,9	10,8	1,2
Transportation and storage (H)	100	6,3	3,0	93,6	74,6	19,1	7,4	11,0	5,9	1,9
Accommodation and food service activities (I)	100	17,3	4,9	81,2	46,3	34,8	10,4	25,8	18,1	1,0
Information and communication (J)	100	16,1	12,3	83,9	67,9	16,1	5,9	9,9	5,7	0,9
Financial and insurance activities, Real estate activities (K,L)	100	13,7	8,3	86,3	70,0	16,3	3,2	12,2	3,6	1,4
Professional, scientific and technical activities (M)	100	31,0	19,0	68,8	51,4	17,4	5,6	11,7	4,4	0,6
Administrative and support service activities (N)	100	12,3	7,4	87,4	45,8	41,6	15,1	23,3	15,8	11,4
Public administration and defence; compulsory social security, Activities of extraterritorial organisations and bodies (O,U)	100	/	/	100,0	84,0	16,0	6,8	9,6	2,5	0,6
Education (P)	100	6,5	5,6	93,4	64,5	29,0	14,8	17,1	5,2	0,6
Human health and social work activities (Q)	100	9,0	4,0	91,0	59,9	31,1	11,3	20,6	8,5	0,7
Arts entertainment and recreation, Other service activities (R,S)	100	26,6	20,2	73,0	44,2	28,8	10,2	19,8	12,3	0,9
Activities of households as employers, undifferentiated goods- and services-producing activities of households for own use (T)	100	7,1	6,5	92,4	14,1	78,3	5,4	73,9	57,6	/

Mehrfachnennungen bei atypischer Beschäftigung möglich.

Source: Federal Statistical Office

1) not including fixed-term volunteer and career soldiers or those completing their statutory period of military or civilian service  
/ = no information since figures not sufficiently secure  
Multiple responses possible with atypical employment

### Gender

The share of persons in atypical employment is much larger among women, at 34 percent, than among men, at 12 percent. The difference is caused by the greater amount of part-time and marginal employment among women in comparison to men. The difference is small when it

comes to fixed-term employment, but men account for a larger share among both the self-employed and among temporary workers.

### **Age**

The share of persons in atypical employment falls as age rises. For instance, it is 37 percent among 15-24-year-olds, and almost 20 percent among 45-year-olds. The main reason is the large share of fixed-term employment contracts, as well as temporary workers, among younger people. By contrast, the share of those in part-time employment and who are self-employed increases with age. Elderly persons (aged 55-64) account for one of the largest shares of part-time employment (16 percent) and marginal employment (9 percent).

### **East/West**

The share of persons in atypical employment, at 23 percent, is higher in Western Germany than in Eastern Germany, at 19 percent. This is a result of the greater predominance of part-time employment in Western Germany. By contrast, the share of fixed-term employment is higher in Eastern Germany. The share of the self-employed with no employees is also higher in Eastern Germany.

### **By sectors**

In absolute terms, most of the total of 7.8 million persons who are in atypical employment work in the healthcare, veterinary and social systems (1.3 million), in retail (1.2 million) and in manufacturing (1 million).

In addition to the individual characteristics of persons in employment, the frequency of the various forms of employment also varies over the sectors. Roughly two-thirds of all individuals in employment worked in a normal employment relationship in 2010. However, the share of persons in employment in private households was 14 percent, and 35 percent in agriculture, forestry and fishery. These sectors are, by contrast, characterised by a large share of persons in part-time and marginal employment and the self-employed. Normal employment relationships are particularly prominent in public administration, electricity, gas, steam and air conditioning supply, water supply, as well as in mining and quarrying and manufacturing, with a share of more than 80 percent.

## **Future developments in the potential for gainfully-active persons**

The potential for gainfully-active persons, that is the maximum available supply of resident labour, is set by the number of individuals who are of working age. As has already been stated above, the potential for gainfully-active persons is restricted to the group of individuals who are aged from 20 to 64 because the increase in the standard age limit will not be completed until 2029. Almost 50 million out of the roughly 82 million people in Germany today are of working age between 20 and 64.

According to the calculations contained in the Federal Statistical Office's 12th coordinated population forecast, the working-age population aged from 20 to 64 will only shrink slightly until 2015, but much more markedly after 2020. Initially, that is until roughly 2015, the developments in the numbers of persons who are of working age will be parallel to the overall population. After that, the working-age population will shrink much more rapidly than the overall population. This process is already established in today's age structure in the population, and is very much connected with the generation of "baby-boomers". The large cohorts from 1955 onwards will be retiring from 2020 onwards.

The working-age population will be roughly 6.3 million people smaller in 2030 than in 2010. This calculation presumes a positive annual migration balance of 200,000 persons from 2020 onwards ("Variant 1-W2", "medium" population, upper limit). If fewer people migrate to Germany in net terms in the coming years (100,000 p.a. from 2014 onwards, "Variant 1-W", "medium" population, lower limit), the fall in the number of working-age persons would be even more rapid, at roughly 7.6 million persons.

## **Workforce participation of women**

Two factors are key when it comes to making better use of the potential number of gainfully-active women. Firstly, it is a matter of increasing the workforce participation of women in general terms, and secondly of also increasing their working hours volume.

Although women today achieve higher and better average educational qualifications than men, they remain underrepresented in the world of work overall – in particular in future-orientated professions and decision-making positions.

It is particularly necessary to keep an eye on how women with children can be more closely integrated into the labour market regardless of their age. For instance, according to the

Microcensus in 2008 the employment rate<sup>2</sup> of mothers whose youngest child was less than three years old was only 28.6 percent in comparison to 82.9 percent among fathers. Only slightly more than one-quarter of these mothers were working on a full-time basis (fathers: 94 percent). At the same time, the employment rate of mothers whose youngest child was between three and six, at 58.6 percent, is already more than twice as high (fathers: 85.2 percent). However, even in this group only one-quarter of these mothers were working on a full-time basis (fathers: 95 percent).

The Federal Government has already taken a variety of measures in order to achieve the goal of a higher workforce participation of women. With the improved reconcilability of family and work by virtue of the expansion in the care offered for children or family members in need of long-term care, the systematic expansion of all-day schools and the support for sharing the burden within the family in a spirit of partnership provided by parental benefit, major prerequisites were created for equal participation by women in employment. The Federal Government is targetedly supporting women in getting back to work, on their path to senior positions and in starting up businesses. Moreover, it is promoting initiatives among the social partners to promote the equality of women in industry and to create a working environment which is family friendly.

In the field of employment promotion and basic security benefits for job-seekers, the Federal Government is endeavouring to ensure that the equality-policy mandate and the promotion of women are consistently implemented in order to effectively support the vocational integration of women and to reduce periods of unemployment. Women remain unemployed much longer than men, and their participation in employment policy measures is much less intensive in some respects.

Women largely work in service occupations. Because of the working hours which are customary in this sector, the childcare that is on offer must also be available at marginal times and at the weekend. The Federal Employment Agency is helping via the Action Programme on child day-care to increase the supply of skilled daycarers and to provide such services at times which are tailored to the need observed.

Particular attention attaches in this context to the group of lone parents – 90 percent of whom are women. They are faced by special challenges in the reconciliation of working time and bringing up children. More than 40 percent of lone parents draw basic security benefits for job-seekers because they are not in gainful employment or do not make a living sufficient to ensure their livelihood.

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<sup>2</sup> Employment rate of active workers: The definition of “active” includes all workers who have worked in the survey week. Those on temporary leave (for instance because of (special) leave or parental leave) are not counted among “active” workers.

In order to improve the life and work prospects for lone parents, the Federal Government undertook measures in April 2010 aiming to exploit the potential of the group of individuals of lone parents to work more rapidly and more efficiently. These include the two federal programmes entitled “Dignified work for lone parents” and “Networks of effective assistance for lone parents”, financed from the European Social Fund (ESF). The network programme aims to promote improved interlinking of the world of work, family policy and reconcilability-orientated support services for lone parents from 2011 to 2013 in at least 100 locations nationwide.

Greater employment potential can be achieved not only by increasing the share of women, but also by expanding the volume of work done by women. To this end, targeted incentives are needed to encourage the conversion of marginal employment subject to mandatory social insurance and part-time employment into full-time employment. The Federal Government is hence examining what suitable activities of the Federal Employment Agency and the basic security benefit agencies could be carried out in order to integrate more women into (full-time) employment subject to mandatory social insurance.

### **Activating the potential of elderly persons**

The gainful employment of elderly persons in employment has developed in a particularly positive direction in recent years. According to information from Eurostat, the employment rate, that is the share of workers among the population in the respective age group, rose by more than 10 percentage points among 55- to 64-year-olds, from 45.4 percent in 2005 to 57.7 percent in 2010. This particularly applies to the age group of 60- to 64-year-olds, whose workforce participation has doubled since 2000.

Because of the gradual increase in the statutory retirement age to 67, more workers will be at the disposal of the labour market for longer. This however also requires the paradigm shift that has been initiated to be continued and the potential of elderly persons in employment to be recognised and made use of. The continued employment of elderly persons in employment is just as important for unlocking the potential of elderly persons as the reintegration of elderly persons into the labour market.

The Federal Government launched the “Initiative 50plus” at the end of 2006 in order to promote existing and new measures to improve the employment chances of elderly persons. This is intended to reduce both the number of elderly persons leaving working life early and to improve the reintegration of older unemployed persons, and increase the participation rate in vocational further training. A number of employment policy possibilities are available to achieve this goal

which accompany the increase in the size of the workforce participation of elderly persons. For instance, the possibilities to promote the vocational further training of elderly persons was improved, thus sending out a clear signal towards life-long learning. Furthermore, the so-called integration allowance for enterprises which recruit elderly persons has been changed and a combined wage created for elderly persons in employment in order to reduce obstacles to the recruitment of elderly persons and to make it easier for enterprises to decide to recruit older job-seekers.

At the same time, older long-term unemployed persons are intensively supported by the Federal "Perspective 50plus – Alliances for Jobs for Elderly Persons in the Regions" programme in becoming reintegrated into the first labour market by means of supraregional Alliances for Jobs. In order to guide elderly persons away from needing assistance and to give them an outlook for work from which they can make a living, the Alliances for Jobs have developed and tested regional strategies and concepts. These regional solutions have in common their focus on the strengths and potential of elderly persons. Those concerned are thus to be enabled to identify their own skills and to deploy them successfully on the labour market.

### **Workforce participation of persons with a migration background**

The workforce participation of persons with a migration background remains much lower than that of the population without a migration background. Here, the possibilities for higher workforce participation of persons with a migration background on the labour market depend decisively on their educational qualifications. According to the Education Report 2010, persons with a migration background still have a lower level of education on average. The difference is most pronounced when it comes to general or vocational qualifications. Whilst 1.5 percent of persons without a migration background have no general qualification, it is 13 percent among persons with a migration background. The difference is more notable still when it comes to vocational training qualifications. At 39 percent, the share of individuals with a migration background who do not have a vocational qualification is as many as 27 percentage points higher than among individuals without a migration background.

What is more, migrants' potential lies waste since vocational and other qualifications acquired abroad are not recognised in Germany in many cases. The Federal Government hence intends to improve the recognition of vocational qualifications and other work-related qualifications acquired abroad in order to open up employment potentials and to promote integration into the labour market and into society. Everyone regardless of their origin and nationality is to be enabled to have the (vocational) qualifications which they have brought with them evaluated. A corresponding draft Bill containing a legal right to an evaluation procedure should enter into

force at the beginning of 2012, on condition of the further deliberations in the Bundestag and in the Bundesrat. It will be clarified in the recognition procedure to what degree qualifications acquired abroad are comparable with German training qualifications. What is more, the setting up of an information portal on vocational training will help the evaluation procedure to be transparent and standard.

Training and skills not only have a positive impact on integration into the labour market, but also into society.

The risk for persons with a migration background of subsequently becoming unemployed is much higher. At 12.9 percent, the unemployment rate of persons with a migration background was almost twice as high as that of the population without a migration background (6.5 percent).

The integration of people with a migration background into the labour market is supported via a large number of programmes for language promotion, vocational skill-building and addressing the integration of persons entitled to remain and refugees. Measures financed with funding from the ESF also play a major role here.

The possibility to participate in the German labour market first and foremost requires an adequate knowledge of German. In many cases, language-orientated courses are not sufficient for qualified integration into the labour market. For this reason, language courses with an occupational orientation have been developed within the language promotion of the ESF. These courses address persons with a migration background who already speak German as a second language, but who have problems with specifically work-related German, thus making it difficult for them to become integrated into the labour market. This programme, which is promoted to the tune of a total of Euro 330 million, will run until 2013. Moreover, the employment services are assisting unemployed persons with a migration background who do not yet have an adequate knowledge of German to attend suitable language courses within integration promotion.

Additionally, the advice and information network "Integration through Qualification – IQ", consisting of 40 initiatives nationally, has been developing new approaches since 2005 in order to increase the chance of lasting employment for people with a migration background. The projects are doing work on the fields of action: advice, ascertaining skills, skill-building, vocation-related German, intercultural opening and business start-ups.

A special programme of the Federation for support on the labour market for persons entitled to remain (*Bleibeberechtigte*) and refugees with access to the labour market has been funded from the ESF since 2008. This programme aims to establish networks at local and regional level with the involvement of the employment services in order to integrate as many persons entitled to remain into the labour market as possible on a lasting basis.

## **Improving the equal opportunities of women and men in employment**

The Federal Government has taken a large number of measures in order to effectively and lastingly support the gainful employment of women. These are measures which, in addition to the improvement in the reconcilability of work and family, aim above all to improve the equal opportunities of women and men in employment.

With the “**Agreement between the Federal Government and the national associations of German industry to promote equal opportunities of women and men in the private sector**”, which was concluded in July 2001, and with regard to which a stock-take is made at regular intervals, the Government and the national associations of German industry have undertaken to combine their efforts to achieve equal participation of women in employment. The **Fourth Stocktake on the Implementation of Reconcilability** was published in July 2011. It documents the changes and measures for all four target areas – reconcilability of family and work, training of girls and women, women in leadership positions, differences in remuneration. Good progress is shown in the first area: the reconcilability of work and family. For instance, the expansion of childcare and the participation by fathers in care for their children, enhanced with the Parental Benefit Act (*Elterngeldgesetz*), has opened up greater scope for parents in the first years of their children’s lives and changed the world of work in German enterprises. More and more young women are returning to work soon after the birth of a child; women’s workforce participation is increasing continuously; more than one father in five is taking parental leave. There is also unambiguous progress in the field of education and dual training of young women. At 56 percent, girls account for the majority of those taking their higher education entrance qualification (*Abitur*), and are therefore achieving higher school-leaving qualifications overall. When it comes to the selection of work and studies, however, women are continuing to limit themselves to a relatively narrow spectrum, and are for instance avoiding technical domains. For this reason, the Federal Government and industry are continuing joint initiatives to win over more skilled women to work in the areas of mathematics, computer science, natural sciences and technology, including via Girls’ Day, on which more information will be provided below.

In the context of improving the equal opportunities of women and men in employment, the Federal Government is also taking action to **overcome differences in remuneration between women and men**. The uncorrected wage gap between the average gross hourly wages of women and men in Germany has been at an almost constant level of 23 percent for quite some time. For this reason, the Federal Government is stepping up its efforts to make the wage gap a topic for discussion among workers and employees. “**Logib-D**” (*Lohnungleichheit im Betrieb – Deutschland* [wage inequality in companies]) is a tailored tool for employers in this field. The major causal factors for the wage gap in companies can be identified using this self-



administered test (which can be consulted as a web tool at [www.logib-d.de](http://www.logib-d.de)). The Federal Government is providing confidential standardised remuneration structure advice free of charge to 200 interested enterprises in 2010 to 2012 on the basis of Logib-D, intended to enable enterprises to overcome the identified causes.

**Equal Pay Day**, where the Federal Government is supporting preparation and implementation, aims to provide information to a broad public about the “Gender Pay Gap”. ‘Equal Pay Day’ was implemented in Germany for the first time in 2008 by the “Business and Professional Women (BPW)” association. The alliance aims to create an awareness among and to mobilise all players, and above all to identify the causes of wage gaps.

The Federal Government recently sent comprehensive information regarding activities to overcome inequality in remuneration between women and men to the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee) which the Committee had asked for on the occasion of the presentation of the 6th German CEDAW National Report in 2009.

The Federal Government is paying particular attention to the **promotion of women in senior positions**. Although women today are just as well trained, and frequently better trained, than men, the share of women falls higher up in the hierarchy and in larger enterprises. Women held as few as 10.6 percent of posts in supervisory councils, and only 3.2 percent of posts on management boards, in the 200 largest enterprises in 2010. The Federal Government therefore aims to lastingly increase the share of women particularly in the highest managerial levels of industry.

The Coalition Agreement provides for a **timetable** to this end, aiming to bring about an increase in the share of women holding managerial positions. The core of the Federal Government’s timetable concept is a **statutory obligation to enter into a voluntary undertaking (“flexirate”)**: Listed enterprises and those subject to co-determination are obliged by law to individually publish a self-determined quota of women, both for the board and for the supervisory council. Enterprises can incur sanctions under company law if they are unable to implement their own target quota which they established taking their starting situation into account. The obligation ceases to apply to individual enterprises as soon as and as long as they have achieved a 30-percent share of women in the supervisory council – and hence the share of women from which it is possible to presume that women are able to influence the corporate culture and change structures.

