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EUROPEAN SOCIAL CHARTER

31st National Report on the implementation of the
1961 European Social Charter
submitted by

THE GOVERNMENT OF GERMANY

(Articles 2, 4, 5 and 6)

for the period 01/01/2009 – 31/12/2012)

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Berlin, November 2013

31th Report

submitted by the Government of the **Federal Republic of Germany**

for the time period from 01 January 2009 until 31 December 2012 (Articles 2, 4, 5 and 6) and Articles 2 and 3 of the 1988 Additional Protocol

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

In accordance with Article 23 of the European Social Charter copies of this report are to be communicated to
the Federation of German Employers' Associations (Bundesvereinigung der Deutschen Arbeitgeberverbände)
and
the Federal Executive Committee of the Confederation of German Trade Unions (Bundesvorstand des Deutschen Gewerkschaftsbundes)
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TABLE OF CONTENTS

Preliminary remarks

The Federal Republic of Germany herewith submits the Sixth Report in accordance with the new reporting system for the drafting of the State reports on the domestic implementation of the European Social Charter.

This Report contains Group 3 – Labour legislation with Articles 2, 4, 5 and 6 and Articles 2 and 3 of the 1988 Additional Protocol (period under review 1 January 2009 to 31 December 2012).

The 31th Report is a follow-up to earlier reports submitted by the Federal Government on the national implementation of the obligations laid down in the European Social Charter. It does not refer to the individual provisions of the Charter unless either the remarks of the European Committee for Social Rights of the European Social Charter (by way of simplification hereinafter referred to as “Committee”) in the conclusions XIX-3 give reason for this, or the questionnaire makes this necessary or if relevant amendments in the material and legal situation have occurred.

Article 2: The right to just conditions of work

Paragraph 1 Reasonable working hours

General legal framework

As regards the general legal framework, reference is made to the previous reports as in the period under review there have been no legal changes concerning the areas covered by paragraph 1.

Length of reference periods

The Committee of experts concludes that the situation in Germany is not in conformity with Article 2(1) of the Charter on the ground that under certain collective agreements the reference period for the calculation of average working hours can be extended beyond 12 months. The Committee points out that this could lead to a weekly working time of more than 60 hours. In this respect, the following should be noted:

From the conclusions it is clear that the Committee considers an average weekly working time of 48 hours admissible. Moreover, the Committee is of the opinion that the maximum daily working time averaged over a period of 6 months is in conformity with the Charter. The Committe is also of the view that an extension of the reference period to a maximum of 12 months by collective agreement is acceptable in principle. Therefore, in the opinion of the Committee, arrangements providing for an average working time of 48 hours over a period of 12 months are compatible with Article 2 (1) of the ESC.

The legal provisions applicable in Germany are fully in line with these requirements. Section 7(8) of the Working Time Act (ArbZG) stipulates that in cases where working time or the reference period is extended by a collective agreement, the average weekly working time may not exceed 48 hours over a period of 12 calendar months. The collective agreements concluded in Germany comply with the limits provided for in the legislation.

Provision for a reference period exceeding 12 months (e.g. a period of 24, 27 or 36 months) in individual collective agreements does not constitute a derogation from section 7(8) of the Working Time Act. On the contrary, over and above the requirements of the ESC, collective agreements fixing a longer reference period in the interest of workers provide for additional compensation taking account of the shorter working time prescribed by the collective agreement. The additional compensation is to be granted within the extended reference period. At an average of 37.43 hours in West Germany and 38.96 hours in East Germany, the regular weekly working time provided for by collective agreements was far below 48 hours in 2012.

The following examples illustrate the negative consequences for workers that would result from the Committees conclusions:

Example 1:
A worker has a fixed weekly working time of 48 hours. A reference period has not been provided for.

Example 1 is compatible with the ESC. Up to a weekly working time of 48 hours, longer-term averaging is not required.

Example 2:
A flexible average weekly working time of 35 hours was laid down by collective agreement; the maximum weekly working time of 40 hours may not be exceeded in any week. The reference period over which the average weekly working time of 35 hours must be reached is 36 months.

Following the Committee's logic, example 2 would violate Art. 2(1) ESC because the reference period is exceeded by more than one year. However, in example 2 the burden on workers would be considerably less than in example 1. Even if the collective bargaining parties had not agreed on a maximum weekly working time (in example 2: 40 hours), weekly working time averaged over a period of 12 calendar months would not be allowed to exceed 48 hours in accordance with section 7(8) of the Working Time Act.

The aforementioned examples show that the Committee's position would lead to hardly understandable results and that the legal situation in Germany is more in line with the interests of workers.

If, for a weekly working time up to the statutory limit of 48 hours, the collective agreements in question did not provide for any reference period at all, they would still be in conformity with the Charter. Therefore, conformity exists a fortiori when - as in the present case - provision is made for a reference period in the case of a weekly working time of less than 48 hours, even though the reference period is longer than 12 months.

The establishment of a reference period exceeding 12 months in combination with a weekly working time of less than 48 hours results in a more advantageous situation for workers and does not give cause for concern as regards their safety and health. It is the purpose of German working time legislation to protect the health and safety of workers. On the contrary, such a provision offers the possibility, among other things, to increase working-time flexibility and to facilitate the reconciliation of work and family life.

Thus, reference periods of more than one year which are established by collective agreements and take account of the legal requirements of the Working Time Act, make it possible to introduce long-term working-time accounts allowing workers to take longer periods of paid leave (e.g. parental leave or leave to care for dependants), to work part-time, to undergo further training or use flexible retirement arangements. This option, which is facilitated by the federal government through specific social insurance and tax regulations, gives workers the possibility to plan their working lives more flexibly and thus contributes to the reconciliation of family, private and professional life.

Finally, it should be noted that working time arrangements, which, at certain times, could lead to a weekly working time of more than 60 hours - as mentioned by the Committee -, are as a general rule not permissible in the case of full-time work. In contrast to the EU Working Time Directive, which only requires a daily minimum period of rest of 11 hours, the German legislation provides for a maximum dailoy working time of 8 hours on 6 working days (48 hours a week). The daily maximum hours may be extended to 10 hours (60 hours a week) if compensatory time-off is granted.

As there is no breach of the Charter, measures to change the current situation are neither necessary nor planned.

The Committee also requested information on
the supervision of working time regulations by the Labour Inspection, including the number of breaches identified and penalties imposed in this area.

Monitoring of compliance with working time regulations applicable to workers is the responsibility of the federal states (Länder) and the state authorities which are competent under the respective state legislation. They carry out their responsibilities without interference from the federal government. Working time checks are carried in the context of routine workplace inspections or inspection campaigns focussing on particular sectors at state or regional level and in response to information, complaints or reports from persons concerned. Depending on the inspection results, the respective employers and workers' representatives are provided with counselling. In addition to workplace inspections, the

inspectorates' activities focus on information and advice concerning questions of occupational safety and health and working time in particular.

The following table provides information on the labour inspection's supervision of working time regulations:

Supervision activities of the federal states		
Year	**Total**	**of these, activities including supervision of working time regulations**
2010	300,253	27,545
2011	297,917	27,538

As notified by the 15 federal states
Annual Report of the Federal Government on Safety and Health at Work

In 2011, the supervisory authorities found 12,242 violations of the Working Time Act compared with a total number of 521,083 complaints concerning occupational safety and health in general (figures notified by the 15 federal states). The federal government does not have any data on fines or criminal sanctions imposed for non-compliance with the Working Time Act. However, it can be assumed that the majority of cases constitute minor violations considering that the number of fines imposed for non-compliance with occupational safety and health regulations in general totalled 2040 in 2011 and the number of criminal charges reached 195 (as notified by the federal states).

Statistics

The collectively agreed working time differs between economic sectors and between East and West Germany.

The tables below give an overview of collectively agreed working hours (as of 31 December 2012):

Year	At the end of the year, a regular working week of																Hours on-average
	(up to 35.4 :	35.5 to 35.9	36.0 to 36.4	36.5 to 36.9	37.0 to 37.4	37.5 to 37.9	38.0 to 38.4	38.5 to 38.9	39.0 to 39.4	39.5 to 39.9	40.0 to 40.9	41.0 to 41.4	41.5 to 41.9	42.0 to 42.4	42.5 to 42.9	>= 43.0	
	applied to ...% of workers covered by collective areements																
2012 West	22.6	-	3.3	0.6	6.2	14.4	7.6	25.0	17.5	0.2	2.4	-	-	-	-	0.1	37.43
2012 East	2.7	-	0.7	-	3.4	0.7	28.5	2.5	16.1	-	44.0	1.1	-	0.2	-	-	38.96

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

Bargaining sector	West Germany	East Germany
Metal and electrical industry	35 hours	38 hours
Chemical industry	37.5 hours	40 hours
Construction industry	40 hours	40 hours
Public Service (Federal Government)	39 hours	39 hours

Source: Federal Ministry of Labour and Social Affairs

In 2012, the average weekly working time of workers covered by collective agreements was 37.4 hours in West Germany and just under 39 hours in East Germany. Therefore, the average weekly working time of workers covered by collective agreements has basically remained unchanged since the 27th Report of 2009.

If no differentiation is made between West and East Germany, the average weekly working time of workers covered by collective agreements in Germany as a whole was 37.7 hours. (Source: Eurofund, EIRO, working time developments 2012).

In 2012, the number of weekly hours actually worked (in the case of full-time workers) in Germany was 40.5 on average (Source: Eurofund, EIRO, working time developments 2012).

Paragraph 2 - Public holidays with pay

As regards the legal framework, reference is made to the previous reports. In the period under review, the legal framework (Continuation of Wage Payments Act) remained unchanged.

In reply to the Committee's request for updated information on the (collectively agreed) supplements for work carried out on public holidays, it must be recalled that provisions on wage supplements for work carried out on Sundays and public holidays are contained in almost all collective agreements.