The ESF programme “School Drop-Outs – A Second Chance” aims to reintegrate school pupils into the normal school system who are at risk of not finishing school because of an intensively

negative attitude towards school. Individual promotional plans are developed in the framework of case management and together with parents and teachers. The programme has been implemented at 192 locations since 1 September 2008; a total of Euro 74 million was available from the ESF for the promotional period from 1 September 2008 to 31 August 2011. The coordination agencies reached 8,261 school pupils in the period from 1 September 2008 to 31 August 2010. 8,020 of them were taken up into case management; 58.1 percent completed it successfully. The Federal Government is making a major contribution with the programme towards reaching the goal agreed by the heads of government of the Federation and the *Länder* in 2008 at the skill-building summit, namely to halve the number of school-leavers with no school-leaving qualification on a national average from 8 percent to 4 percent by 2015.

The “Competence Agencies”, which are also promoted from the ESF, support disadvantaged young people in their vocational and social integration through individual case management. Contacts of the Competence Agencies approach the juveniles, agree together with them their individual promotion and skill-building plans and guide them in their implementation. The programme has been implemented at 209 locations since 1 September 2008; a total of roughly Euro 70 million is available from the ESF for the promotional period from 1 September 2008 to 31 August 2011. The “Competence Agencies” reached 52,750 young people in the period from 1 September 2008 to 31 August 2010. 35,805 of them were taken care of in case management; 72.1 percent successfully completed case management.

More than 420 “Youth Migration Services” nationwide support young migrants in their linguistic, school, vocational and social integration. The programme forms part of the Child and Youth Plan of the Federation. In addition to assistance in social pedagogy, prior to, during and after the integration courses of the Immigration Act (*Zuwanderungsgesetz*), the institutions play an active role in networking services for young migrants in social spaces. A total of 260,664 young people with a migration background received guidance from “Youth Migration Services” from 2007 to 2010.

With the ESF’s model programme entitled “Strengthening Youth: Active in the Region”, which was launched in October 2010, the Federal Government is sending out a signal for closer cooperation between the large number of stakeholders in transition between school, training and work, and for a more systematic coordination of their activities in situ within the municipalities. The programme provides incentives to the municipalities to take responsibility for coordination and networking between all concerned and those supplying the services. Monitoring tools help them to record supply and demand at grassroots level, and on this basis to take decisions for a systematic refinement of their activities on the basis of the available data. The model programme runs from 1 October 2010 to 31 December 2013, and is funded with roughly Euro 17 million from ESF funds.

**Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon (non-discrimination, prohibition of forced labour, other aspects)**

No new statutory regulations were adopted in the reference period; reference is hence made to the 25th Report.

Insofar as the Committee of Experts asks whether the list of reasons in the General Anti-Discrimination Act (*Allgemeines Gleichbehandlungsgesetz – AGG*) is exhaustive, the following needs to be stated:

The General Anti-Discrimination Act is a component of an Act transposing several European directives to enforce the principle of equal treatment in national law. It was not possible to reach a consensus among the Member States on the inclusion of further discrimination criteria in the directives.

German law does not provide for any further prohibitions of discrimination. Article 3 § 3 of the Basic Law prohibits discrimination because of sex, origin, race, language home and origin, faith, religious or political views or a disability. The prohibition of victimisation which is embedded in the Civil Code [*Bürgerliches Gesetzbuch – BGB*] (section 612a of the Civil Code) ensures that employees who exercise their rights in a permissible way may not incur disadvantages in the employment relationship. In addition, as a result of European law, there are further specific bans on discrimination. These include section 4 subs. 1 of the Act on Part-Time Work and Fixed-Term Work (*Teilzeit- und Befristungsgesetz*), which bans as a matter of principle the poorer treatment of a part-time worker because of his/her part-time work.

The question as to how a disadvantage for the reasons stated in section 1 of the General Anti-Discrimination Act is determined in each case is governed by section 3 of the General Anti-Discrimination Act. This provision defines direct and indirect discrimination in line with the prerequisites of the European Anti-Discrimination directives. Sexual and other types of harassment, and instructions to engage in discrimination, are deemed equivalent to discrimination. In accordance with section 3 subs. 2 of the General Anti-Discrimination Act, indirect discrimination applies if provisions, criteria or procedures which appear to be neutral are able to place persons at a particular disadvantage because of a reason named in section 1 of the General Anti-Discrimination Act vis-à-vis other persons unless the provisions, criteria or procedures in question are de facto justified by a lawful objective and are suited to and appropriate for the means to achieve this objective.

It is not possible to answer the question of the Committee of Experts as to how exceptions to the prohibition on discrimination because of major vocational requirements or to facilitate positive measures are particularly restricted in practice by the case-law of the courts because there is no such case-law.

Reference is made to section 7 subs. 2 of the General Anti-Discrimination Act in response to the question of the Committee of Experts as to whether the legislation provides that any provision contained in collective agreements, employment contracts or in-company arrangements conflicting with the principle of equal treatment can be rescinded. Accordingly, provisions in agreements which are in breach of the prohibition of discrimination contained in subs. 1 are deemed null and void.

The question of the Committee of Experts as to the available remedies is answered as follows: In accordance with section 13 of the General Anti-Discrimination Act, persons in employment may complain to the competent units within the company, enterprise or agency if they consider themselves to have been placed at a disadvantage in relation to their employment relationship by their employer, superiors, other persons in employment or third parties because of a reason given in section 1. The complaint is to be investigated and the complainant informed of the outcome of the investigation. Persons who have been placed at a disadvantage may consult anti-discrimination associations in support of their interests (section 23 of the General Anti-Discrimination Act). These are empowered in the context of their statutory purpose to appear as counsel in court proceedings in which there is no mandatory legal counsel. Anyone who considers themselves to have been placed at a disadvantage can also contact the Federal Anti-Discrimination Agency. The latter supports victims of discrimination in enforcing their rights. It can in particular provide information regarding claims and procedures; it can also establish contact with other advisory agencies and endeavour to bring about an amicable settlement between the parties. Moreover, recourse to the courts is also open.

Compensation and damage claims are regulated in section 15 of the General Anti-Discrimination Act. Section 15 subs. 1 of the General Anti-Discrimination Act stipulates that the employer must provide compensation for the material damage that has been suffered in the event of a violation against a prohibition of discrimination defined in section 7 of the General Anti-Discrimination Act.

In accordance with section 15 subs. 2 of the General Anti-Discrimination Act, the injured party can demand suitable compensation for non-pecuniary damage in addition to the payment of the material damage that has been incurred. The amount of the compensation must be appropriate. The national courts are bound by the case-law of the ECJ when assessing this amount.

Accordingly, compensation must be effective and act as a deterrent in the sense of a prevention effect. As a matter of principle, no maximum limits are provided for. Only in an exceptional case is it not permissible for the compensation to exceed three months' salary where a person is not recruited. This is the case if the applicant would also not have been appointed had the selection been free of discrimination (not the best qualified).

We are in a position to state the following in answer to the query of the Committee of Experts on guaranteeing the protection of the individual dignity and freedom of workers in Germany:

#### **A. Regulations and principles to protect workers' privacy**

Particular significance also attaches for the employment relationship to the protection of privacy, as protected by the **Constitution** (Art. 1 § 1 and Art. 2 § 1 of the Basic Law [*Grundgesetz*]). Just as on the works councils, an obligation is incumbent on the employer to protect and promote the free development of the privacy of the workers employed in the establishment (section 75 subs. 2 of the Works Constitution Act – [*Betriebsverfassungsgesetz – BetrVG*]). The comprehensive body of case-law of the labour courts has however developed principles for the information and data protection of the right of privacy under general labour law, as protected by the Constitution.

Moreover, the prohibition of discrimination contained in the General Anti-Discrimination Act plays a major role in the protection of workers' right to privacy. The General Anti-Discrimination Act rules out any discrimination against workers because of gender, religion or world view, disability, age, sexual identity, race or ethnic origin, both on recruitment and in implementing and terminating an employment relationship. The prohibition of discrimination contained in the General Anti-Discrimination Act is to be taken into account in the employment relationship, in particular when collecting and utilising workers' data (right of the employer to ask) and when granting benefits.

The characteristics stated exhaustively determine the scope of application of the General Anti-Discrimination Act. The General Anti-Discrimination Act serves "only" to transpose the four European equal treatment directives (directives 2000/43/EC, 2000/78/EC, 2002/73/EC and 2004/113/EC). Only for bulk transactions and contracts with private insurance companies do the provisions contained in the General Anti-Discrimination Act go beyond Community law, in which also the characteristics of religion, disability, age and sexual identity are included in the protection against discrimination under civil law. The General Anti-Discrimination Act was hence always planned not to be a statute which is to conclusively regulate anti-discrimination measures. The General Anti-Discrimination Act however constituted a major step towards establishing a society free of discrimination.

Section 3 subs. 1 and subs. 2 of the General Anti-Discrimination Act contain a legal definition of direct and indirect discrimination.

A further aspect of information and data protection under labour law which deals with the permissibility of genetic tests at work will be regulated by the **Genetic Diagnostics Act** (*Gendiagnostikgesetz*), which is in planning. Once focus of the Act will be on provisions relating to the collection and use of genetic data at work (fundamental ban on corresponding genetic tests).

Workers are also protected by the provisions contained in the **Federal Data Protection Act** (*Bundesdatenschutzgesetz – BDSG*) generally applicable to personal data. These provisions also apply to the automatic processing of workers' data. Restrictions emerge from the Act with regard to work with data which the employer may collect and use. In accordance with section 32 subs. 1 No. 1 of the Act, data may only be collected, stored, altered or transmitted to third parties if they are necessary for the purposes of the employment relationship. Interests must be balanced in order to determine these purposes in which the principle of proportionality is to be taken into account. The collection and/or utilisation of data not connected to the employment relationship is not permissible.

In accordance with these principles, for instance with recruitment procedures, employers may only ask questions in which they have an objectively justified interest to assess the aptitude and ability of the worker (e.g. questions relating to the career history, examination and assessment grades) outweighing the worker's interest in protection of privacy and the inviolability of privacy. The worker may refuse to answer unlawful questions (e.g. as to criminal record which is unrelated to the job to be filled). Even an untruthful response to a question that is not permitted does not have any negative legal consequences for the worker. For instance, in accordance with the established case-law of the Federal Labour Court, an incorrect answer to an unlawful question does not constitute grounds for dismissal, and is not deemed as malicious deception entitling the employer to challenge the employment contract.

Particular attention when it comes to the protection of their data moreover attaches to the provisions contained in the **Works Constitution Act** and the **Personnel Representation Acts** (*Personalvertretungsgesetze*) regarding the rights to contribute and co-determination rights of the works council or of the staff council, in particular regarding the introduction and application of technical monitoring facilities. Many individual questions relating to the protection of workers' data which touch on workers' right to privacy (e.g. collection of telephone data) are regulated at company level with company agreements by employers and works councils.

## **B. Claims of workers in case of a breach of the general right to privacy**

If the employer breaches workers' right to privacy, this constitutes a violation of its obligations under the employment contract. In case of a culpable (i.e. intentional or negligent) violation of the right to privacy by the employer, the worker has a right to **compensation** (sections 280 subs. 1 and 823 subs. 1 of the Civil Code), as well as to payment of damages for pain and suffering (sections 280 subs. 1 and 823 subs. 1 of the Civil Code in conjunction with section 253 of the Civil Code). The culpability of employees is attributed to the employer in such cases (sections 278 and 831 of the Civil Code). If the employer culpably inflicts damage on workers by virtue of the collection, processing or use of personal data in accordance with the Federal Data Protection Act (*BSDG*) or in accordance with other provisions on data protection in a manner that is not permissible or which is incorrect, it is obliged to provide compensation. If there is dispute as to whether the damage was caused as a result of a circumstance which can be attributed to the employer, the burden of proof is on him/her (section 7 of the Federal Data Protection Act). Further, the worker may also demand the impairment to be **remedied** if the employer has not acted in a culpable manner in case of an encroachment which is objectively unlawful in accordance with sections 12, 862 and 1004 of the Civil Code and may demand **forbearance** of further encroachments in case of danger of a repeat.

## **C. Surveillance of workers at the workplace**

### I. Permissibility

Surveillance procedures at the workplace affect workers' right to privacy. This right is protected by the sector-specific principles of workers' data protection emerging from the Basic Law, from the provisions of the Federal Data Protection Act, of the Works Constitution Act on the rights of the works council to cooperate and to co-determination, as well as from the case-law and legal dogma on the general protection of information and data protection under labour law (cf. A and B above).

When it comes to the legal assessment of surveillance measures in working life by **video cameras**, it is necessary to distinguish between video surveillance in premises that are open to the public and that of premises which are not open to the public.

#### 1. Video surveillance in premises that are open to the public

In accordance with section 6b subs. 1 of the Federal Data Protection Act, video surveillance in premises that are open to the public (which may include points of sales or pubs and restaurants) is only permissible insofar as it is necessary

- to enable public authorities to carry out their tasks,
- to defend the right to keep out trespassers, or

- to enforce justified interests for purposes which have been specifically established (e.g. on suspicion of the commission of criminal offences) and there are no indications that interests of those concerned meriting protection outweigh this.

It should be made evident in case of video surveillance that the observation is taking place and who is being observed (section 6b subs. 2 and subs. 4 of the Federal Data Protection Act). Clandestine surveillance is not permissible. Furthermore, the data that are collected may as a matter of principle only be processed or used if they are necessary in order to achieve the purpose pursued and there are no indications that interests of the data subjects meriting protection outweigh them (section 6b subs. 3 of the Federal Data Protection Act). The data are to be deleted promptly if they are no longer needed to achieve the purpose, or if interests of the data subjects meriting protection oppose further storage (section 6b subs. 5 of the Federal Data Protection Act).

## 2. Surveillance of premises that are not open to the public

Section 6b of the Federal Data Protection Act does not apply in accordance with the case-law of the Federal Labour Court at workplaces if these – unlike for instance points of sale – are not open to the public. The permissibility of surveillance by a video camera or by other technical facilities is then in accordance with the general provisions on the protection of workers' right to privacy.

The general right to privacy, protected as it is by the Constitution, covers on the one hand the right to one's own image. The right of self-determination of each individual includes deciding whether film recordings may be made of them and used against them. On the other hand, the right to the spoken word is also protected, i.e. the need to determine oneself whether it is to be accessible to one's interlocutor or indeed to third parties, or in fact to the public, or whether it may be recorded on a sound carrier, etc.

Encroachments on workers' right to privacy may be justified by virtue of the defence of overriding interests of the employer meriting protection. Should the general right to privacy clash with the interests of the employer, it is to be ascertained through a balancing of interests in the individual case whether the general right to privacy is to take precedence. In accordance with the case-law of the Federal Labour Court, therefore, clandestine surveillance by technical means at the workplace is only permissible if



- there is a concrete suspicion of a punishable act or of another grievous breach against the employer,
- less incisive means to clarify the suspicion have been exhausted,
- clandestine surveillance constitutes the only remaining means in practice, and
- if the surveillance as a whole is not disproportionate, e.g. if a cash shortfall cannot be clarified by any other means (on this the case-law of the Federal Labour Court of 27 March 2003 - 2 AZR 51/02 - NZA - 2003, pp. 1193 et seqq.).

Surveillance may by no means violate the core area of the right to privacy (the intimate domain). For this reason, video surveillance for instance of changing rooms and toilets is prohibited under all circumstances.

If video cameras or comparable technical means are to be installed at the workplace with the knowledge of the workers, this measure is also not necessarily permissible. Whilst monitoring workers' performance and conduct is one of the encroachments on the right to privacy which are unavoidable in the employment relationship, workers know of and consent to this on conclusion of the employment contract. This however does not constitute consent to uninterrupted supervision, such as in particular is possible using technical devices, given that the pressure of monitoring, imposing strain on workers, given them a feeling of being continuously observed, considerably impairs the right to privacy. This applies above all if the employer is able to monitor without being noticed. In this case, too, it is necessary to weigh up the interests of the persons in employment against those of the employer meriting protection (Federal Labour Court of 29 June 2004 - ref. 1 ABR 21/03 - in: NZA 2004, pp. 1278 et seqq.).

The above principles regarding the protection of the right to privacy also apply to other surveillance activities undertaken by the employer. For instance, an employer who secretly monitors workers' **private conversations** at work encroaches on their right to privacy. This also applies in accordance with the case-law of the Federal Labour Court to **telephone conversations** with work-related content. If such conversations are to be monitored, the worker must be informed in advance.

#### Other aspects of the right of the worker to earn his living in an occupation freely entered upon Data protection at the workplace

The data protection of persons in employment at the workplace has been enhanced by section 32, which was inserted into the Federal Data Protection Act during the reference period

(Act of 14 August 2009 – Federal Law Gazette Part I p. 2814, entered into force on 1 September 2009).

In accordance with section 32 subs. 1 sentence 1 of the Federal Data Protection Act, workers' personal data may be collected, processed or used for purposes of the employment relationship if this is necessary for deciding on the establishment of an employment relationship or, subsequent to the establishment of the employment relationship, for its implementation or termination. In accordance with section 32 subs. 1 sentence 2 of the Federal Data Protection Act, data of persons in employment may only be collected and used to uncover criminal offences committed by a staff member if de facto indications give rise to the suspicion that a worker has committed such a criminal offence in the employment relationship. Such indications must be documented. Moreover, the collection, processing or use of the data must be necessary to uncover the criminal offence, and the interest of the person meriting protection in employment in ruling out the collection, processing or use may not outweigh this; in particular the nature and extent of the collection and use of the data may not be disproportionate to the occasion.