At the end of 2012, supplements for work on Sundays and public holidays ranged from 63 to 150 per cent of the collectively agreed pay.

The following provisions continue to apply for federal public service employees:

According to section 8 of the Collective Agreement for the Public Service, employees receive a supplement of 135 per cent in the case of work carried out on public holidays, Sundays and in the case of night work, if no compensatory time off is granted. If compensatory time off is granted, the supplement is 35 per cent of the standard wage payable for one hour.

Paragraph 3 – Annual holiday with pay

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

All collective agreements provide for longer periods of leave than the statutory minimum leave. In 2012, average leave amounted to approx. 30.5 working days in western Germany and 30.3 working days in eastern Germany. The calculation is based on five working days per week. Provisions on minimum employment periods are contained in most collective agreements and in the Federal Paid Leave Act.

To complement the last report in which the federal government replied to the Committee's request for information on the rules on the postponement of annual leave (section 7§3 of the Federal Paid Leave Act) reference is made to the following decision of the Federal Labour Court (BAG) on this matter delivered in the period under review:

Following the judgements of the European Court of Justice in the Schultz-Hoff case (ECJ of 20 January 2009- Case C-350/06) and the KHS case (ECJ of 22 November 2011 - Case C-214/10), the Federal Labour Court, further developing case law on section 7§3 of the Federal Paid Leave Act in conformity with the Directive, decided that in the case of workers who have been absent on sick leave for several years, the entitlement to paid annual leave is extinguished only 15 months after the end of the leave year (ruling dated 7 August, 2012, 9 AZR 353/10).

In addition to the comments in the 27th report, it should be noted that the Federal Labour Court, taking account of the recent ECJ jurisprudence in the preliminary ruling C-214/10 of 24 November 2011 (KHS case), also considers in its own ruling of 7 August 2012 (9 AZR 35/10) that a limitation of the carry-over period for annual leave not taken on account of long-term illness in national legislation on paid leave is in conformity with the Directive. Consequently, with respect to federal public service employees, section 7§3 of the Federal Paid Leave Act is now also interpreted in a manner that conforms with EU law, meaning

that the right to paid annual leave is extinguished 15 months after the end of the leave year, if employees had been incapacitated for work due to illness.

Paragraph 4 - Reduced working hours or additional holidays in dangerous or unhealthy occupations

In response to a request from the Comittee, the federal government in its 27th report provided additional information on measures taken to reduce exposure to residual risks in certain occupations involving exposure to ionising radiation, extreme temperatures, noise, steelmaking etc.

The Committee now asks for information on how it can be ensured, in companies or sectors where it is not possible to eliminate or reduce the risks significantly, that in practice, actual working hours based on collective agreements satisfy the requirements of Article 2§4 of the Charter.

In this context, it should be noted that activities involving risks that cannot be eliminated or reduced significantly would be inadmissible under German occupational safety and health legislation (regulations). (Example: Non-compliance with limit values for exposure to ionising radiation, noise or temperatures at work).

The Committee did not request any further information regarding federal public service employees covered by the relevant collective agreement.

Paragraph 5 – Weekly rest period

General legal framework

As regards the general legal framework, reference is made to the previous reports as there have been no legal changes concerning the areas covered by Art. 2§5 of the Charter in the period under review.

Derogation from section 11§3 of the Working Time Act

The Committee concludes that the situation in Germany is not in conformity with Article 2 (5) of the Charter on the ground that the time in which a weekly rest day is granted may exceed twelve successive working days. In this respect, the following should be noted:

According to section 12 §2 of the Working Time Act a collective agreement or a works or service agreement based on a collective agreement may specify the reference period within which time off has to be granted. This means that the two-week compensatory period for the day off to compensate for work on Sunday laid down in section 11 (3) of the Working Time Act may be prolonged by the parties to collective bargaining. It cannot be ruled out that, in exceptional cases, employees may work more than 12 days in succession.
With this provision, the German legislator creates the possibility for the collective bargaining parties to derogate from the requirements of section 11§3 of the Working Time Act, if workers' health and safety are ensured. Here, the legislator's specific focus was on part-time businesses (whose operations are limited to specific seasons) and seasonal businesses (which have an exceptional workload at particular times of the year).

The provision of section 12§2 of the Working Time Act does not constitute a departure from the basic conditions that have to be satisfied when employees are required to work on Sunday. Work on Sundays is only allowed if the specific requirements are met. According to section 10§1 of the Working TIme Act, exceptions from the prohibition of work on Sunday (section 9 of the Working Time Act) are only posssible in specific areas and only when the work cannot be done on workdays. It is not permissible to arrange for a waiver of compensatory time off for work on Sunday. The only permissible measure is a prolongation of the time span within which compensatory time off has to be granted.

Collectively agreed arrangements have to respect the objectives of the Working Time Act; hence working time arrangements must be such as to guarantee the health and safety of workers at work (section 1§1 of the Working Time Act).