## II. Co-determination rights of the works council

The introduction and application of technical means intended to monitor workers' conduct or performance are subject to the co-determination right of the works council in accordance with section 87 subs. 1 No. 6 of the Works Constitution Act (*BetrVG*).

When introducing the technical means, the works council has first of all a comprehensive right to information vis-à-vis the employer. The latter must provide to the works council all information connected with its introduction which is needed so that the works council can assess the risks emanating from the technical surveillance means for workers' privacy. These include information on the time of the introduction, the place, purpose and manner of the surveillance and information on changes in the workplace or working procedures becoming necessary.

The right of co-determination is to be primarily exercised in advance in order to prevent encroachments on workers' privacy which are not legally permissible (preventive protection). In the context of legally-permissible encroachments, it guarantees to the works council a right to act and influence the introduction and application of technical means. This makes it possible to ensure that a measure is restricted to the degree which is indispensable in view of the circumstances within the company.

The co-determination right of the works council furthermore includes a right of initiative entitling the works council to make its own proposals, for instance to amend existing control facilities.

A of technical monitoring measure introduced without the consent of the works council is not permissible; the works council may have its use banned by a court.

The **Federal Act on Gender Equality** (*Bundesgleichstellungsgesetz – BGleIG*) has been in force since 2001. This Act aims to bring about equality between women and men, as well as to eliminate existing and prevent future discrimination because of gender in the indirect and indirect federal administration, regardless of the legal form, and in the courts of the Federation.

The Act is regularly evaluated in the shape of an **experience report** at intervals of four years. The Federal Government submitted a current report at the end of 2010 in which it documented the progress that had been made in the implementation of the Act. For instance, the number of women in the overall federal service rose to 51 percent. The difference in the remuneration of the gross hourly wage between men and women is only 1 percent in the federal service. The percentage of women in senior functions rose from 24 percent to 30 percent in the period from 2004 to 2009, albeit women remain noticeably underrepresented as one looks further up the hierarchical level. Despite the positive developments, the Federal Government still considers there to be a need to act. Firstly, cooperation between stakeholders of the Federal Act on Gender Equality is to be enhanced in order to further support the implementation of the goals of the Federal Act on Gender Equality. These stakeholders include the equality commissioners, as “motors” and “ticket inspectors” of the Act, and managers who play a major role in implementing the Act. Secondly, developments in the employment of women in the federal service are to be made more transparent and rapid. In future, the evaluation of the Act is not only to be carried out every four years in the shape of a report, but major benchmarks revealing the developments are to be evaluated on an annual basis.

Another major tool for the promotion of the equality of women in the federal service is the **Equality Plan**. The Federal Act on Gender Equality provides for the drafting of an Equality Plan in agencies of the Federation. This will not only portray the situation of female persons in employment in comparison to male persons in employment, but also sets goals to promote women. In order to improve the effectiveness of this tool, it is to be further developed under the patronage of the Federal Government.

The Federal Anti-Discrimination Agency launched a pilot project entitled “Anonymised application procedure” in November 2010 in the which various enterprises, authorities and municipalities test anonymised application procedures.

Deutsche Post, Deutsche Telekom, L'Oréal, Mydays, Procter & Gamble, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Employment Agency in North Rhine Westphalia and the city administration of Celle will be trying out new possibilities for staff recruitment for twelve months each. Several thousand applications will be anonymised in the pilot project for roughly 225 jobs as well as training and study places. The jobs range from training for apprentices through study places which are to be awarded, to technical work or jobs in customer service.

All anonymisation methods will be tested in the pilot project and examined as to their viability. Anonymised application procedures are to help to reduce discrimination. In statistical terms, discrimination takes place above all in the first phase of application processes, that is prior to the invitation to attend an interview. Once applicants get an opportunity to be convincing in a person-to-person conversation, many prejudices become less powerful. Anonymised application procedures are about giving people this first chance. They can also help to open up new groups of applicants and to ensure that enterprises invite the best qualified applicants to attend an interview.

It was possible to draw up an initial positive interim report in June 2011. In the space of six months, more than 4,000 applications have already been anonymisedly processed with the participating enterprises and institutions. As a result, a total of 111 jobs were occupied via the anonymised procedures. The feedback from those responsible in personnel regarding the project is positive. All methods used in the pilot project can be applied. As a result of the anonymisations, it was possible to concentrate the focus on applicants' qualifications, which tended to be evaluated as positive by those responsible in personnel departments.

As to the question posed by the Committee of Experts with regard to any methods adopted:

- a. to seek the co-operation of employers' and workers' organisations and other appropriate bodies in promoting the acceptance and observance of the above policy of non-discrimination, as well as
- b. to ensure the acceptance and observance of the above policy through educational efforts,

we are in a position to make the following statement:

The Federal Government provides information in the federal service on the Federal Act on Gender Equality and on the statutes that are related to it. An attractive brochure has been drawn up containing both an overview of equality-related developments in the federal service from 1986 to 2006 and a presentation of the statutory texts with explanations in a manner that is attractive and legible. This brochure is regularly revised and sent to persons responsible in personnel departments and equality commissioners. It is currently being examined whether, additionally, further training is expedient and needed for this target group.

Furthermore, the Federal Government provides additional information on its websites with regard to the Federal Act on Gender Equality. One finds here in particular a constantly-growing list of questions and answers answering potential questions of those responsible in personnel departments, equality commissioners and other persons in employment. Additionally, the Federal Government gives the supreme federal authorities information on topical interpretation questions on the Federal Act on Gender Equality in circulars where necessary.

It should also be stressed that the latest current experience report (2010) was drawn up for the first time with academic support, and was presented together with the report on the Federal Act on Appointment to Bodies. The reports are also available together in a single brochure, providing a useful overview of the changes in an attractive inter-departmental comparison and provide a motivation towards independent measures through the exemplary presentation of best practice examples.

It is possible to refer here to the abovementioned pilot project of the ADS entitled "Anonymised application procedures". What is more, the ADS provides on its homepage [www.antdiskriminierungsstelle.de](http://www.antdiskriminierungsstelle.de) a guideline for enterprises, as well as a variety of handouts, so that employers can obtain extensive information regarding the existing regulations on the protection of persons in employment against discrimination.

To promote the dialogue with the social groups, the ADS is working in accordance with section 30 of the General Anti-Discrimination Act with the advisory council, on which workers' representatives are also represented, as are employers' associations.

The Committee of Experts also posed the question of whether nationals of other States Parties may be employed in the public service, local government and so on, in posts that are not concerned with national security, exercise public authority or protect public order and security.

This question can be answered as follows:

There are two status groups of persons in employment in the public service in Germany, namely civil servants (*Beamte*) and public employees (*Tarifbeschäftigte*). The exercise of public authority as a constant task is as a rule to be assigned to civil servants (Art. 33 para. 4 of the Basic Law). The tasks covered by the question are hence carried out as a matter of principle by public employees. There are no collective provisions making employment in the public service of the Federation conditional on nationality. The same also applies to the Federal *Länder* and municipalities. Nationals of other State Parties may hence be employed in the German public service to exercise public authority.

### **Paragraph 3 – Free employment services**

A two-tier system of state employment policy remains in place: employment promotion in accordance with Book III of the Social Code as a contributory insurance system, as well as the system of “basic security benefits for job-seekers” financed from taxes in accordance with Book II of the Social Code. In this regard, the statements contained in the 25th Report of the Government of the Federal Republic of Germany remain valid unless stated otherwise below.

### **Employment promotion in accordance with Book III of the Social Code**

#### Placement work of the employment agencies

The information as to the percentage of the market represented by the public employment services as a percentage of the total number of persons recruited on to the labour market requested by the Committee of Experts cannot be provided because no data are collected on appointments on the labour market.

Unemployed persons leaving the system and (previously unemployed) participants entering promoted employment (legal target group of Book III of the Social Code)

Characteristic	Leaving unemployment				
	Total	Including (col. 1)			
		in gainful employment	in employment on the first labour market	incl.: (col. 3)	
				placed by Federal Employment Agency	in employment on the second labour market
1	2	3	4	5	
<b>Annual total 2007</b>					
Total	4,179,984	1,913,067	1,704,312	159,140	15,195
Men	2,214,979	1,140,327	1,000,418	97,415	8,661
Women	1,965,005	772,740	703,894	61,725	6,534
under 25	964,295	453,980	414,410	50,550	3,435
25 to under 50	2,294,611	1,160,315	1,028,126	87,420	3,937
50 and older	921,076	298,772	261,776	21,170	7,823
<b>Annual total 2008</b>					
Total	4,015,680	1,815,857	1,622,921	202,066	6,597
men	2,146,527	1,082,769	954,719	122,840	3,825
women	1,869,153	733,088	668,202	79,226	2,772
under 25	920,241	413,409	377,291	61,012	2,310
25 to under 50	2,258,298	1,112,532	984,761	113,037	1,824
50 and older	837,139	289,916	260,869	28,017	2,463
<b>Annual total 2009</b>					
Total	4,334,910	1,859,785	1,640,797	197,291	4,915
men	2,517,364	1,154,312	1,004,514	117,804	3,037
women	1,817,546	705,473	636,283	79,487	1,878
under 25	963,997	400,373	359,269	55,708	1,547
25 to under 50	2,461,616	1,151,132	1,006,942	114,286	1,269
50 and older	909,297	308,280	274,586	27,297	2,099
<b>Annual total 2010</b>					
Total	4,163,759	1,973,690	1,737,881	254,358	2,042
men	2,430,811	1,238,841	1,079,080	161,490	1,340
women	1,732,948	734,849	658,801	92,868	702
under 25	912,095	412,391	375,573	72,517	889
25 to under 50	2,300,477	1,206,677	1,047,654	142,153	467
50 and older	951,186	354,622	314,654	39,688	686

Source: Federal Employment Agency; version August 2011

Utilisation rate of the employment agencies

Year	Jobs subject to mandatory social insurance leaving system	Commenced employment relationships subject to mandatory social insurance <sup>1)</sup>	Utilisation rate in % (Col.2 / Col.3)
2007	1,871,765	7,621,362	24.6
2008	1,810,375	7,576,718	23.9
2009	1,499,130	6,929,560	21.6
2010	1,728,180	7,471,025	23.1

Source: Federal Employment Agency; version August 2011

Placement rate (legal target group of Book III of the Social Code)

	2007	2008	2009	2010
Total	8.8	11.7	11.0	14.0
men	9.2	12.2	10.8	14.4
women	8.3	11.1	11.4	13.4
50 and older	6.9	9.1	8.4	11.5

Source: Federal Employment Agency; version August 2011

Duration of unemployment in weeks (legal target group of Book III of the Social Code)

Year	Average completed duration of unemployment	Average completed duration on leaving for gainful employment
2007	27.1	16.7
2008	23.0	14.7
2009	18.1	13.9
2010	19.1	14.7



### Organisation of the placement provided by the employment agencies

The statements contained in the 25<sup>th</sup> Report of the Government of the Federal Republic of Germany remain valid.

### Accompanying measures for job-seekers in Book III of the Social Code

In order to make the tools for the support of the placement work even more effective, Germany has re-orientated core tools available in employment services in terms of employment policy as per 1 January 2009, and considerably reduced the bureaucracy involved. At the same time, with the newly-introduced placement budget the placement specialists in situ have been provided with a tool to support application for and taking up of employment in a manner that is flexible, tailored to needs and unbureaucratic in individual cases. In return, a large number of highly-regulated individual benefits were abolished.

The placement budget hence offers considerable latitude for individual promotion in order to be able to grant various types of assistance in individual cases. The legislature has foregone making detailed stipulations on possibilities for promotion. It is necessary in individual cases to clarify with the placement and advisory staff the concrete need for support and the individual assistance from the placement budget which is to be applied for.

This is conditional on the promotion being necessary to eliminate a concrete obstacle when applying for or taking up employment and the employer not providing such benefits. The amount of the promotion must furthermore be appropriate.

The promotion can also be granted for application for or taking up of employment in a Member State of the European Union, in a State of the Agreement on the European Economic Area or in Switzerland which is subject to mandatory social insurance. This is conditional on an intention to exercise the employment for at least 15 hours per week.

The possibilities open to the public employment services were also expanded with the same aim in mind to commission third parties with implementing measures to enable vocational integration. Whilst the Federal Government set precise requirements in the past regarding the design of such measures, now only those goals which are to be pursued with the measures are defined by law: introduction to the training and labour market; establishment, reduction or elimination of obstacles to placement, placement in employment subject to mandatory social insurance, introduction to self-employed work and the stabilisation of taking up employment.

Accompanying measures for job-seekers in figures (legal target group of Book III of the Social Code)

Employment policy tools  Instrumente der Arbeitsmarktpolitik	Number (annual average)							New participants/approvals (annual total)						
	absolute				year-on-year change in %			absolute				year-on-year change in %		
	Bestand (Jahresdurchschnitt)							Zugang/Eintritte/Bewilligungen (Jahressumme)						
	absolut				Veränderung zum Vorjahr in %			absolut				Veränderung zum Vorjahr in %		
	2010	2009	2008	2007	2010	2009	2008	2010	2009	2008	2007	2010	2009	2008
Benefits in support of placement	78.501	124.994	77.476	44.189	-38,8	61,3	75,3	1.900.690	1.980.745	1.859.051	1.538.740	x	x	x
Placement vouchers – disbursed after six weeks	x	x	x	x	x	x	x	29.784	27.841	29.741	33.483	7,0	-6,4	-11,1
Commissioning of third parties with placement (processing of remaining cases)	37	58.695	68.797	21.277	-99,9	-17,6	223,3	-	108.194	253.955	120.735	-100,0	-57,4	110,3
Institutions commissioned with integration measures	74	1.479	8.679	22.912	-95,0	-83,0	-82,1	-	1.872	5.253	74.101	-100,0	-84,4	-92,9
Support for advice and placement (to 31.12. 2008)	x	x	x	x	x	x	x	-	93.985	1.370.102	1.308.441	-100,0	-93,1	4,7
Placement budget	x	x	x	x	x	x	x	1.211.178	1.084.712	-	-	11,7	x	x
Activation and vocational integration measures incl. with an employer	76.389	66.820	-	-	14,3	x	x	659.728	644.181	-	-	2,4	x	x
	6.998	7.815	-	-	-10,8	x	x	272.221	285.903	-	-	2,4	x	x
Employment-accompanying benefits	238.289	245.138	259.350	293.079	-2,8	-5,5	-11,5	297.131	351.199	476.898	460.573	-15,4	-26,4	3,5
<b>Promotion of dependent employment</b>	<b>94.758</b>	<b>112.310</b>	<b>95.245</b>	<b>75.877</b>	<b>-15,6</b>	<b>17,9</b>	<b>25,5</b>	<b>150.619</b>	<b>214.091</b>	<b>357.571</b>	<b>334.650</b>	<b>-29,6</b>	<b>-40,1</b>	<b>6,8</b>
Integration allowances	55.107	72.048	62.170	50.293	-23,6	15,9	23,6	104.431	142.523	129.838	123.387	-26,7	9,8	6,2
Integration allowances for persons with serious disabilities	8.806	9.186	9.204	8.224	-4,1	-0,2	11,9	6.806	7.386	8.526	8.128	-7,9	-13,4	4,9
Integration voucher	5.003	3.829	857	-	30,7	347,0	x	5.435	5.425	2.763	-	0,2	96,3	x
Security of remuneration for elderly persons	17.085	13.943	11.712	9.047	22,4	19,1	29,5	18.379	11.830	11.457	11.888	55,4	3,3	-3,6
Allowance towards remuneration for vocational further training of those in employment	8.688	12.342	8.032	2.838	-29,8	53,7	183,3	15.388	37.871	29.627	15.186	-59,4	27,8	95,4
Other promotion of dependent employment incl. personal service agencies	92	983	3.270	6.478	-90,5	-70,5	-40,3	200	9.058	175.382	178.103	-97,8	-94,8	-0,4
	52	285	912	2.314	-80,2	-71,0	-80,8	141	821	2.852	6.384	-82,8	-89,0	-58,5
	-	535	2.020	2.928	-100,0	-73,5	-31,0	-	134	3.695	5.446	-100,0	-96,4	-32,2
Recruitment allowance for business start-ups	-	116	272	235	-100,0	-57,3	16,7	-	28	398	384	-100,0	-93,0	3,8
Recruitment allowance for substitution (job rotation)	x	x	x	x	x	x	x	-	8.001	168.476	163.870	-100,0	-95,3	2,8
Mobility assistance	39	48	87	3	-18,1	-28,8	x	59	72	141	19	-18,1	-48,9	x
Skill-building allowance for younger employees	143.531	132.828	164.106	217.201	8,1	-19,1	-24,4	146.512	137.108	119.325	125.923	6,9	14,9	-5,2
<b>Promotion of self-employment</b>	<b>143.531</b>	<b>128.239</b>	<b>123.482</b>	<b>92.175</b>	<b>13,7</b>	<b>2,2</b>	<b>34,0</b>	<b>146.512</b>	<b>137.108</b>	<b>119.325</b>	<b>125.923</b>	<b>6,9</b>	<b>14,9</b>	<b>-5,2</b>
Start-up subsidy	-	-	-	3.148	x	x	-100,0	-	-	-	-	x	x	x
Transitional benefit	-	6.589	40.624	121.878	-100,0	-83,8	-86,7	-	-	-	-	x	x	x
Business start-up subsidies (processing of remaining cases)	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Source: Federal Employment Agency, version August 2011

**Basic security benefits for job-seekers in accordance with Book II of the Social Code**

Unemployment assistance and social assistance have been combined to form one single assistance benefit with the introduction of basic security benefits for job-seekers in accordance with Book II of the Social Code as per 1 January 2005. The institutions responsible for the one-stop benefit have been from the outset the Federal Employment Agency and the local authorities. By the end of 2010 and in 2011, the institutions carried out/are carrying out the tasks of basic security benefits for job-seekers in the models of the joint agencies, the separated execution of tasks and licensed local authority agencies (option model).

Following on from the case-law of the Federal Constitutional Court in 2007, which declared the model of the joint execution of tasks through the formation of a joint agency not to be compatible with the Basic Law, the organisational structures were refined in the reference period. With the Act Refining Basic Security Benefits for Job-Seekers (*Gesetz zur Weiterentwicklung der Grundsicherung für Arbeitsuchende*) of 3 August 2010, the so-called Jobcenter

reform was completed in the sense that the Federal Employment Agency and the municipalities remained the institutions responsible for basic security benefits, but these now carry out the tasks of Book II of the Social Code in joint institutions with greater scope for discretion at local level. The joint institutions carry out the tasks in their own name for the institutions, whilst it is possible to build on the positive experience of the previous work in the joint agencies and hence also a uniform, customer-orientated service will continue to be provided in future. An assembly of institutions is formed with each joint institution which coordinates the local labour market and integration programme of basic security benefits for job-seekers between the two institutions, namely employment agency and the municipality.

The option model which was previously provided for as an experimental clause with a sunset clause limiting its application to the end of 2010 was confirmed (in 67 municipalities) and moderately expanded, so that in future 25 percent of the institutions executing the tasks are given the option as licensed local authority agencies to carry the tasks of Book II of the Social Code out on their own responsibility (from 2012 in up to 108 municipalities). There is no longer any provision for the separated execution of tasks which is practiced in a total of 21 municipalities from 1 January 2012 onwards.

Support is received by the local stakeholders both in the joint institutions and in the special facilities with the licensed local authority agencies through local advisory councils and commissioners for equal opportunities on the labour market. The local advisory councils provide advice in the selection and design of the integration tools and activities. They particularly consist of representatives of the independent welfare institutions, employers and workers, as well as the chambers and organisations of the professions. The commissioners for equal opportunities on the labour market provide support and advice in questions related to the equality of women and men in the basic security benefits for job-seekers, in promotion of women, as well as in the reconcilability of family and work, in particular in questions related to advice, integration into work and training, as well as the vocational reintegration of women and men after a family phase.

#### Participation by the job centres in the compensation processes on the labour market

148,398 unemployed persons belonging to the legal target group of Book II of the Social Code were placed on the first labour market in 2010 by institutions of basic security benefits for job-seekers.

The placement rate, which indicates to what degree employment services have contributed through selection and proposal to the taking up of employment by unemployed people, was 16 percent. The measured figure cannot however portray the total degree of participation of the employment agencies in the compensation process of the labour market. The participation of

employment agencies/institutions of the basic security benefits in the establishment of an employment relationship cannot be covered with a strict definition of placement. Amongst other things the self-enquiry facilities provided by the Federal Employment Agency, the advisory services, the “*Jobbörse*” (employment listings) information platform, the consultation of third parties, various types of financial assistance towards job-seeking, and also the placement voucher for taking up employment, are increasingly making a contribution over and above classical placement via selection and proposal.

Total	Leaving unemployment in the legal target group of Book II of the Social Code				
	Total	incl. (col. 1)		incl.: (col. 3) placed by the Federal Employment Agency/Jobcentre	into employment on the second labour market
		into gainful employment	into employment on the first labour market		
	1	2	3	4	5
<b>Annual total 2007</b>					
Total	4,564,094	1,523,744	892,635	110,037	575,060
men	2,561,528	962,178	574,889	73,825	346,595
women	2,002,362	561,537	317,725	36,208	228,457
under 25	860,283	258,416	137,975	18,063	110,791
25 to under 50	2,894,197	1,038,289	657,886	77,695	340,496
50 and older	809,091	227,026	96,764	14,276	123,770
<b>Annual total 2008</b>					
Total	4,586,793	1,515,696	848,066	121,416	616,641
men	2,520,070	932,583	530,851	80,100	365,291
women	2,066,673	583,109	317,212	41,315	251,350
under 25	808,160	244,179	124,093	18,239	111,245
25 to under 50	2,938,771	1,017,747	621,434	86,374	360,418
50 and older	839,546	253,762	102,533	16,800	144,976
<b>Annual total 2009</b>					
Total	4,693,337	1,348,206	728,406	102,852	570,668
men	2,563,100	816,261	436,085	62,758	345,126
women	2,130,235	531,945	292,321	40,094	225,542
under 25	822,279	226,875	106,682	16,224	111,238
25 to under 50	2,943,081	885,438	526,244	71,198	325,392
50 and older	927,731	235,889	95,476	15,429	134,038
<b>Annual total 2010</b>					
Total	5,243,256	1,479,491	904,682	148,398	521,535
men	2,926,517	936,123	580,950	100,565	316,795
women	2,316,739	543,368	323,732	47,833	204,740
under 25	884,502	235,784	127,988	22,754	99,145
25 to under 50	3,297,232	994,672	661,727	105,715	295,621
50 and older	1,061,367	249,030	114,962	19,927	126,769

Placement rate (legal target group of Book II of the Social Code)

	2007	2008	2009	2010
Total	9.1	11.6	11.2	16.0
men	9.5	12.3	11.4	17.1
women	8.3	10.4	10.8	14.2
50 and older	10.1	12.5	12.1	17.0

Duration of unemployment in weeks (legal target group of Book II of the Social Code)

The following evaluation does not contain any data from licensed local authority agencies.

Year	Average completed duration of unemployment	Average completed duration when transiting into gainful employment
2007	56.0	49.9
2008	53.0	47.0
2009	49.1	41.1
2010	47.7	39.7

Guidance activities for job-seekers in Book II of the Social Code

In accordance with section 1 of Book II of the Social Code, the basic security benefits for job-seekers are in particular to be orientated towards ensuring that

- need of assistance is avoided or eliminated by means of gainful employment, that the need of assistance is shortened or the extent of the need of assistance is reduced,
- the ability to work of the person in need of assistance is retained, improved/restored, gender-specific disadvantages of persons in need of assistance who are able to work are countered,
- the family-specific relationships of persons in need of assistance who are able to work who are bringing up children or looking after family members who are in need of long-term care are taken into account,
- disability-specific disadvantages are overcome.

Benefits for integration into work can be provided where they are necessary to avoid or eliminate, shorten or reduce the need of assistance for integration. When it comes to the benefits for integration into work, the aptitude, the individual situation, in particular the family situation, the provisional duration of the need of assistance and the lasting nature of the integration of persons in need of assistance who are able to work are also to be taken into account. Measures should be taken as a matter of priority which enable people to take up gainful employment directly.

The lion's share of the promotional benefits provided for by Book III of the Social Code can also be used within the legal target group of Book II of the Social Code. Moreover, tools such as integration bonus and work opportunities can be used for the integration of persons in need of assistance who are able to work. With the Act on the Reorientation of Labour Market Policy Instruments (*Gesetz zur Neuausrichtung der arbeitsmarktpolitischen Instrumente*), which came into force as per 1 January 2009, the integration bonus of Book II of the Social Code have been re-organised and the scope for discretion for the institutions of basic security benefits for job-seekers have been expanded vis-à-vis the law as it previously stood. In particular with the abovereferenced employment promotion tools of the placement budget, activation measures and vocational integration (cf. above), as well as with the newly-created independent promotion, those responsible at grassroots level are provided with flexible options for the work-integration support of persons in need of assistance who are able to work. Details can be found in the table below.

Tools of employment policy		Number (annual average)							In/out/approvals (annual total)						
		absolute				Year-on-year change in %			absolute				Year-on-year change in %		
		2010	2009	2008	2007	2010	2009	2008	2010	2009	2008	2007	2010	2009	2008
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
<b>Benefits in support of placement</b>		149,214	129,133	57,904	42,016	15.6	123.0	37.8	2,475,790	2,062,371	1,495,317	1,264,960	20.0	37.9	18.2
incl.	Placement vouchers – disbursed after six weeks	x	x	x	x	x	x	x	37,394	28,614	37,670	40,860	x	x	x
	Commissioning of third parties with placement (processing of remaining cases)	2,218	63,620	53,829	33,755	-96.5	18.2	59.5	1,310	105,784	189,772	123,806	-98.8	-44.3	53.3
	Institutions commissioned with integration activities	20	573	4,075	8,262	-96.5	-85.9	-50.7	22	732	2,809	21,457	-97.0	-73.9	-86.9
	Support for advice and placement (up to 31 December 2008)	x	x	x	x	x	x	x	3,054	117,522	1,265,066	1,078,837	-97.4	-90.7	17.3
	Promotion from the placement budget	x	x	x	x	x	x	x	1,473,163	1,260,334	-	-	16.9	x	x
	Participation in activities of activation and vocational integration	146,975	64,940	-	-	126.3	x	x	960,847	549,385	-	-	74.9	x	x
	incl. with an employer	7,399	6,368	-	-	16.2	x	x	216,650	168,622	-	-	28.5	x	x
<b>Employment-accompanying benefits</b>		126,976	126,256	111,332	99,734	0.6	13.4	11.6	204,380	217,156	432,522	402,662	-5.9	-49.8	7.4
	<b>Promotion of dependent employment</b>	<b>116,347</b>	<b>114,039</b>	<b>95,451</b>	<b>79,771</b>	2.0	19.5	19.7	<b>178,774</b>	<b>190,159</b>	<b>407,728</b>	<b>370,485</b>	-6.0	-53.4	10.1
	Integration allowances (incl. section 421f and section 421p of Book III of the Social Code)	66,785	64,211	65,959	61,843	4.0	-2.7	6.7	136,898	123,637	139,237	142,947	10.7	-11.2	-2.6
	Integration allowances for persons with serious disabilities (incl. section 421f of Book III of the Social Code)	4,540	4,083	3,669	2,371	11.2	11.3	54.8	4,266	3,705	3,974	3,317	15.1	-6.8	19.8
	Integration voucher	23	10	2	-	121.6	x	x	37	24	7	-	54.2	242.9	x
	Allowance towards remuneration in case of vocational further training of persons in employment	108	106	90	90	2.2	17.4	0.3	136	210	209	262	-35.2	0.5	-20.2
	Integration bonus – variant: employment	9,227	8,630	10,292	8,516	6.9	-16.1	20.9	27,504	20,571	25,014	22,072	33.7	-17.8	13.3
	Employment allowance in accordance with section 16c of Book II of the Social Code	35,072	35,216	11,051	76	-0.4	218.7	x	8,005	26,752	25,319	554	-70.1	5.7	x
	Other promotion of persons in dependent employment	592	1,783	4,388	6,877	-66.8	-59.4	-36.2	1,928	15,260	213,968	201,333	-87.4	-92.9	6.3
	incl. personal service agencies	183	425	721	1,298	-57.0	-41.0	-44.4	453	1,251	2,082	3,661	-63.8	-39.9	-43.1
	Recruitment allowance for business start-ups	4	791	2,635	3,187	-99.5	-70.0	-17.3	*	190	4,391	5,836	x	-95.7	-24.8
	Recruitment allowance for substitution (job rotation)	-	49	110	132	-100.0	-56.0	-16.3	-	20	160	186	-100.0	-87.5	-14.0
	Employment-accompanying integration assistance	202	334	765	2,257	x	-56.3	-66.1	*	113	578	3,905	x	-80.4	-85.2
	Mobility assistance	x	x	x	x	x	x	x	1,120	13,317	206,381	187,722	-91.6	-93.5	9.9
	Skill-building allowance for younger workers	203	184	157	3	10.0	17.3	x	340	369	376	23	-7.9	-1.9	x
	<b>Promotion of self-employment</b>	<b>10,629</b>	<b>12,216</b>	<b>15,881</b>	<b>19,962</b>	-13.0	-23.1	-20.4	<b>25,606</b>	<b>26,997</b>	<b>24,794</b>	<b>32,177</b>	-5.2	8.9	-22.9
	Integration allowance - variant: self-employment	10,629	12,216	15,881	19,962	-13.0	-23.1	-20.4	16,734	19,844	24,794	32,177	-15.7	-20.0	-22.9
	Non-monetary benefits for the self-employed in accordance with section 16c of Book II of the Social Code	-	-	-	0.00	x	x	x	8872.00	7,153	-	-	24.0	x	x

### **Private employment services**

The Federal Employment Agency has a task covering all of society in the context of services for the public to ensure a rapid, lasting balance between supply and demand on the labour market. Book III of the Social Code provides that the Federal Employment Agency itself is to carry out this task, but that it can also consult private third parties. As to their consultation, it has various employment policy tools available, including promotion of vocational further training in accordance with section 77 et seqq. of Book III of the Social Code, commissioning third parties with placement in accordance with section 46 of Book III of the Social Code and the placement voucher in accordance with section 421g of Book III of the Social Code. Certification and approval conditions differ from one employment policy tool to another.

A major employment policy tool is constituted by the measures for enhancement and vocational integration in accordance with section 46 of Book III of the Social Code. The legislature has defined five objectives in providing possibilities to deploy these measures (introduction to the training/labour market, establishment, reduction and elimination of obstacles to placement, placement in employment subject to mandatory social insurance, introduction to self-employed work and stabilisation of taking up employment). Several hundred thousand participants participate in these measures on an annual average (annual average number in 2009: 301,266 participants). The public employment services are free as to how they design and compose the measures in accordance with section 46 of Book III of the Social Code. They can specifically commission the institutions responsible for the activities – i.e. exclusively – with the placement of the allocated participants in employment or combine the legally-defined objective in holistic activities.

The possibility to commission third parties with the placement of unemployed persons is similar to the model in the United Kingdom. The measures to enhance vocational integration in accordance with section 46 of Book III of the Social Code are subject to the law on the award of public contracts. Persons seeking training, the unemployed or persons at risk of unemployment can at the initiative of the employment agency be allocated to a measure in accordance with section 46 of Book III of the Social Code for a specific duration. In accordance with the goals, it is possible with the measure to aim to place candidates in employment subject to mandatory social insurance. The institution receives a payment calculated in the competition-based procedure related to applicants which can be orientated towards both effort and success. Unemployed persons can require the employment agency to permit them to participate in a measure for enhancement and vocational integration if they are still unemployed six months after becoming unemployed. Certification of the third party who has been commissioned is currently not necessary. It is however to be introduced as an external approval procedure as per



1 April 2012 with the Act to Improve Integration Chances on the Labour Market (*Gesetz zur Verbesserung der Eingliederungschancen am Arbeitsmarkt*).

Private employment agencies are also regarded as third parties on the labour market. With the deregulation of private employment services in 2002, the obligation for private employment agencies to obtain authorisation was abolished. Private employment agencies have since then only needed to obtain a trading licence. Specific protective regulations governing the legal relations between job-seekers and private employment agencies are however still contained in Book III of the Social Code. These are above all provisions regarding the placement contract to be concluded between the agency and the job-seeker regarding the maximum amount of remuneration to be paid to the job-seeker in the event of success, on the ineffectiveness of specific agreements, as well as on the treatment of data. These protective provisions only apply to placement contracts with job-seekers; the private employment agencies are free to make their own arrangements when it comes to the design of the contracts and establishment of remuneration claims with their clients.

The private employment agency sector has developed quality standards which have been applied since 2003 on the basis of a voluntary undertaking.

With the deregulation of private employment services, the placement voucher in accordance with section 421g of Book III of the Social Code was introduced for a limited time, and its content has been amended since then on several occasions. The placement voucher enables unemployed people to commission private employment agencies of their choice with placement in work under certain preconditions, whilst the remuneration of the private employment agency in the event of success is carried out by the employment agency or institution of basic security benefits. The disbursement of the first instalment of Euro 1,000 for the placement voucher is not due until after six weeks of employment; the disbursement of the second instalment of Euro 1,000 after six months in the employment relationship. Job-seekers can also consult a private employment agency without a placement voucher, but then they have to pay the agreed remuneration, the amount of which is stipulated by the law, in case of success. Taking up the services of a private agent (with or without a placement voucher) is voluntary. The introduction of the placement voucher has led to greater competition between public and private employment services. The Act to Improve Integration Chances on the Labour Market is to integrate the placement voucher in accordance with section 421g Book III of the Social Code as a new "activation and placement voucher" among the measures to enhance vocational integration from 1 April 2012, and hence it is no longer to be time limited.

Certification of labour market service-providers is currently only mandatory in Germany for vocational further training. It is however to be introduced with the Act to Improve Integration

Chances on the Labour Market as per 1 April 2012 in the shape of an external approval procedure for all labour market service-providers, and to largely correspond to the regulations already applicable for vocational further training.

#### **Paragraph 4 - Vocational guidance, training and rehabilitation**

##### Vocational guidance:

Vocational guidance is offered in accordance with section 29 of Book III of the Social Code by the employment agencies as a mandatory benefit to all persons seeking advice. Information regarding changes vis-à-vis the last report is provided in the observations regarding Article 9.

##### Training:

Various amendments of Book III of the Social Code were carried out from 2007 to 2010 in order to promote vocational training:

It has been possible since 1 October 2007 for vocational orientation measures to also take place outside lessons and to last for more than four weeks. This arrangement was initially introduced on a fixed-term basis to the end of 2010, and was extended in 2010 until the end of 2013. At the same time, introductory training (long-term in-company internships), which was trialled as a special programme from 2004 to 2007, was included in the law on employment promotion as a standard benefit.