The right to bargain collectively with a view to the regulation of terms and conditions of employment is one of the fundamental rights and protected by Article 6 of the European Social Charter. In Germany, the delegation of powers to the social partners is one of the fundamental principles of the social market economy and traditional practice. The social partners play a significant role also in the area of health and safety at work. The social partners are in a better position than the legislator to assess the working conditions and the work-related strain in the undertakings in their respective sectors and to find practical, adequate and effective solutions that meet the needs of the companies while taking into account occupational health and safety considerations.
Finally, the possibility to define a reference period in derogation from section 11§3 of the Working Time Act that has been granted to the collective bargaining parties, does not exempt employers from the obligation to include working time in the risk assessment they have to carry out under section 5 of the Occupational Safety and Health Act and to take

action, where necessary, to ensure the safety and health of workers. In this context, the employer must also consider the number of successive days worked.

The federal government takes the view that this approach, which, as a matter of fact, is also in line with the EU Working Time Directive, is in conformity with Article 2§5 of the Charter. In the federal government's opinion, the term "weekly rest period" does not mean that in every case a day off has to granted within each week, but rather that one day-off has to be granted per week. The Committee seems to be of the same view since it generally accepts a time frame of two weeks for granting compensatory time off. Against this background, the view upheld by the Committee that the time frame must be limited to 12 working days, without any expection, does not appear plausible. In exceptional cases, it must be possible for the social partners to settle for a longer time frame for granting compensatory time off as long as the protection of workers' health is guaranteed.

Article 4: Right to a fair remuneration

Paragraph 1 – Adequate remuneration

Under the system of collective bargaining autonomy guaranteed by the German Constitution in Article 9 (3) of the Basic Law, remuneration in the Federal Republic of Germany is determined autonomously by the social partners without interference from the government. This has not changed in the period under review.

Collective agreements are in place for economic sectors employing around 80 percent of all employees.

There are different ways of being bound by collective agreements.

According to the Collective Agreements Act (TVG), collective agreements have a direct and binding effect

- when the employer is a member of the association that negotiated the agreement, or party to a company agreement, and the employee is a member of the bargaining trade union (sections 3, 4 (1) of the Collective Agreements Act), or

- when the collective agreement has been declared generally binding (section 5, (4) of the Collective Agreements Act).

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

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

Regarding the coverage of collective agreements the latest survey of the Institute for Employment Research of the Federal Employment Agency (2011 Establishment Panel) showed the following picture:

- In western Germany, 54% of workers (56% in the year before) work in companies bound by industry-wide collective agreements and 7% (7% in the year before) work in companies covered by company-wide collective agreements.

- In eastern Germany, 37 % of workers (37 % in the year before) work in companies bound by industry-wide collective agreements and 12 % (13 % in the year before) work in companies covered by company-wide collective agreements.

Thus 61% (preceding year 61%) of all workers in western Germany and 49% (preceding year 50%) of all those in eastern Germany are employed by companies bound by collective agreements - totalling 59% for Germany as a whole (down from 61% in the preceding year).

The 2011 Establishment Panel moreover shows that there are companies which are not bound by a collective agreement but use the relevant collective agreements as an orientation thus extending their application to another 20% of workers in western Germany (19% in the preceding year) and 26% in eastern Germany (24% in the preceding year).

This means that in Germany around 80% of all employment relationships (81% in the year before) are fully or mainly governed by collective agreements.

Responding to the Committee's request for information on the national net average wage and on the lowest wages paid in the standard case of a single worker as well as on the proportion of workers receiving the minimum wage or the lowest wage actually paid, we comment as follows:

Official statistics in the form of the **2010** Structure of Earnings Survey show the following data:

In 2010, **average net monthly earnings of all full-time workers** stood at **2,159 €**. The following table shows the 20 occupations with the lowest net monthly pay on average:

Net monthly earnings of full-time workers according to occupational activities (ISCO-08)
Results of the 2010 Structure of Earnings Survey

Occupations according to ISCO-08	Employees	Net monthly pay
		Average
	Share	Euros
514 Hair dressers, beauticians and related workers	0.12%	1,043
941 Food preparation assistants	0.17%	1,155
921 Agricultural, forestry and fishery labourers	0.05%	1,187
962 Other elementary workers	0.21%	1,229
911 Domestic, hotel and office cleaners and helpers	0.78%	1,245
513 Waiters and bartenders	0.46%	1,273
532 Personal care workers in health services	0.58%	1,292
832 Car, van and motorcycle drivers	0.15%	1,310
324 Veterinary technicians and assistants	0.01%	1,311
933 Transport and storage labourers	3.57%	1,352
521 Street and market salespersons	0.01%	1,369
932 Manufacturing labourers	0.77%	1,383
422 Client information workers	0.37%	1,408
815 Textile, fur and leather products machine operators	0.35%	1,421
523 Cashiers and ticket clerks	0.15%	1,431
512 Cooks	0.69%	1,448
912 Vehicle, window, laundry and other hand cleaning workers	0.32%	1,459
753 Garment and related trades workers	0.25%	1,478
611 Market gardeners and crop growers	032%	1,548
515 Building and housekeeping supervisors	0.38%	1,556
Total	100.00%	2,159