The training bonus (time limited to the end of 2010) and the model work integration guidance (time limited to the end of 2011) came into force at the end of August 2008. The training bonus served to promote employers who offered additional training places for applicants from earlier school-leaving years. This arrangement was not extended because of considerable knock-on effects. The career entry support programme supports young people from the penultimate school year onwards until they enter vocational training in achieving a school-leaving qualification, in work orientation, when seeking a training place and in stabilising the training relationship.

The legal right to preparation to catch up on *Hauptschule* (secondary general school) graduation within training measures in preparation for work was introduced as per 1 January 2009 with the reorientation of the employment policy tools.

The 23rd Act Amending the Federal Educational Assistance Act (23. *BAföG-Änderungsgesetz*), served to increase the needs rates (+ 2 percent) and the exemptions (+ 3 percent) in the vocational training grant (for trainees), as well as training benefit for persons with disabilities,

parallel to benefits under the Federal Educational Assistance Act (for students and school pupils) by effect as per 1 August 2010.

The Federal Employment Agency has developed a concept on behalf of the Federal Government in order to optimise young people's chances on the labour market in the field of basic security benefits by improving cooperation between the job centres, the employment agency and youth welfare. The goal is to promote cooperation between all players responsible for the labour market integration of young people drawing benefits set out in Book II of the Social Code in situ in order to appropriately interlink their resources for young people. The trialling of better interface work in initially six model regions commenced in August 2010, in line with the concept of the Federal Employment Agency, under the working title "Working alliance for youth and work". These model regions already had established cooperation structures. In cooperation with the six locations, the Federal Employment Agency has developed a toolbox intended to contribute towards improved interface management in other regions. Job centres, employment agencies and youth welfare offices are working intensively towards guaranteeing care for young people on a one-stop basis in a number of model regions which has now grown to 20.

#### Equal access:

The preconditions for access to promotion of training for young foreigners who already have a long-term residence entitlement, or have been living in Germany for a long time and have a permanent perspective to remain, were relaxed as per 1 January 2008.

Since 1 January 2009, the provisions of section 63 Book III of the Social Code have also covered foreigners whose deportation has been temporarily suspended (section 60a of the Residence Act [*Aufenthaltsgesetz*]) who have their place of residence in Germany.

The Federal Government has been helping mothers to get back to work after an extended family-related interruption with the **Action Programme entitled "Job Prospects for Mothers Returning to Work"** in cooperation with the Federal Employment Agency since 2008. The programme supports in a career-orientated manner the transition back to work from family-related non-employment, motivates men to play an active role in the process of enabling their spouses and partners to return to work, informs enterprises and companies, shows opportunities for employers and creates an awareness of the potential for women going back to work, and also improves the framework for a return to work in local networks.

Various initiatives are being bundled under the umbrella of the Action Programme: Within the model programme, which is being funded by the ESF, and with the involvement of spouses and partners, enterprises and local networks, new tools and procedures are being trialled and

evaluated in counselling, training and integration services for people getting back into work. More than 7,800 individuals, largely from the so-called silent reserve, have already been reached by the information and counselling services. More than 3,500 individuals have been given intensive assistance in getting back to work via individual coaching.

Expert academic reports in accompanying research and active approaches to enterprises and industrial associations at fairs and specialist congresses provide support in the broad-based socio-political debate on the topic of getting back to work. As a navigator, the [www.perspektive-wiedereinstieg.de](http://www.perspektive-wiedereinstieg.de) guiding portal compiles information regarding getting back to work. With a “calculator for getting back to work”, it makes it easier for those women who might like to get back to work to calculate the long-term income outlook and the impact on their own security in old age arising from “Job Prospects for Mothers Returning to Work” (i.e. going back to work which is subject to mandatory social insurance).

## **Article 9 - The right to vocational guidance**

### Access to the services and sectors offering the service

There are no changes in comparison to the last report. Vocational guidance is offered by the employment agencies free of charge as a mandatory benefit to all persons seeking advice in accordance with sections 29 et seqq. of Book III of the Social Code.

### Measures to improve the vocational guidance services:

The Federal Employment Agency has developed a new advice concept since the last report which redefines the methodical basis for the advice that it offers. The Federal Employment Agency is to enhance workers' skills – and hence the professionalism and quality of the advisory work. The concept has been drafted since 2008 within a project, and is in the implementation phase.

As a specialist concept within the organisation, the Federal Employment Agency's advice concept focuses on the work of both the placement staff who work on an advice-orientated basis and on those who work on a worker-orientated basis. It distinguishes between

- 1) vocational guidance which processes, regardless of a placement mandate, questions related to the choice of occupation, careers planning, school and university education (orientation and decision-making advice), and
- 2) advice which accompanies and supports the direct process of integration into work and training as a part of placement (advice accompanying integration).

The concept describes the respective advisory processes and defines quality standards. Above all, however, it offers a highly-practical inventory of methods which supports advisors in their everyday work with their clients.

The fundamental concept and constituting elements apply to worker-orientated advice in the Federal Employment Agency as a whole. This provides an overall understanding, a joint structure and common forms of portrayal. The concrete drafting of advice for orientation and decision-making, and the integration-accompanying advice, however took place separately for work with young people, with adults and with persons with disabilities. This offered an opportunity to integrate typical case constellations and approaches, and hence to remain closely orientated towards the practical.

A central element of implementation is a skill-building process which is to be completed at the beginning of 2012. For the first time in the Federal Employment Agency, all worker-orientated placement and advice specialists, as well as their direct superiors, are involved in a skill-building process of "advice" (16,000 participants).

#### Measures for persons with disabilities

Vocational guidance provides an extensive, specific range of information and advice services for special groups of individuals such as persons with disabilities. In addition to multimedia information and orientation aids for school-leavers, there are printed and electronic media for multipliers and other persons dealing with the training of young people with a disability. Persons with disabilities are cared for and placed by specially-trained advisors, the so-called teams for those undergoing rehabilitation.

#### Measures of vocational guidance which have been taken to promote vocational and social advancement and information within the vocational guidance services

Reference is made to the information provided the last report.

#### Public expenditure and the number of specialist advisers

It is only possible to provide information regarding vocational guidance in education. This is understood as vocational guidance in accordance with section 30 of Book III of the Social Code. Where vocational guidance takes place as employment counselling, it is in most cases a part of the placement activities of the employment services. The staffing capacities accounted for by "counselling" are not separately recorded.

The total expenditure for vocational guidance specialists can be roughly calculated on the basis of staffing structure data and the average staff cost rates, as well as the flat material costs of a workplace, including the IT share.

### Spending on vocational guidance

Rough calculation of total spending on the basis of average staff cost rates and the flat material cost of a workplace, including the IT share

Federation

Time series 2007 to 2010 (reference month May)

	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
not incl. advisors for people undergoing rehabilitation or persons with serious disabilities in mill. Euro	190	199	213	224
incl. advisors for people undergoing rehabilitation or with serious disabilities in mill. Euro	245	257	272	287

### Persons employed in vocational guidance

Employees in legal target area of Book III of the Social Code

Full-time equivalents

Federation

Time series 2007 to 2010 (reference month May)

		<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>
Overall result	Area of activity	3,286	3,418	3,662	3,799
Academic occupations					
<a href="#">Advisors(focusing on career orientation)</a>	Aa I	725	751	754	790
Rehabilitation/serious disabilities					
<a href="#">Advisors(focusing on rehabilitation)</a>	Aa IV	768	795	820	854
U25					
<a href="#">Advisors(focusing on career orientation)</a>	Aa IV	1,793	1,872	2,088	2,155

Source: coPW IT procedure (2007 to 2009) and ERP-BI (from 2010 onwards) (personnel structure data, as per 16 July 2011); ID 91

### Number of individuals benefiting from vocational guidance

No data are available regarding “recipients of vocational guidance”, on either the training or the labour market. The number of applicants per training place on the “training market” could be estimated (most recently in the year under report 2010/2011: 538.245).

No information has been available regarding so-called “advice-seekers” since the Federal Employment Agency’s computer system was converted from Compas to VerBIS. The statistics department of the Federal Employment Agency is working to be able to provide figures on this once more, at least for the training market.

Geographic and institutional spread of the vocational guidance services, as well as access to vocational guidance

Reference is made to the information provided the last report.

**Article 10 – The right to vocational training**

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

Correction of the Committee of Experts' statement regarding the measures to make access to training easier and their effectiveness:

The expenditure on active employment measures for young people in the transition from school to training should have referred to “billions” and not only to “millions”. There was presumably a translation error.

**Paragraph 2 - Promotion of apprenticeship**

Reference is made to the information provided in the last report.

The introductory training was taken on from the special programme entitled “Introductory Training for Youths (EQJ)” as per 1 August 2007 as a standard benefit in employment promotion law (section 235b of Book III of the Social Code). An average of 14,307 young people took part in the scheme in 2010. Moreover, cf. the list of legal amendments under Article 1 paragraph 4 (b).

The Federal Employment Agency and the basic security benefit agencies funded 74,170 young people in extra-company training in 2010, averaged over the year.

In the case of the vocational training grant, trainees who are undergoing in-company training can receive a cost-of-living allowance depending on their income. There is a legal right to the vocational training grant. The benefit is funded via employment promotion law from contributions towards unemployment insurance. 165,961 young people were promoted with a vocational training grant in 2010, averaged over the year (not including those undergoing rehabilitation).

In addition to measures orientated towards juveniles of both genders, initiatives have also proven their value addressing girls or boys, respectively, in order to expand the spectrum of training and occupational choices, and to arouse an interest in more “untypical” jobs (cf. also contribution regarding Article 1, paragraph 1).

A highly-successful initiative to expand the training and job spectrum of young women is **Girls' Day - Future Prospects for Girls**. The Federal Government together with the ESF have been promoting the nationwide activity day Girls' Day - Future Prospects for Girls since 2001. Every year in April, girls from 5-10th grades can familiarise themselves on this day with jobs in which they have so far been underrepresented, such as in natural science and technology. A number of enterprises and institutions growing every year is involved with events enjoyed by more than one million girls so far. Young women's spectrum of occupation choices has already widened as a result of Girls' Day. 10 percent of enterprises have already been able to take on women as a result of their Girls' Day activities. Moreover, repeated participation in Girls' Day exerts a positive influence on the corporate culture and leads to a measurably greater awareness of equality. A total of 125,512 girl pupils took part in Girls' Day 2011, making up 5.5 percent of the potential target group.

In order to expand the training and job spectrum of young men, the **Boys' Day - Future Prospects for Boys**, promoted by the Federal Government and from ESF funds, was implemented on a nationwide basis for the first time in 2011. The voluntary day of activities for boys targets all boys in grades 5-10. A total of 34,526 pupils took part in the first Boys' Day, held on 14 April 2011. In comparison to the total number of pupils in these grades, this accounts for participation of 1.4 percent. A large number of offers enabled the juveniles to gain an impression of jobs of which they would otherwise be unlikely to gain any insight, such as in teaching, caring or social fields.

The Federal Government's **Initiative to Strengthen Youth**, finally, supports and promotes the social, school and vocational integration of disadvantaged young people with and without a migration background.

It has been possible to breakdown the newly-concluded training contracts by gender since 2002 in a survey carried out by the Federal Institute for Vocational Education and Training. At that time, the share of young women among those taking up training was 43.4 percent. Of the 560,073 newly-concluded training contracts of 2010, 58.1 percent were concluded with young men and 41.9 percent with young women. Unlike in both previous years, in which the fall in the number of contracts primarily focussed on male juveniles, the number of training contracts concluded with young women fell by as many as -2.9 percent year-on-year in 2010. The number of new contracts concluded with young men, by contrast, rose by +0.9 percent nationwide. The Federal Government will be continuing to track these developments.

Women are not only less common in dual training, they also focus on fewer training occupations. 75.9 percent of all women taking up training in 2010 were found in only 25 jobs.



When it came to young men, the 25 jobs most frequently chosen by male juveniles accounted for 59.8 percent of all men taking up training. The jobs in which young men were most heavily represented included vehicle mechanic, retail sales person, industrial mechanic, chef and electronic technician. Sales assistant is the job most frequently taken up among young women, followed by retail sales person, bank clerk, specialist healthcare employee and hairdresser.

The partners **of the National Pact for Career Training and Skilled Manpower Development** continued in 2010 to make their contribution towards improving the situation on the training market. The voluntary undertakings on the part of industry to create new training posts and to recruit new training companies were exceeded in 2010 once again. Instead of the target of 60,000, 70,300 new training places were acquired. Instead of the anticipated 30,000, 42,800 new companies declared themselves willing to engage in training. Companies provided 29,010 places for introductory training. Almost 22,500 juveniles had been placed in introductory training by January 2011. The training rate in the federal administration in 2010, at 7.7 percent of persons in employment subject to mandatory social insurance, was once more higher than the commitment of 7 percent given in the Pact (previous year: 7.6 percent). The Federation and the *Länder* continued the training programme in the East in 2009/2010 with a total of 5,000 training places. The Federal Employment Agency promoted 40,000 persons entering extra-company training in 2010 (2009: 41,000, 2008: 40,300, 2007: 51,400). All juveniles who appeared for post placement received at least one offer, and of these the vast majority (98 percent) received a training place or introductory training.

The Training Pact was extended to 2014 in 2010, and its content refined against the background of the changed framework. Central measures of the new Pact agreement here are the new initiative of the Federal Government “Graduation and connection – education chains to conclusion of training”, as well as the 10,000 company-implemented introductory training courses per year specifically for juveniles in need of special assistance (EQ Plus) provided by industry for the first time. In order to ensure that the demand for specialists is met, the new Pact agreement however also aims to recruit more high-performance juveniles for in-company training.

With the **JOBSTARTER** training structure programme, the Federal Government is promoting innovation in vocational training. JOBSTARTER hence makes a major accompanying contribution towards the activities of the training pact. The Federal Government is providing funding of Euro 125 million for the programme up to 2013, including funding from the ESF. JOBSTARTER is promoting projects supporting additional in-company training places and their occupation in the regions. By means of better cooperation between the stakeholders in situ, regional responsibility is enhanced in vocational training and at the same time a contribution made towards structural development. In the fifth round of promotion, JOBSTARTER particularly aims to sustainably safeguard the provision of specialists through in-company

training, opening up towards our partners in Europe and enhancing the attractiveness of dual training.

It has been possible to acquire roughly 56,700 training places in the JOBSTARTER programme to date, almost 39,000 of which were occupied precisely as needed (as per November 2011). In addition to the acquisition of training places, the quality and structure of the regional training situation was improved. For instance, it was possible to build up training structures for new and re-structured occupations in future-orientated sectors; training services for young parents were created with part-time training projects. Furthermore, it was possible to promote projects which led to the establishment of foundations in vocational training. Other projects are committed towards enhancing European training cooperation. A further focus lies in the promotion of projects which persuade self-employed people with a migration background to provide training and support them in carrying out the training.

In order to improve communications between schools, the transitional system and dual training, the Federal Government has coordinated with the *Länder* in launching the initiative entitled **“Graduation and connection – education chains to conclusion of training”** in 2010 with which school drop-outs are to be avoided, waiting periods in the transition system avoided and the supply of young specialists safeguarded through vocational training. To this end, three interlinked promotion tools are deployed:

1. potential analyses from 7th grade upwards,
2. practice-orientated work orientation measures from 8th grade upwards, as well as
3. guides to those getting into work for ongoing individual guidance and advice over a period of years for school pupils in need of nurturing.

The *Länder* have designated roughly 1,000 secondary general and specialist schools playing an active role in the special programme. Up to 30,000 pupils in need of nurturing at these schools are to be accompanied on their path to training. Roughly 700 of the roughly 1,000 planned vocational training coaches have now taken up their work. Furthermore, approx 1,000 senior experts (practitioners with work experience) are being deployed to provide guidance during training and to avoid drop-outs from training. In addition to these activities, the Federal Employment Agency is promoting roughly 1,200 vocational training coaches in accordance with section 421s of Book III of the Social Code, who are working at roughly 1,000 other schools.

All in all, roughly Euro 481 million are available for the education chain initiative from funds of the federal budget until 2014.

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

Promotion of further training can be provided to workers if such training is necessary in order to provide them with vocational integration in case of unemployment or to avoid a risk of unemployment, or because they do not have a vocational qualification. "Unskilled" workers, who are eligible as a matter of principle, also included those workers who have a vocational qualification but have been in semi-skilled or unskilled employment for more than four years and who can presumably no longer be placed in the job for which they originally trained. The workers must have been advised by the employment agency or the job centre prior to commencement of participation. A training voucher is required to certify that the prerequisites for promotion are met. The promotion also covers the possibility of further training with a vocational qualification (retraining).

The training voucher, which as a rule is valid for three months, specifies the vocational goal, the skill-building foci and the planned maximum duration of further training. The training voucher is limited to the daily commuter area where appropriate measures are on offer. The participant can use the training voucher with a licensed provider of their choice who offers the authorised training goal. The training institutions are obliged to support participants in their efforts to be placed.

The following further tools are available to promote employed workers' skill-raising:

- Employers who release employed workers for further training to catch up on a vocational qualification can be promoted by the Federal Employment Agency through subsidies towards the remuneration for work. The subsidy can be paid up to the amount of the remuneration, including the employer's share of the total social insurance contribution. The subsidy towards the remuneration is to constitute an incentive for employers to support the further training of persons in employment. The promotion aims to enable persons in employment to avoid unemployment by engaging in skill-building activities at an early date.
- The promotion of the further training of older workers was expanded with the "Act to Improve the Employment Opportunities of Older People" (*Gesetz zur Verbesserung der Beschäftigungschancen älterer Menschen*) of 19 April 2007 such that, in companies with fewer than 250 employees (previously up to 100 employees), workers may already receive promotion of further training from the age of 45 (previously from the age of 50). This is intended to make it possible for small and medium-sized enterprises to provide vocational further training for their older workers and to improve such workers' employability. Skills-

related dismissals can be prevented by acquiring up-to-date skills. Older workers' further training costs are refunded when they take part in a training activity recognised by the employment agency as eligible for subsidy if they are released by their employer on pay to attend the further training. The employment agency pays a subsidy towards necessary outside accommodation and childcare costs in individual cases.

- In order to enhance skills among the group of individuals of the low-skilled and elderly persons, the Federal Employment Agency continued the programme entitled "Continued education of low-skilled and employed elderly workers in companies" (WeGebAU) in the reference period. 295,331 promotions were funded via this programme in the reference period. Roughly Euro 250 million were available for this in 2007 and 2008, respectively. In the context of the stimulus package, the funding in 2009 and 2010 was topped up to Euro 400 million per year and the target group of those eligible was expanded to include all workers whose vocational training or most recent publicly-promoted further training took place at least four years ago, this expansion being time-limited to the end of 2010. The programme is also being continued in 2011. Euro 250 million are still available for this, as in the years before the stimulus package.
- The efforts of the social partners to enhance the participation of employees and enterprises in further training are to be supported with the social partners' guidelines entitled "*Weiterbilden*" (further training), which entered into force on 16 April 2009. The promotion aims to implement collective agreements on skill-building and further training agreements reached by the respective social partners on further training. A total of Euro 140 million in ESF and federal funds are being provided for this until 2013. It is possible to promote measures to improve the framework for in-company further training and further training measures in companies.
- Sustainable strategies for personnel development are being developed in the programme entitled "*Rückenwind*" (tailwind), financed by the ESF and from federal funds, and trialled in the social-employment sector. Amongst other things, programmes in the area of on-the-job skill-building to improve and safeguard adaptability and employability, of older specialists and managers in particular, are eligible for promotion in this programme. The programme will run until 2013, equipped with Euro 60 million.

In order to soften the global economic crisis, the following employment policy provisions were adopted with the Act to Safeguard Employment and Stability (*Gesetz zur Sicherung von*

*Beschäftigung und Stabilität*) in Germany of 2 March 2009 which were time limited until 31 December 2010:

- Skilled employed workers are able to receive promotion from the Federal Employment Agency if their vocational qualification or their most recent publicly-promoted further training was at least four years ago. Parallel to this, the scope of application of the Federal Employment Agency's programme for "Continued education of low-skilled and employed elderly workers in companies" (WeGebAU) has been expanded (see above).
- In order to improve the employment and skill-building chances in the field of temporary employment, temporary workers are promoted in re-employment by taking on the further training costs.

For times of skill-building of workers during short-time working, the Federal Employment Agency refunds to employers the full social insurance contributions until March 2012 if workers expand their vocational skills during at least half the working time that is lost. As well as the enterprises, workers therefore also benefit from skill-building during short-time working. They acquire additional vocational skills increasing their chances to rise up, hence expressly improving their labour market potential. If skill-building measures are carried out as the employer is legally obliged to do (e.g. training courses in the field of health and safety at work), or which are in the exclusive or manifestly overwhelming interest of the enterprise (e.g. training to introduce a new series of products), half of the social insurance contributions are refunded by the Federal Employment Agency as they are with short-time working without skill-building.

The skill-building measures for beneficiaries of short time work allowance can also be subsidised by an ESF programme of the Federal Ministry of Labour and Social Affairs. The amount of the subsidy is from 25 to 80 percent of the eligible costs, and is in line with the nature of the skill-building, the size of the enterprise and the individual worker. The programme implemented by the Federal Employment Agency enables workers who work in the occupation which they have learned to participate where necessary in general further training during short-time working which is valuable on the labour market, as well as in more targeted training. The programme, which has a sunset clause limiting its validity until 31 March 2012, supplements the ESF promotion of skill-building activities whilst drawing short time work allowance for a transfer period.

A total in excess of Euro 10 billion was spent in the context of Book III of the Social Code and Book II of the Social Code on measures of vocational further training from 2007 to 2010.

The following can be stated with regard to the Committee of Experts' request for information on specific measures geared towards continuing training for the long-term unemployed, as well as information on the activation rate in this group of individuals:

With the Act on the Reorientation of Labour Market Policy Instruments of 21 December 2008, the preventive approaches of active employment policy were strengthened in order to prevent the risk of long-term unemployment for persons with placement obstacles. A central aspect here was the introduction of a legal right to the promotion of preparation on the subsequent acquisition of a *Hauptschule* (secondary general school) leaving certificate for juveniles in the context of pre-vocational training programmes, and in the context of vocational skill-building measures for adults who have no school-leaving qualification. This improves the chances of these people for integration on the labour market.

A further contribution towards reducing the long-term unemployment rate is to be made by the programme entitled "Initiative to Accompany Structural Change (IFLAS)", which the Federal Employment Agency launched in 2010. The programme funding targets low-skilled unemployed persons to receive those vocational qualifications or recognised sub-qualifications leading to a vocational qualification (modules) needed to meet the regional demand for specialist workers. In the framework of the programme, cohesive, certified modules are also being developed on a model basis for specific jobs leading to a recognised vocational qualification. This also makes it possible to create prospects for those low-skilled workers to gain a vocational qualification who cannot undergo the training all at once. Priority is to be allotted to promoting in-company and company-focused skill-building. Funding of Euro 250 million was available for this programme in 2010. It was possible to promote a total of 34,400 persons up to November 2010. The programme is also being continued in 2011, and its budget has been topped up to Euro 350 million for this purpose.

It should be pointed out in this context that, in the reference period from 2007 to 2010, both the structure of unemployment has improved in that the share accounted for by the long-term unemployed has fallen, and the total number of those affected by long-term unemployment has dropped, since the long-term unemployment rate has fallen:

The share accounted for by the long-term unemployed among those not in gainful employment fell markedly from 2007 to 2009 and rose slightly in 2010. By contrast, the long-term unemployment rate has fallen continually since 2005, from 5.9 percent to 3.4 percent in 2010. Looked at in detail, the share of the long-term unemployed among all persons not in gainful employment, and the long-term unemployment rate, developed as follows from 2005 to 2010:

	2005	2006	2007	2008	2009	2010
Share of the long-term unemployed among all persons not in gainful employment in %	53.0	56.4	56.6	52.6	45.5	47.3
Long-term unemployed in % (share of long-term unemployed among the working-age population)	5.9	5.8	4.9	4.0	3.5	3.4

Source: Eurostat; Data from the Labour Force Survey

The information requested by the Committee of Experts regarding developments in the activation rate for the long-term unemployed can be gleaned from the table below. The following should be pointed out in this regard:

- For reasons related to data processing, the data provided by the licensed local authority agencies for the long-term unemployed cannot yet be taken into consideration. For this reason, the data of participants in the employment policy measures of the licensed local authority agencies are also not taken into account when calculating the activation rate for the long-term unemployed.
- The participants in employment policy measures have been unemployed in the long term prior to entering the measure.
- In accordance with section 18 of Book III of the Social Code, all individuals who have been registered unemployed with the employment agencies or with the institutions for basic security benefits for job-seekers for one year or longer in accordance with the Book II of the Social Code on the respective date of the count are considered to be long-term unemployed.

## Activation rate of the long-term unemployed <sup>1)</sup>

Germany, 2007 to 2010

Activation rate	Total <sup>2)</sup>	including	
		Book III of the Social Code <sup>3)</sup>	Book II of the Social Code <sup>4)</sup>
2007	15.3	15.2	15.4
2008	15.5	13.1	15.9
2009	14.4	11.1	14.9
2010	14.0	7.6	15.1

Source: Statistics of the Federal Employment Agency

<sup>1)</sup> activation rate 1 (number of participants in employment policy measures)

counter = participants in employment policy measures

denominator = unemployed and participants in employment policy measures (not incl. section 421i)

<sup>2)</sup> The number of participants in measures includes the promotion or tasking of institutions with integration measures, promotion of vocational further training, promotion of vocational further training for persons with a disability, measures of ascertaining aptitude/training measures, measures of ascertaining aptitude/training measures on the participation of persons with a disability in working life, integration subsidies, recruitment subsidies with business start-ups, recruitment subsidies with substitution, remuneration subsidies, integration assistance for younger workers, personnel service agencies, integration bonus, skill-building subsidies for younger workers, employment subsidies (section 16a of Book II of the Social Code), job-creation schemes, structural adjustment measures, employment-creating infrastructure measures, work opportunities, other further benefits in accordance with section 16 subs. 2 sentence 1 of Book II of the Social Code, independent promotion in accordance with section 16f of Book II of the Social Code, participation in measures for activation and vocational integration, transitional benefits for the self-employed, business start-up subsidies for establishing a so-called "Me, Inc." firm and independent promotion in accordance with section 10 of Book III of the Social Code.

<sup>3)</sup> The number of participants in measures includes the promotion or tasking of institutions with integration measures, promotion of vocational further training, promotion of vocational further training for persons with a disability, measures of ascertaining aptitude/training measures, measures of ascertaining aptitude/training measures on the participation of persons with a disability in working life, integration subsidies, recruitment subsidies with business start-ups, recruitment subsidy with substitution, remuneration subsidy, integration assistance for younger workers, personnel service agencies, skill-building subsidies for younger workers, employment subsidy (section 16a of Book II of the Social Code), job-creation schemes, structural adjustment measures, employment-creating infrastructure measures, participation in measures for activation and vocational integration, transitional benefits for the self-employed, business start-up subsidies for establishing a so-called "Me, Inc." firm and independent promotion in accordance with section 10 of Book III of the Social Code.

<sup>4)</sup> The number of participants in measures includes the promotion or tasking of institutions with integration measures, promotion of vocational further training, promotion of vocational further training for persons with a disability, measures of ascertaining aptitude/training measures, measures of ascertaining aptitude/training measures on the participation of persons with a disability in working life, integration subsidies, recruitment subsidies with business start-ups, recruitment subsidies with substitution, remuneration subsidies, integration assistance for younger workers, personnel service agencies, integration bonus, skill-building subsidies for younger workers, employment subsidies (section 16a of Book II of the Social Code), job-creation schemes, structural adjustment measures, employment-creating infrastructure measures, work opportunities, other further benefits in accordance with section 16 subs. 2 sentence 1 of Book II of the Social Code, independent promotion in accordance with section 16f of Book II of the Social Code and participation in measures for activation and vocational integration.



The promoted further training activities are divided as follows among the various types of employment in accordance with the statistics of the Federal Employment Agency:

**New participants in promotion of vocational further training after selected schooling periods – not including data from the licensed local authority agencies**

Germany, 2007 - 2010, data as of June 2011

Goal of training course	Total			
	2007	2008	2009	2010
<b>Total, including:</b>	<b>341,262</b>	<b>433,007</b>	<b>587,386</b>	<b>458,625</b>
2210 Lathe operator, general	2,266	3,467	4,681	2,093
2410 Welder, general	14,978	19,353	30,020	16,084
2700 Fitter, not specified	1,539	597	491	94
3230 Metal worker, not specified	3,058	3,755	4,565	1,697
6010 Mechanical engineering	1,402	1,000	1,286	922
7140 Motor vehicle driver, not specified	13,475	30,203	46,659	33,326
7144 Professional driver (goods transport)	8,406	4,189	1,995	1,171
7410 Store supervisor, not specified	9,964	11,366	16,162	10,718
7511 Businessman, managing director	834	973	1,345	2,041
7720 Bookkeeper, general	5,449	5,169	5,652	3,527
7740 Data processing specialist, not specified	3,748	1,571	462	205
7742 Application programmer	1,354	1,874	2,703	2,044
7744 Computing centre specialist	4,415	5,900	8,178	9,292
7810 Specialist clerk, general	70,216	77,874	92,443	58,623
7911 Works protection force	7,003	7,787	10,880	10,037
8614 Geriatric nurse	6,919	10,361	22,966	29,449

Source: Statistics of the Federal Employment Agency

Promotion of vocational further training by taking on the further training costs in accordance with Book III of the Social Code/Book II of the Social Code is possible as a matter of principle with all unemployed workers. The promotion of employed workers in accordance with Book III of the Social Code/Book II of the Social Code is orientated towards low-skilled workers who have no vocational qualification, as well as elderly persons (aged from 45) in small and medium-sized enterprises.

The number of adult workers who have taken part in training and retraining measures is as follows:

<b>New participants in promotion of vocational further training – not including data from the licensed local authority agencies</b>				
Germany				
2007 - 2010, data as of June 2011				
Year under report	Political territorial structure	Promotion of vocational further training	Incl.:	
			Promotion of vocational further training leading to a qualification	Promotion of other vocational further training
2007	Total, including:	341,262	23,929	317,333
	West	233,224	16,222	217,002
	East	108,014	7,706	100,308
2008	Total, including:	433,007	26,537	406,470
	West	298,937	17,314	281,623
	East	134,018	9,223	124,795
2009	Total, including:	587,386	41,079	546,307
	West	407,981	26,083	381,898
	East	179,152	14,986	164,166
2010	Total, including:	458,625	48,578	410,047
	West	316,792	34,212	282,580
	East	141,833	14,366	127,467

Source: Statistics of the Federal Employment Agency

#### Measures to support adult women when taking up or returning to a vocational activity

The significance of the statutory mandate of improving the vocational situation of women through the benefits of employment promotion in accordance with section 1 of Book III of the Social Code has been emphasised with the Act on the Reorientation of Labour Market Policy Instruments, which has been in force since 1 January 2009. The statutory mandate to endeavour to eliminate existing disadvantages and to overcome a training and labour market that is typified in terms of gender, and to promote women at least in line with their share in unemployment, hence makes up the core of the efforts being undertaken (previously section 8 of Book III of the Social Code). Furthermore, the new flexibility in the employment policy tools has served to create optimum conditions have been created for tailored, targeted implementation in vocational integration, which also benefits women.

The results of the research into the effect of basic security benefits for job-seekers in accordance with Book II of the Social Code from a specifically equality policy-related point of view have been available since the summer of 2009. On the basis of that research, the Federal Government implemented a workshop at the end of 2009 in order to discuss it with experts.

With regard to the research results, the German Bundestag adopted a legal amendment of Book II of the Social Code. The Act to Reorganise Basic Security Benefits for Job-Seekers (*Gesetz zur Weiterentwicklung der Organisation der Grundsicherung für Arbeitsuchende*) has created a situation in which there have also been since 1 January 2011 commissioners for equal opportunities on the labour market in the legal target group of Book II of the Social Code, as there had previously already been in the legal target group of Book III of the Social Code. The commissioners have been advising the job centres on all matters of the technical implementation of tasks concerned with equal opportunities of women and men and with the reconciliation of family and work.

The commissioner for equal opportunities on the labour market in the legal target group of Book III of the Social Code is also committed to the “Job Prospects for Mothers Returning to Work” Action Programme, described above, initiated in March 2008 together with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, to make it easier for women to get back to work.

Reference is made with regard to the further activities of the Federal Employment Agency (special measures for persons going back to work, as well as advising employers on how to provide family-friendly working conditions) to the information provided in the 25th report on the European Social Charter.

The Federal Government, together with the Federal Employment Agency, adopted in 2009 the Strategic Partnership “Job Prospects for Lone Parents”, with the aim in mind to improve the integration of lone parents into the labour market and to improve their situation. In this context, the Federal Government initiated an ongoing ESF-Federal programme from 2009 to 2012 entitled “Dignified work for lone parents”. 77 projects were selected for promotion which help activate lone parents who are drawing basic security benefits for job-seekers and integrate them into the labour market.

#### Equal treatment of foreigners and persons with disabilities

As a matter of principle, foreign women and men who have unrestricted access to the labour market and established residence status have access to promotion of further training in accordance with Book III of the Social Code subject to the same prerequisites as Germans.

Benefits for compensation of disadvantages of these individuals are provided in addition to the general measures set out in Book III of the Social Code for the integration of persons with disabilities and serious disabilities on the labour market. Particularly the tools of Book IX of the

Social Code are available for the labour-market integration of persons with disabilities, and in particular those with serious disabilities (cf. in detail information re Art. 15).

The training bonus is made up of two components:

1. The Federation is using the bonus voucher to support workers in their further training by paying 50 percent of the cost of further training, up to a maximum of Euro 500. The voucher can be applied for once per year from currently roughly 550 advice centres nationwide.

The bonus voucher addresses workers and self-employed people with a maximum annual taxable income of Euro 25,600 (Euro 20,000 from 1 December 2011 onwards). With those who are jointly assessed (e.g. spouses), the amount is up to Euro 51,200 (Euro 40,000 from 1 December 2011 onwards). This means that roughly 25 million workers are able to benefit from bonus vouchers.

2. Saving towards further training permits an early withdrawal from the balance saved in accordance with the Asset Accumulation Act (*Vermögensbildungsgesetz – VermBG*) in order in particular to make it easier to fund more laborious, frequently more long-term further training. The right to the employee's savings premium remains applicable.

The advantages of saving towards further training can be taken up by anyone who has a savings balance promoted with the employee's savings premium, regardless of their current income.