Full-time workers (excluding trainees) in October 2010 in establishments with 10 or more employees

Source: Federal Statistical Office

Collectively agreed provisions on minimum wages are an integral part of our system of collective bargaining autonomy. An overview of the applicable minimum wages in Germany as defined in the Posted Workers Act (*Arbeitnehmer-Entsendegesetz - AEntG)*) and the wage floor applicable to temporary work according to the Act on Temporary Employment (*Arbeitnehmerüberlassungsgesetz - AÜG*) can be found under the following link:

- http://www.bmas.de/DE/Themen/Arbeitsrecht/Mindestlohngesetze/inhalt.html

Paragraph 2 – Increased rate of remuneration for overtime work

As of end 2012, collectively agreed overtime supplements ranged from 24% to 41%.

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

There were no changes in the law in the period under review. Reference is made to the 27th report.

As regards the wage gaps between men and women workers, the Federal Statistical Office provides the following data for the year 2012: (https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdiensteArbeitskosten/VerdienstunterschiedeMaennerFrauen/Aktuell_Verdienstunterschied.html;jsessionid=CDBF056C256FB6B5131EB2163FC6B60B.cae3):

In 2012, women earned 22% less than men. This has placed Germany in the lower ranks of the list of EU countries for years. The gap is even wider for university graduates and executive staff. In 2012, women's gross hourly pay was €15.21, which is 22% below that of men (€19.60). The gender pay gap in Germany as a whole did not change as compared with previous years. The figures for eastern and western Germany showed hardly any changes either. In 2012, the unadjusted gender pay gap was 24% in the former Federal territory and 8% in the new Federal states.

Investigations into the reasons for the pay differential can be made every four years on the basis of the data from the Structure of Earnings Survey. The most recent findings are available for 2010. They show that about two thirds of the unadjusted gender pay gap can be attributed to structural imbalances. The differential in average gross hourly pay is mainly due to the fact that women and men tend to work in different sectors and occupations and that job requirements in terms of executive functions and skills are unevenly distributed. To this adds that women have more often part-time or marginal jobs than men.
There are no job-related characteristics that could explain the remaining one-third of the pay differential. For Germany as whole this adjusted gender pay gap, as it is called, was 7% in 2010 (unadjusted gender pay gap in 2010: 22%). This means that women with comparable qualifications and jobs earn 7% less per hour worked than men. Yet it has to be seen that the adjusted gender pay gap would possibly be lower if further factors impacting on wages had been available for analyses. For instance, there were no data on individual behaviour in pay talks nor on family-related career interruptions.
Comparisons between the eastern and western parts of the country show a remarkable picture: In what was formerly West Germany the unadjusted gender pay gap was 24% in 2010, the adjusted gender pay gap 7%. In the east German federal states the unadjusted wage differential was merely 7%, but rose to 9% when adjusted. This is due to the fact that in 2010 qualifications, jobs and other analysed characteristics of female workers in

east Germany would, in arithmetic terms, even have justified higher average wages than for east German men.
Compared to the 2006 Earnings Structure Survey, which had been used as a basis when determining the gender pay gap for the first time, the rates of the unadjusted and adjusted gender pay gaps for the year 2010 had only slightly changed.

The goal of the German government is to identify the causes of the wage differential between women and men and to develop strategies of action to effectively reduce the wage gap in Germany. The options of the individual players must be made clear and forms of cooperation must be explored.
The German government goes for a **cause-focused strategy to overcome pay inequality.** Various research projects have found that the gender pay gap has three main causes:

- Women are missing in certain occupations, sectors and at executive levels: the horizontal and vertical segregation of the labour market continues to be a reality.
- Women interrupt their careers and reduce working hours for family reasons more often and for longer periods than men.
- Individual and collective pay negotiations have not succeeded in ending the practice that "typically female jobs" are rated inferior.

To narrow the pay gaps and thus strengthen the efforts towards a sustainable Germany, the German government plans to cooperate more closely with the relevant players, since the goals can often be achieved only when interacting with civil society (social partners, women and trade associations) in the field of equal pay and all other state levels including the federal states and municipalities. The German government therefore intends to bring the different players together so that they all act in the areas where they have the greatest impact.

In reply to the Committee's request concerning the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework, the following information is provided:

Companies/employers' associations
In 2001, an agreement was concluded between the German government and the central associations of German industry to promote equal opportunities for women and men in the private sector. The agreement includes four areas of action: It calls upon companies to take appropriate measures to improve the **education and training perspectives** and carreer opportunities for women and girls, to facilitate the **reconciliation of work and familiy life**, to increase the share of women in **management positions** and future-

oriented professions and to reduce the **pay gap** between men and women. The agreement provides for a regular evaluation of the measures implemented, the state of progress and future action. The evalution has shown positive changes with regard to general education and vocational training. In recent years, policies to improve the reconciliation of work and family life and cooperation with business in this area have been particularly successful.

A valuable service for industry has been the introduction of **Logib-D**, supported by consultants, with the aim of giving firms an incentive to analyse wage differentials in their enterprises. Logib-D is a proven instrument the federal government provides to companies enabling them to identify the existing gender pay gap, analyse its determinants and to develop ideas on how it can be overcome. Logib-D is a registered trademark and is an acronym for "**Lo**hn**g**leichheit **i**m **B**etrieb" ("Pay Equality in Companies - Germany"). Since 2010, some 160 (out of 200) companies completed the government-subsidised consultation process (position as of June 2013). In more than 3500 cases, the webtool which is at any time available on the Internet, has been downloaded and the evaluation report printed out. Logib-D helps employers who are subject to a collective agreements as well as those who are not bound by a collective agreement analyse the causes of gender pay differences in their companies and to develop a pay structure based on gender equality; in the light of demographic change and skilled labour shortages this is a good investment in the company's future. All companies who successfully participated in the consultation process are awarded the "Logib-D geprüft" ("Logib-D certified") label. Many companies use the "Logib-D certified" label to improve their image and to reposition themselves with a view to demographic change and the shortage of skilled labour. Logib-D has also attracted considerable interest among European neighbouring countries.

Many senior managers in industry have recognised that it is in their own interest to promote gender equality at work. Therefore, there has been an extremely successful cooperation with the corporate "Success Factor Family" programme for many years. Its primary objective is to improve the reconciliation of work and familiy life. Meanwhile, roughly 3,400 employers who belong to the programme's corporate network subscribe to a family-friendly human resources policy. In the context of these activities, the "**Family-friendly Working Hours" initiative** was launched in autumn 2010. Its aim is to put in place more flexible working time models giving mothers better career opportunities and fathers more time with their families. Quasi full-time work arrangements of 30 to 35 hours a week are of particular significance as they respond to the wishes of many employees and facilitate the reconciliation of work and family life also for specialist and executive employees.

In view of future shortages of specialist and executive personnel, it is important for industry to overcome gender segregation in the labour market and increase the proportion of women in leadership positions and male dominated professions. The **Girls' Day Project or the MINT (Mathematics, IT, Natural Sciences, Technology) Project as well as the TOTAL-E-QUALITY label** are examples of cooperation existing in these areas.

In addition to the Agreement between the federal government and the central associations of German industry, it is planned to initiate new self-commitments in areas where it is possible to follow up their implementation in the immediate social environment and regional settings. Thus, since the end of 2011, the federal government has supported the **"Regional Alliances for Gender Equality"** initiative. Its aim is to assist 10 municipalities and districts in setting up the structures for more gender equality in industry. Policymakers and companies act together at local level to attract more women to leadership positions. Currently, some 100 participating companies are given individual strategy advice on how to achieve specific targets of increasing the number of women in leadership positions. The aim is to enhance the attractiveness and competitiveness of companies and regions.

The **"Change of Corporate Cultures to Prevent Career Interruptions"** initiative was carried out by the Fraunhofer Society on behalf of the federal government (2010 to 2012). In cooperation with nine large companies, the initiative analysed the extent to which career interruptions among women are influenced by corporate culture. The initiative's aim was to stimulate change within businesses to prevent career interruption in the future and to improve female career opportunities. The project has shown that the percentage of women in leadership positions can only be successfully increased if individual starting conditions in the respective company are taken into account and if diversity is considered a valuable corporate resource. To be succesful, measures to bring more women into leadership positions must address the organisational structure as a whole. Moreover, the necessary changes in corporate culture must include women and men, enabling both sexes to benefit.

Trade unions

Another important aspect is the cooperation with trade unions. For example, in a partnership with the DGB the federal government supports the **"Women Breadwinners"** project. In almost one-fifth of German multi-person households women are the main breadwinners. Half of them are lone parents, the other half usually have a partner with a low income or a partner who is in need of care or unemployed. Therefore, women breadwinners often have to take on a double burden: they have the reponsibility as the main income earner and are in charge of the children's education. The project seeks to raise the women's awareness and contribute to political mobilisation for their needs.

Social partners

The research project **"Collective Barganing and Equal Pay"** (project partners: University Nuremberg-Erlangen, IAB) was launched in January 2012 to analyse the effect of collective bargaining on the gender pay gap. In this context, a workshop with experts from the Collective Bargaining Commission and representatives of academia was held in spring 2013. At the workshop, lessons were drawn on the mechanisms of collective bargaining. The project aims to raise the social partners' awareness for the issue of equal pay in collective bargaining.