To date, roughly 165,000 persons have had a training bonus voucher issued (as of November 2011). The redemption rate is approx. 70 percent, women accounting for roughly 75 percent of the promoted further training participants. The training bonus is financed by funds from the Federal Ministry of Education and Research and from the ESF.

#### **Paragraph 4 - Financial aspects, working hours and monitoring of the activities**

The monitoring of vocational training for the recognised training occupations in Germany is regulated by the Vocational Training Act (*Berufsbildungsgesetz – BBiG*). For instance, section 28 subs. 1 of the Act links entitlement to appoint trainees to personal aptitude. Persons who are not suitable in personal terms are those who may not employ children and juveniles (e.g. persons to whom an employment ban applies) or who have repeatedly or grievously

breached provisions of the Act or provisions and regulations handed down on the basis of the Act. Over and above their personal aptitude, trainers must also be suitable in terms of their subject. They must therefore have the vocational and vocational teaching skills, knowledge and abilities necessary for imparting the content of the training (section 30 subs. 1 of the Vocational Training Act).

Moreover, the Vocational Training Act stipulates for the recruitment and training of trainees that the training place must be suitable in terms of the nature and facilities for vocational training and that the number of trainees must be appropriately proportionate to the number of training places or to the number of specialist workers employed. Adherence to these provisions is monitored by the competent agencies (e.g. chambers of crafts, chambers of commerce and industry, medical associations) (section 30 of the Vocational Training Act). If shortcomings are ascertained which either cannot be eliminated or which have not been eliminated within a specific period, the competent agency notifies this to the authority competent in accordance with *Land* law. The latter can then ban the appointment and training.

#### Developments on the market for training places in 2009 and 2010

The situation on the training market for young people in Germany continued to improve in 2010. This was caused mainly by the renewed, strong economic growth, a future-orientated personnel policy on the part of enterprises, as well as the demographic reduction in the number of applicants for training places.

A total of 560,073 new training contracts were concluded nationwide from 1 October 2009 to 30 September 2010 (-4,234, or -0.8 percent compared with 2009). The drop is caused solely by the development in the number of contracts in the new *Länder* (-7,335, or -7.4 percent, to 91,663), and hence constitutes a direct consequence of demographic developments. For instance, roughly 17,800 fewer juveniles in the new *Länder* left mainstream schools in 2010 than was the case in 2009. Looking at the past makes clear the extent of the drop: Whilst the number of school-leavers in the new *Länder* was still roughly 235,000 ten years ago, it had fallen by more than half by 2010, to roughly 114,100. In the old *Länder*, at 468,410, therefore 3,101 (or +0.7 percent) more training contracts were concluded than in the previous year.

The Federal Employment Agency once again registered more unoccupied training places (19,605) than unallocated applicants (12,255) at the end of the training year. The number of unallocated applicants in 2005, at 40,505, was much higher than the number of unoccupied training places (12,636).

It was also fortunately possible to reduce considerably the number of young people in the so-called transitional system in recent years. Whilst roughly 417,600 juveniles ended up in the so-

called transitional system in 2005, there were only 323,700 in 2010. This corresponds to a drop of roughly 94,000, or 22.5 percent. A drop of roughly 24,500, or -7.0 percent, was recorded last year alone.

The demographic fall in the number of applicants led in 2010 to a reduction in the burden on the training market, but may constitute a serious problem for enterprises in the years to come when it comes to attracting new recruits. There is already a shortage of applicants in some regions; companies are unable to fill the training places that they have on offer. On the other hand, there are still too many juveniles who do not manage to enter training directly after school for a variety of reasons. It is this target group on which we will have to concentrate, also in order to ensure that Germany will have sufficient numbers of young workers in future

## **Article 15 – Right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement**

### **Paragraph 1 - Vocational training for persons with disabilities**

#### **Disabled status and the number of disabled persons**

Section 2 subs. 1 of Book IX of the Social Code defines “disability” as follows: People are disabled if their physical function, mental ability or emotional health will very probably deviate for longer than six months from the state which is typical of their age, thus impairing their participation in life in society. They are at risk of disability if the impairment is to be anticipated. The definition of serious disability is based on this (section 2 subs. 2 of Book IX of the Social Code), but is additionally dependent on a particular severity of the disability.

In the law on serious disability, the degree of disability is used as a measure of the physical, mental and emotional consequences of the functional impairment. The impact of the functional impairments is reflected as the degree of disability in steps of ten, from 20 to 100. Anyone has a serious disability who has a degree of disability of at least 50 and has his/her place of residence, habitual residence or regular employment in Germany.

The characteristic of a serious disability is ascertained by the pension office or by the authorities which are competent in accordance with *Land* law, at the request of the person concerned. These authorities have to ascertain the degree of the disability and of compliance with health-related criteria in order to entitle the applicant to benefit from measures compensating for disadvantages. This takes place in particular using medical findings submitted or acquired by the authority, as well as reports relating to rehabilitation, those drafted on release from rehabilitation and social reports and comparable documents. The pension office or the authority

competent in accordance with *Land* law states the category in a notice, whilst at the same time issuing the severely disabled person's pass, which is intended to document the disability vis-à-vis authorities, employers and other agencies.

Persons with disabilities whose established degree of disability is below 50 but at least 30 may be able to have their status assimilated to persons with serious disabilities under certain conditions. Such status is granted on request by the employment agency.

Persons with serious disabilities enjoy special protection and promotion in working life. Vocational participation is protected and promoted through the following regulations, amongst others:

- mandatory employment system and compensation levy (cf. more detailed observations)
- persons with a serious disability and persons with assimilated status enjoy special protection against dismissal. They may only subject to ordinary or summary dismissal if the integration office has previously approved this.
- Persons with serious disabilities have a right to five days' additional paid leave per leave year. This does not apply to persons with disabilities with assimilated status.
- Regardless of the degree of the disability and of the applicability of specific health prerequisites, tax concessions (e.g. flat-rate deductions), exemption from road tax or free conveyance in public transport may be claimed.

There are roughly 9.6 million persons with disabilities in Germany. Detailed information can only be provided for those individuals with regard to whom a serious disability was established. The statistics kept by the Federal Statistical Office on persons with a serious disability show the following as per the end of 2009:

**Persons with serious disabilities (as per: December 2009):**

	<b>Total</b>	<b>Female</b>
Total number of persons with serious disabilities	7,101,682	3,443,575
No. of working-age persons with serious disabilities (working age is defined as aged between 15 and 65)	3,114,834	n.a.

Source: Federal Statistical Office

No appropriate data are yet available on the number at the end of 2010.

## **Training for persons with disabilities**

The vocational training of persons with disabilities is highly significant, given that this is where the stage is set for the future. Successful training forms the basis for equal participation by persons with disabilities in working life. The vocational training of women and men with a disability is placed on a broad foundation.

The Federal Employment Agency, supported by specialist integration services, already advises pupils with a disability and their parents individually in school of the vocational training opportunities that are available. The Federal Employment Agency offers targeted pre-vocational training programmes for juveniles with a disability who are not yet ready to undergo training when they leave school.

State subsidies are available for employers who train the persons with disabilities, in particular towards the training costs and for setting up the workplace to suit a person with disabilities. If training in the dual system is not possible despite the state subsidies because of the nature or severity of the disability, other possibilities are available to persons with disabilities, in particular through specialised training centres.

## **Special vocational facilities for persons with disabilities**

### I. Specialised training centres

Specialised training centres (*BBW*) are supraregional institutions which primarily enable juveniles with disabilities to undergo training for the first time. There are 52 specialised training centres nationwide, offering a total of roughly 13,000 training places for approx. 230 different occupations and offering qualified vocational training to young persons with disabilities. In addition to the training places, there is a large number of further places in pre-vocational training programmes.

Knowledgeable staff in the specialised training centres, as well as accompanying services, support the juveniles with a disability in their personal and vocational development.

Through their holistic concept comprising a training establishment, school, boarding school, leisure activities and specialist guidance, specialised training centres guarantee optimum conditions for training. They also accompany the young people undergoing rehabilitation in



their transition to employment. The goal is to enable trainees with a disability to participate in vocational and social life without limitations.

No details are known as to the total number and the skills of the staff of the specialised training centres.

## II. Vocational training centres

The vocational training centres (BFW) provide social services to integrate adults with disabilities into the labour market. To this end, the facilities provide to those concerned a wide variety of different tailored, flexible benefits. These range from information and advice through trialling and diagnostics, to skill-building and assistance in taking up work in a company. By these means, vocational skills and self-confidence are promoted.

The vocational training centres offer a broad range of skill-building measures in 28 nationwide network plan facilities with roughly 15,000 places. The adults undergoing rehabilitation have more than 180 courses of training at their disposal with a recognised qualification.

No detailed information is available concerning the total number and the qualifications of the staff of the vocational training centres.

## III. Workshops for persons with disabilities

Despite the promotional tools that are available, not all young people can be employed on the general labour market because of the nature or severity of their disability, and because they are not or not yet able to complete training. These people have at their disposal the initial and vocational training area in workshops for persons with disabilities. The workshops here fulfil the statutory mandate to offer suitable vocational training to these persons with disabilities, aiming to integrate them into working in sheltered workshops or on the general labour market.

The aim of the initial procedure is to ascertain whether the workshop is the right facility to enable a person with disabilities to participate in working life, and which areas of the workshop and which benefits for integration into working life can be considered. Furthermore, an integration plan is to be drawn up. The initial procedure follows on from the vocational training area. Here, individual measures and training courses are to be implemented to improve participation in working life and to further develop the personality. The goal is for persons with

disabilities to already be able to perform a minimum of economically-useable work after completing vocational training. The duration of the vocational training schemes is two years as a rule. They are approved for one year in most cases and extended for another year if the performance of the person with disabilities can be progressed or restored.

The content of the vocational training aims to nurture the individual person with disabilities and to enhance their vocational and personal skills on the basis of their individual potential for learning and development. They are to be able to perform a minimum of economically-valuable work on qualifying.

There are around 700 recognised workshops for persons with disabilities in Germany. As is shown by the table below, roughly 10% of the persons in employment there are in the initial procedure or undergoing training.

#### **Persons in employment in recognised workshops**

	<b>2008</b>	<b>2009</b>
Total number at the end of the year (initial procedure and vocational training, as well as work)	278,689	280,815
Persons entering the initial procedure and the vocational training stage	16,411	17,205

Source: Federal Ministry for Labour and Social Affairs, Federal Employment Agency, *Länder*

There is no concrete information regarding the total number of staff in the recognised workshops. The quantitative ratio of specialists for work and work promotion in the vocational training and work stages depends on the number and composition of the persons with disabilities, as well as on the nature of the employment and the technical equipment in the work stage. As a matter of principle, the staffing ratio should be 1:6 in the initial procedure and vocational training stage and 1:12 in the work stage.

The head of the workshop is to have a qualification from a university of applied sciences (*Fachhochschule*) in a commercial or technical field or an equivalent level of education, as well as sufficient work experience. The specialists for work and vocational training are to be skilled workers, have passed their certificate of apprenticeship or be master craftspersons with at least two years' work experience. Additionally, the staff of the workshops for persons with disabilities must be suitable in terms of their pedagogical skills and have an additional special pedagogical qualification. This qualification can be acquired, firstly, through the recognised qualification "Examined specialist for work and vocational promotion in workshops for persons with

disabilities". The qualification is however not a prerequisite for working as a specialist in a workshop. The necessary additional special pedagogical qualification can alternatively also be acquired elsewhere, for instance by attending suitable further training activities.

## **Paragraph 2 – Placement activities for persons with disabilities**

The self-determined participation of persons with serious disabilities in social life and in working life is a declared goal of the policy of the Federal Government. Work is just as essential an element of social participation for persons with a disability as it is for those without disabilities. For this reason, the Federal Government is explicitly in favour of stepping up the vocational integration of persons with disabilities, also and in particular for vocational activities on the general labour market.

When it comes to the efforts to improve the vocational integration of persons with serious disabilities, a large number of employment-promoting and -safeguarding tools play a major role:

### Mandatory employment and compensation levy

The mandatory employment system and the compensation levy take up a central place. Mandatory employment is incumbent on employers with at least 20 workplaces (definition contained in section 73 of Book IX of the Social Code). They are obliged to employ persons with serious disabilities in at least 5 percent of these jobs. If this mandatory employment obligation is not complied with, or not completely, they are obliged to pay a compensation levy to the integration offices.

The goal is to motivate enterprises to take on more persons with serious disabilities (incentive function). If this goal is not reached, the compensation levy for persons with a serious disability is levied as a second priority. This is to compensate for burdens between those employers who meet their obligation and those who do not (compensation function). The compensation levy is a special levy which serves solely to promote the employment of persons with serious disabilities, and hence a specific material purpose.

The compensation levy is orientated in line with the degree to which mandatory employment is complied with. The higher the degree of non-compliance, the higher is the compensation levy. Accordingly, an employer must pay a monthly compensation levy per unoccupied mandatory job amounting to

- Euro 105 with an employment rate from 3 percent to less than 5 percent,
- Euro 180 with an employment rate from 2 percent to less than 3 percent, and
- Euro 260 with an employment rate of less than 2 percent.

Less stringent special arrangements apply to employers with fewer than 60 workplaces.

As a result of the introduction of the compensation levy contributions being imposed in stages, the number of obligatory jobs occupied increased and the compliance rate (real rate) increased markedly:

**Number of mandatory jobs occupied**

	<b>2007</b>	<b>2008</b>	<b>2009</b>
Total no of occupied mandatory jobs	841,609	875,811	907,654
Real rate	4.2	4.3	4.5

Source: Federal Employment Agency

Integration subsidies

The employment agencies and the institutions of basic security benefits for job-seekers can pay integration subsidies to employers if they employ persons with disabilities (as a rule up to 70 percent of the eligible wage for up to 24 months, this possibly being longer with elderly persons). It is also possible for subsidies to be paid towards training remuneration. The following figures can be made available on this:

Integration and training subsidies

	<b>2009</b>	<b>2010</b>
Cases	20,338	20,990
Expenditure	Euro 483.3 million	Euro 387.7 million

Source: Federal Employment Agency

Benefits from the integration offices

The integration offices of the *Länder* are responsible for providing accompanying assistance in working life aiming to ensure that persons with serious disabilities are employed in jobs in which

they can take full advantage of their skills and knowledge, and nurture them. This assistance includes above all:

- equipping workplaces and training places for persons with disabilities (e.g. fitting a Braille display to a computer workstation or ensuring barrier-free access; for instance by installing ramps or lifts)
- benefits for extraordinary burdens (wage cost subsidies as compensation for reduced performance)
- as well as work assistance (e.g. personal assistance for persons with serious physical disabilities, someone to aid in reading for person who is blind or seriously visually impaired or sign-language interpreters for deaf people).

The developments in these financial benefits provided to employers who make a major contribution towards maintaining and safeguarding jobs are described in the following overviews (no data are yet available for 2010):

#### **Equipping workplaces and training places for disability**

<b>2007</b>		<b>2008</b>		<b>2009</b>	
Euro million	No. of cases	Euro million	No. of cases	Euro million	No. of cases
23.09	8,433	21.47	8,094	22,24	8,013

Source: Federal Association of Integration Offices and Central Welfare Offices

#### **Benefits for extraordinary burdens**

<b>2007</b>		<b>2008</b>		<b>2009</b>	
Euro million	No. of cases	Euro million	No. of cases	Euro million	No. of cases
93.03	26,674	79.94	25,811	79.58	25,887

Source: Federal Association of Integration Offices and Central Welfare Offices

#### **Work assistance**

<b>2007</b>		<b>2008</b>		<b>2009</b>	
Euro million	No. of cases	Euro million	No. of cases	Euro million	No. of cases
10.46	1,868	12.31	1,923	14.04	2,083

Source: Federal Association of Integration Offices and Central Welfare Offices

It is only possible to provide information regarding the number of persons with serious disabilities who work for employers subject to mandatory employment (20 and more workplaces). The following developments have occurred here (no data for 2010 are yet available):

**Persons with serious disabilities employed by employers with at least 20 workplaces**

2007			2008			2009		
Total	Women	in %	Total	Women	in %	Total	Women	in %
806,887	340,536	42.2	846,166	359,268	42.5	876,296	376,550	43.0

Source: Statistics from the Federal Employment Agency from the report procedures in accordance with section 80 subs. 2 of Book IX of the Social Code

The number of persons with disabilities who are employed in workshops outside the general labour market has developed as follows:

**Persons in employment in workshops for persons with disabilities**

2007	2008	2009
275,492	278,689	280,815

Source: Federal Ministry of Labour and Social Affairs

Funding has been provided in the context of the initiative entitled “Job – Jobs without Barriers” (cf. also text below) for the evaluation of interlinked training that has been carried out in order to implement interlinked training within specialised training centres. The results show that properly-trained juveniles are not only more frequently placed in work, but also significantly more often take up employment corresponding to their training. On the basis of the results, a further, much larger, broad-based pilot project on interlinked training has been implemented, i.e. greater numbers of juveniles with a disability, more training occupations and more enterprises have been included. The evaluations have revealed that roughly 20 to 25 percent of all juveniles in specialised training centres are likely to be suited for interlinked training, that is roughly 1,500 juveniles with a disability per year. Roughly 90 percent of specialised training centres are currently taking part in interlinked training. The project is to include even more of them in the years to come. This gives more and more trainees at the specialised training centres the opportunity to gain direct experience of operational working procedures in the enterprises themselves. This considerably enhances the practical nature of the training, thus improving the chances of juveniles with a disability to obtain a permanent job in an enterprise after graduation from training.