Alliances

On 15 April 2008, the Business and Professional Women (BPW) association organised the first **"Equal Pay Day"** in Germany. Its aim was to inform about the gender pay gap and to encourage woman to take the initiative and raise the issue of pay inequality more actively. Since 2011, the Equal Pay Day event has been developped into an "Equal Pay Day Forum", which organises nationwide events for women multiplyers every year, focussing on annual priority themes and preparing toolkits (for example a guide for the organisation of events and information material) for animation and support of public events. This year, the sixth Equal Pay Day on 21 March 2013 had the theme "Wage Formation in Health Occupations". Numerous events were held across the country and attracted a great deal of media interest.

In autumn 2011, the project **"RuralWomenVoices for the Future: Ensuring Fair Income Prospects" (LandFrauenStimmen für die Zukunft: Faire Einkommensperspektiven sichern“)** was launched in cooperation with the German Rural Women's Association. The project aims at analysing the career decisions of women in rural areas where the family context plays a far greater role than in urban areas. Another aspect the project will address is networking among actors in rural areas to ensure more effective information on the impact of the gender pay gap over a lifetime. The situation of rural women was defined as a priority theme at the Commission on the Status of Women (csw) session in 2012. The German side event on the rural women project attracted great international interest. The project was also presented at a stand at the International Green Week Exhibition 2013. In February 2013, the network of women in rural self-governing bodies held its first meeting.

Federal Anti-Discrimination Agency

The Federal Anti-Discrimination Agency (ADS) started its work when the General Equal Treatment Act (AGG) entered into force in August 2006. It is an independent contact point for persons who feel discriminated against under the terms of the General Equal Treat-

ment Act. In case of dispute, the ADS can offer victims of discrimination free counselling, refer them to counselling centres, if necessary, or initialize an out-of-court settlement between the parties involved. Since the start of the ADS' operation, counselling has been provided in a total of 73 cases of gender-based wage discrimination.

Federal States

The federal states support the federal government's initiatives to eliminate the gender pay gap by a great variety of own measures[1]. At the annual Conference of Equality and Women's Ministers and Senators of the Laender (GFMK) participants regularly call upon the federal government to take specific action to reduce the gender pay gap that also exists in the public service. At the same time, the federal states support projects like Equal Pay Day and Logib-D.

Irrespective of the above-mentioned measures and alliances, the federal government continues to pursue a root-cause oriented governance strategy to overcome the wage gap.

Change of role stereotypes and increasing the percentage of women in executive positions.

..

Traditional role models in some sectors/groups of society are an essential reason for the limited spectrum of occupational choices of women and the obstacles they encounter in their career. Therefore, the federal government's gender equality policies are essentially aimed at expanding the occupational choices of both men and women, and to improve their employment and career opportunities in general.

The projects that the federal government launched in cooperation with various partners like the "Girls' Day" and "Come on, join MINT" ("Komm mach MINT") initiatives, are aimed at motivating girls and young women to expand their career opportunities by choosing occupations that are untypical for women and until now have hardly been taken into consideration. In 2005, the federal government initiated the nationwide "New Ways for Boys" ("Neue Wege für Jungs") project and introduced a Boys' Day in 2011. The Boys' Day is organised simultaneously with the Girls' Day and is aimed at motivating boys to choose a career in the social field.

In the coalition agreement of 2009, it was decided to develop of a phased plan to bring more women into management positions. The plan, which is being implemented successively, seeks to achieve greater transparancy, more self-comitments and a coordinated

[1] For example, the Free State of Bavaria produced a cinema commercial "Schluss mit dem Unsinn" ("Stop the Nonsense") in which the gender pay gap is illustrated in a very creative manner.

approach in fighting the root causes of existing inequality. The first phase, focussing on better reconciliation of work and family life and changes in corporate culture, laid the groundwork for overcoming the low presence of women in managerial positions. Action in this context includes the expansion of child care facilities, the Initiative for family-friendly working hours, and the corporate programme "Success factor Family".

The plan's second phase provides for a package of projects aimed at making competition and transparency the driving forces for fair opportunities. This includes, for example, the implementation of a flexible female quota at sub-statutary level by the DAX-30-Initiative, projects like "Changing Corporate Cultures to Prevent Career Interruptions", "Equal Rights for Female Shareholders", and measures to promote the Women-on-Board Index and the development of the Women-Career Index.

All measures mentioned above create transparency and contribute to increasing the pool of women available for leadership positions and help to prepare the ground for the necessary change of culture in the world of work. A sustainable influence of women on corporate culture can be expected, particularly, when a sufficient number of women have reached top leadership positions.

Improving framework conditions through family policies and back-to-work programmes

In Germany, family-related career interruptions and career cut-backs are a particularly significant cause of pay inequality. A comparison with other countries shows quite clearly that the higher participation rates of women in these countries and their social infrastructures for reconciling work and family responsibilities have reduced the gap between the average pay of men and women. Better opportunities for combining family and career will help women to have uninterrupted careers and forms of employment that provide a decent living. It is therefore of vital importance to create the appropriate framework conditions for mothers and fathers. With its family and gender policy the Federal government has taken decisive steps in the right direction. The **expansion of child-care facilities,** particularly for children under 3, the improved tax **deductibility of child-care costs**, the provision of **parental allowances as wage replacement benefits and the related partner months** are policies making it easier for women and men to reconcile family commitments and work and enabling mothers and fathers to share their child care obligations.