The following can be stated when it comes to the request of the Committee of Social Rights for further information after a revision of the preceding reporting on Article 15 ESC:

1. The Committee asks this report to provide the following up-to date figures:

- number of students (children and adults) with disabilities attending mainstream education and vocational facilities;
- number of students with disabilities attending special school education or training facilities
- the percentage of those entering the labour market following such education/training.

According to press release 187/11 of the Federal Statistical Office (Destatis) of 12 May 2011, 9.6 million people were living in Germany who had an officially-recognised disability according to the results of the Microcensus in 2009. On average, therefore, one inhabitant in nine (11.7 percent) had a disability. More than half of them (53 percent) were men. A total of 17 percent of persons with disabilities aged from 25 to 44 did not have a mainstream school-leaving qualification (or had gained a qualification after at most seven years' school attendance). Many fewer people without a disability (3 percent) did not have a qualification at this age. By contrast, 12 percent of persons with a disability and 29 percent of persons without disabilities in this age group had acquired their higher education entrance qualification (*Abitur*). Current data on the situation of students with a disability/chronically ill students (the questionnaire in the summer semester 2011 has just been completed) will not be available until the data have been evaluated in the early summer of 2012.

According to the information contained in the National Education Report 2010 ([www.bildungsbericht.de](http://www.bildungsbericht.de) – the website includes a download summary in English) there are a total of 3,302 promotional schools in Germany at present. Roughly 400,000 pupils were attending them in 2008/09. In accordance with the federal structure of the Federal Republic of Germany, schooling is within the competence of the Federal *Länder*. There are hence also differences between them when it comes to special pedagogic promotion rates and in the share of pupils with a need for special schooling who are taught at other mainstream schools. These differences emerge from different criteria and procedures for the provision of special school promotion needs and other factors (such as legal provisions, preventive measures to avoid a diagnosis of needing to attend a special school, and the interest in obtaining institutional differentiations in the school system).

The share of pupils with special learning needs who are taught at other mainstream schools totalled 19 percent in 2008. Having said that, the information between the Federal *Länder* is not directly comparable here, given that pupils with special learning needs attending other mainstream schools covered by the school statistics are in widely-differing learning situations. The practice ranges from special classes at other mainstream schools, through cooperative models to integration of individual pupils in standard classes, with individual *Länder* focussing

on specific, different aspects. Preventive measures are however gaining ground – also against the background of the UN Convention on the Rights of Persons with Disabilities.

The Education Report 2010 moreover provides information on graduates by qualifications, types of school and Federal *Länder* from 2007/08 onwards, as well as regarding leavers from both mainstream and special schools in 2008 with no *Hauptschule* (secondary general school) qualification. It is pointed out that juveniles with no *Hauptschule* qualification are referred to in the public discussion more frequently as persons leaving a *Hauptschule* with no school-leaving qualification. At approx. 55%, the majority of those who do not have a *Hauptschule* qualification come from special schools, where it is not always possible to acquire a *Hauptschule* qualification.

Roughly one-fifth of juveniles with no *Hauptschule* qualification in 2008 did obtain a dual training place (almost 6 percentage points more than in 2006). The Education Report however does not distinguish at this point according to whether an individual has a disability.

As to the Committee's request for information on the concrete impact of the initiative "Job – Jobs without Barriers" on the effective right to training of persons with disabilities:

The impact of the initiative has been that information was provided regarding the legal framework regulations on the promotion of training and employment of persons with a disability and persons with serious disabilities, as well as on in-company prevention by introduction of in-company integration management. Furthermore, examples of successful integration of persons with a disability and persons with serious disabilities in training and work are publicised, in particular at events for those responsible in personnel departments of enterprises and through the Internet initiative, and reference is made to the support that is available to employers of persons with disabilities. The initiative made it possible to create a large number of training places and jobs for persons with disabilities. By funding pilot projects, the range of training available for persons with disabilities has been expanded by developing a new course of training, and research was done to determine what need for change exists on the part of enterprises when occupying training places in order to reach equal opportunities for applicants with a disability. Furthermore, the possibility to employ women with a serious disability has been improved via the development of a new field of activity, and the motivation of small and medium-sized enterprises has been improved by targeting them to provide information on the possibility to employ persons with serious disabilities. What is more – in line with the UN Convention on the Rights of Persons with Disabilities – fields of action to improve the situation of persons with serious disabilities on the general labour market have been identified; these are to be implemented from 2011 onwards in the context of the new "Inclusion Initiative".



The following observations can be provided as to the Committee of Experts' request to include information in this report on whether the supply of places offered in specialised training centres, vocational training centres and sheltered workshops for persons with disabilities meets demand and there is information regarding details on the total number and qualification of the personnel of these centres:

There is a right to inclusion in a workshop for persons with disabilities if a person is unable to find work on the general labour market because of the nature or severity of his/her disability. This right accruing to persons with disabilities is met. Hence, the supply of places in sheltered workshops for persons with disabilities meets demand.

The Committee of Experts requests to know a percentage of how many persons from workshops for persons with disabilities have progressed to the general labour market:

A rate of 0.32 percent (2003) was stated in the last report for transfers from workshops to the general labour market. The number is not regularly recorded. There are however no indications that it has changed much since then. One reason for this is that persons with disabilities in workshops frequently do not want to be employed on the general labour market, even if they might be suited to such employment.

The following can be observed with regard to the request of the Committee of Experts for information to be provided on implementation in practice of workplace integration management and the retention in employment of persons with serious disabilities:

Employers have been obliged since 2004 to offer workplace integration management to persons in employment who are ill. Workplace integration management serves to maintain employability, and is one of the central tools being used in order to effectively counter the consequences of demographic change. At the same time, workplace integration management ensures individual opportunities for participation in work through early intervention.

Workplace integration management has been entrenched in law since 2004 in section 84 subs. 2 of Book IX of the Social Code, which establishes that an employer has to carry out workplace integration management in favour of all persons in employment who are consecutively or repeatedly unable to work for more than six weeks within one year. This means that the employer must clarify "how the incapacity to work can be overcome wherever possible, and with which benefits or assistance renewed incapacity to work can be overcome and the job retained." The details of this clarification are deliberately not stipulated in section 84 subs. 2 of

Book IX of the Social Code. Suitable individual solutions have to be found in each company and in each unit. The law stipulates – where those concerned consent – only the participation of the competent representation of interests of the persons in employment (works or staff council). In the case of persons with a serious disability in employment this includes the participation of the representation of persons with a serious disability. Furthermore, the works or company medical officer should be consulted if this is necessary. In accordance with section 84 subs. 3 of Book IX of the Social Code, the rehabilitation institutions and the integration offices can provide financial support to companies in the implementation of workplace integration management.

Studies on the state of implementation (e.g. Niehaus, et al.: *Betriebliches Eingliederungsmanagement, Studie zur Umsetzung des Betrieblichen Eingliederungsmanagement*, Cologne 2008) make it clear that there is still considerable optimisation to be done as regards the quality of the implementation of workplace integration management. According to this survey, only roughly half the respondent companies offer workplace integration management to their staff. A special implementation problem exists in the field of small and medium-sized enterprises (SMEs), which as a rule do not have the personnel and technical resources needed to introduce workplace integration management. A number of pilot projects have been implemented in order to tackle this issue which have trialled the approaches of counselling specifically for SMEs. The most sustainable proves to be an approach used by the German Federal Pension Insurance to offer advice via the joint service units of the German Federal Pension Insurance. The model is currently being expanded from the pilot region Berlin-Brandenburg to Saxony-Anhalt.

As a result of the projects that have been promoted, there are now large numbers of publications and practical aids to make implementation of workplace integration management easier. Reference is made here only by way of example to the materials which are indicated on the homepage of the project entitled “*New paths in workplace integration management*” ([www.neue-wege-im-bem.de/literatur-downloads](http://www.neue-wege-im-bem.de/literatur-downloads)).

**Article 18 - The right to engage in a gainful occupation in the territory of other Contracting Parties**

**Paragraph 1 – Applying existing regulations in a spirit of liberality**

6,753,600 people with a foreign nationality were living in Germany on 31 December 2010. This corresponds to a total share of 8.8 percent of the overall population.

The statistics show for the reference period the following figures regarding work permits that had been issued and refused, as well as residence permits issued for gainful employment:

	Work permits for EU citizens from the acceding states		Residence titles for third-state nationals for gainful employment		
	Work permits issued	Work permits refused	Residence titles issued for employment	Residence titles issued for self-employment	Residence titles refused
2007	389,078	12,102	63,600	3,004	Not recorded
2008	386,582	12,395	72,565	3,847	
2009	391,028	12,258	67,919	3,778	
2010	382,102	14,023	76,756	4,010	

The larger number of work permits in comparison to the previous reference period results from the accession of Romania and Bulgaria to the European Union as per 1 January 2007. Nationals of these countries still need a work permit to take up employment in Germany.

Free movement of individuals applies to nationals of these two countries, so that they do not require a residence title. They do not however yet enjoy unrestricted free movement of workers (cf. at Article 18 paragraph 3 for more details).

EU citizens certainly do not need work permits in order to take up self-employment.

**Paragraph 2 – Simplifying existing formalities and reducing dues and taxes**

Germany still applies “one-stop government”, as introduced as per 1 January 2005, with which the work and residence permits which previously had to be applied for in parallel were replaced with one single permit, namely the residence title. Reference is made to the corresponding information in the 25th Report on the application of Article 18.

As a matter of principle, foreigners need a residence title in order to enter and reside in Germany. In Germany residence titles are issued as a residence permit, as a settlement permit or as a Community residence permit. The settlement permit is applicable indefinitely; it entitles the holder to exercise any gainful employment in Germany. The domestic impact of the Community residence permit, which was introduced in transposition of the Directive concerning the status of third-country nationals who are long-term residents, largely corresponds to the settlement permit. The residence permit, by contrast, is always limited. The time limit depends on the occasion for which residence is permitted. Prerequisites for issuing a residence permit include as a rule that the applicant's livelihood is ensured, the identity and the nationality of the foreigner is clarified and the obligation to have a passport is complied with.

There is no statistical information on the duration of the process involved in issuing residence titles.

Fees and charges are levied for official acts in accordance with the Residence Act. The Federal Government determines the for-a-fee elements and the fees, as well as fee exemptions and reductions, in particular for cases of need, in the Residence Ordinance (*Aufenthaltsverordnung – AufenthV*), which requires the consent of the Bundesrat. The current version of the individual fee rates is established in sections 44 et seq. of the current version of the Residence Ordinance. Fees of Euro 50 are accordingly charged for issuing a residence permit with a validity of up to one year, and Euro 60 with a validity of more than one year. The fees for issuing a settlement permit are between Euro 85 and 200.

Transitional regulations applied on the freedom of movement of workers for eight states of the European Union until 30 April 2011. These are the Czech Republic, Slovakia, Poland, Hungary, Slovenia, Estonia, Latvia and Lithuania. These transitional regulations continue to apply to Bulgaria and Romania. In order to exercise employment, nationals of these countries need a Community residence permit, for which they have to apply from the Federal Employment Agency prior to taking up employment.

### **Paragraph 3 – Liberalising regulations**

Germany has very much eased access to the labour market for foreign workers in the reference period, in particular for specialists and highly-skilled workers, as well as for foreigners who wish to become self-employed. Moreover, two further countries became members of the European Union as per 1 January 2007, namely Romania and Bulgaria, whose nationals benefited from easier access to the labour market from that time on.

In detail:

#### Changes for academics and highly-skilled workers

First of all, by the Graduates' Access Ordinance (*Hochschulabsolventen-Zugangsverordnung*), access to the labour market for

1. mechanical, automotive and electrical engineers from the ten new EU States in Central and Eastern Europe for whom transitional regulations still apply to access to the German labour market, and
2. for foreign graduates of German universities, regardless of the subject of the studies for taking up employment suited to their training

was made easier by waiving the precedence to be given to placing Germans and foreign job-seekers with legal status equivalent to theirs. The Ordinance came into force as per 16 October 2007.

Since 2009, the German labour market has been open to all foreign academics for employment suiting their vocational qualification (section 27 of the Employment Ordinance [*Beschäftigungsverordnung – BeschV*]). For academics who have graduated in Germany, as well as for graduates of German schools abroad and foreign graduations which are recognised or are comparable to a German graduation or qualified vocational training acquired in Germany, no examination is carried out any more as to whether domestic job-seekers are available for the concrete employment (priority examination). It is however still examined whether the foreigner is not being employed with less favourable working conditions than comparable German workers.

Also as per 1 January 2009, the income limit was reduced for the granting of a settlement permit for the highly-skilled in accordance with section 19 of the Residence Act from twice the contribution assessment ceiling of statutory health insurance (2008: Euro 86,400) to the contribution assessment ceiling (West) of the general pensions insurance (2009: Euro 64,800).

#### Amendments applicable to low-skilled employment

The maximum duration of employment for foreign seasonal workers (section 18 of the Employment Ordinance) was extended from for to six months per calendar year as per 1 January 2009.

No further amendments are currently planned for low-skilled and unskilled workers. It should however be taken into consideration that nationals from the states which acceded to the European Union on 1 May 2004, to which the transitional deadlines apply for free movement of workers (see comments below on the employment possibilities for nationals from the acceding states to the European Union) have been given freedom of access to all employment in Germany as per 1 May 2011, and hence also to low-skilled employment.

#### Amendments applicable to long-term employment or longer-term residence

Persons who have already become integrated to a considerable degree as a result of many years of employment or many years of residence in Germany are entitled to access to the labour market with no priority examination and without an examination of the employment conditions. Access to the German labour market is hence unrestricted.

Germany reduced the necessary employment period as per 28 August 2007 from three to two years and the necessary uninterrupted residence from four years to three (section 9 subs. 1 of the Employment Procedure Ordinance [*Beschäftigungsverfahrensverordnung – BeschVerfV*]).

#### Amendments for foreigners whose deportation has been temporarily suspended

With section 18a of the Residence Act, which was introduced as per 1 January 2009, foreigners whose deportation has been temporarily suspended who have successfully completed skilled training or studies in Germany, or who already entered Germany with the corresponding qualification or who have been employed for three years consecutively as a specialist worker are enabled to change into lawful residence with a residence permit. The fundamental obligation to leave the country hence ceases to apply.

The issuance of the residence permit requires the consent of the Federal Employment Agency, but without a priority examination.

Access to skilled training by foreigners whose deportation has been temporarily suspended was relaxed at the same time by the amendment to the section 10 of the Employment Procedure Ordinance foregoing the priority examination.

#### Amendments for the self-employed

A residence title can be issued to foreigners from third states who wish to become self-employed if, amongst other things, a superior economic interest or a special regional need exists and the activity leads one to anticipate a positive impact on the economy. The

investment amount with which these prerequisites are regarded as being globally met was reduced as per 1 January 2009 from Euro 500,000 to Euro 250,000.

#### Employment opportunities for nationals from the acceding states to the European Union

With the exception of Malta and Cyprus, nationals from the acceding states to the European Union have not yet been able to unrestrictedly invoke the fundamental European freedom of movement of workers in the reference period. This concerns the countries Poland, the Czech Republic, Slovakia, Hungary, Slovenia, Latvia, Lithuania and Estonia (members of the EU since May 2004), as well as Romania and Bulgaria (members since 2007). The accession treaties with these states provide that transitional provisions can be applied on freedom of movement during a period of up to seven years. The restrictions on access to the labour market have been implemented by their inclusion in the "old" work permit law contained in sections 284 et seqq. of Book III of the Social Code. In the transitional period, new Union citizens continue to need a Community work permit, issued by the units of the Federal Employment Agency, in order to take up employment in Germany.

Workers from the acceding states enjoy easier access to the German labour market in many areas vis-à-vis third-state nationals. This includes in particular:

- Union citizens from the acceding states can receive a Community work permit for any employment which is conditional in Germany on qualified training (section 284 of Book III of the Social Code in conjunction with section 39 subs. 6 of the Residence Act). Section 25 of the Employment Ordinance defines qualified employment as an activity requiring at least two-years' vocational training. Third-state nationals, by contrast, may only gain access to the labour market in the cases explicitly regulated in the Employment Ordinance (e.g. sections 26 to 31).
- When examining whether domestic job-seekers with priority rights are available for a specific employment (priority examination), nationals from the acceding states take priority over nationals of third states when it comes to issuing work permits (section 284 subs. 4 sentence 2 of Book III of the Social Code).
- After one year of admission to the German labour market, there is a right to issuance of a Community work permit. This entitlement is issued without restrictions and opens up freedom of access to the labour market.

#### **Paragraph 4 – Moving abroad to work**

There are still no restrictions imposed on foreigners to leave the country to take up work in another state.

#### Circumstances in which German citizens may be prevented from leaving the country

In accordance with section 1 subs. 1 sentence 1 of the Passport Act (*Passgesetz – PassG*), German nationals leaving or entering Germany are required to carry a valid passport or a valid passport replacement (e.g. identity card). The issuance of a passport may be refused in individual cases, subject to strict preconditions (section 7 subs. 1 of the Passport Act) or revoked (section 8 of the Passport Act), for instance when there are reasonable grounds to believe that the passport applicant constitutes a threat to the internal or external security or to other significant interests of the Federal Republic of Germany or intends to evade prosecution. Equally, the scope of application of the identity card may be restricted in accordance with section 6 subs. 7 of the Identity Card Act (*Personalausweisgesetz*) (exit ban).

#### **Article 1 of the Additional Protocol of 1988 – The right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex**

#### **Pilot project on anonymised application procedures**

Reference is made to the information above regarding Art. 1 para. 2 of the ESC.