An important additional step is the **Federal government's action programme "Vocational Reintegration as a Perspective"** that was launched in March 2008. This programme and its various components are meant to help women and men who have interrupted their careers for family reasons for several years and who wish to return to work.

This broad initiative, which is implemented in cooperation with the Federal Employment Agency, supports local agencies in their efforts to develop networks of support for returners to work and to achieve a professional return to work after periods of family-related absence.

In addition to the existing support, so-called "blended learning scenarios" for the skill-building of job returners are being tested since June 2013 in a joint pilot project with the Federal Employment Agency. Another objective of the action programme is to train job returners for an employment with social insurance coverage in the field of household-related services. This is a possibility for giving low-skilled returners job prospects that will enable them to build up provision for their retirement.

Increased use of online media and e-learning services for training and qualification purposes and "return to work and care responsibilities" will be priorities in the next ESF programming period (2014-2020).

Reform of pay structures

With the exception of the public service, the federal government has no possibility of intervening directly in the process of wage-setting. This is mainly the task of the collective bargaining parties, of individual employers and workers and of the works and staff councils. In practice, wage-setting includes topics like job evaluation in the context of collective agreements, reform of pay structures, as well as wage bargaining. Nevertheless, Germany supports the bargaining parties in critically examining existing job evaluation and grading systems with regard to valuation differences between typically female and typically male jobs so as to assess the effect of wage-setting systems and different job evaluation procedures on pay equality and to adjust them where necessary. The experience other European countries have gained from legislation on pay structure transparancy is also being evaluated.

Finally, the federal government supports the social partners and all actors involved in wage-setting with the Guide published in 2007 "Fair P(l)ay - Equal Pay for Men and Women" on how to apply the principle of "equal pay for equal work and work of equal value". In particular, the Guide recommends that transparent and non-discriminatory (analytical) job evaluation procedures be provided for in collective agreements to avoid the perpetuation of gender pay gaps. For individual wage negotiaions, the female wage and salary check (Frauenlohnspiegel) partially funded by the EU provides an important orientation.

In reply to the Committee's request for detailed statistics or any other relevant information on pay differentials between men and women not working for the same employer by sec-

tor of the economy, and according to level of qualification or any other relevant factor, the following data are provided:

Unadjusted earnings differential by personal characteristics in 2010

Measured characteristics	Gross hourly earnings			Earnings differential
	Total	Women	Men	
	Euro			%
Total	16.95	14.62	18.81	22
Age				
under 25	8.13	8.03	8.22	2
25 to 29 years	13.52	12.86	14.06	9
30 to 34 years	16.50	15.20	17.46	13
35 to 39 years	18.04	15.74	19.73	20
40 to 44 years	19.01	15.91	21.45	26
45 to 49 years	18.94	15.67	21.63	28
50 to 54 years	18.81	15.71	21.48	27
55 to 59 years	19.72	16.34	22.64	28
60 to 64 years	20.76	17.14	23.36	27
65 years and older	12.35	10.68	13.40	20
Education				
University degree	29.50	24.86	32.57	24
University of applied sciences degree	24.25	20.12	27.99	28
University entrance certificate	18.05	15.66	20.51	24
Lower secondary/intermediate school leaving certificate	15.60	13.80	16.96	19
Training				
Without vocational training	10.89	10.08	11.57	13
With vocational training	17.23	15.17	18.81	19
With university degree				

Source:
https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdiensteArbeitskosten/VerdienstunterschiedeMaennerFrauen/Tabellen/GPG_Persoenlich.html

Unadjusted earnings differential by workplace characteristics in 2010				
Measured characteristics	Gross hourly earnings			earnings differential
	Total	Women	Men	
	Euro			%
Total	16.95	14.62	18.81	22
Territorial unit				
West Germany	17.51	14.92	19.55	24
East Germany	13.23	12.75	13.66	7
Occupational groups				
Employees in managerial positions	35.10	28.64	37.66	24
Employees in key positions	23.32	21.07	24.88	15
Specialist employees	16.18	15.17	16.99	11
Semi-skilled employees	13.03	11.91	13.82	14
Unskilled employees	10.42	10.16	10.74	5
Type of employment				
Full-time	18.11	15.38	19.33	20
Part-time	14.37	13.92	15.69	11
Full-time civil servants	23.94	22.39	25.28	11
Part-time civil servants	23.23	23.08	24.54	6
Partial retirement	31.45	26.21	35.18	25
Minor employment	8.65	8.61	8.71	1
Apprentices	4.37	4.46	4.30	-4
Type of employment contract				
Contracts for an indefinite term	17.97	15.34	20.04	23
Fixed-term contracts	13.48	12.84	14.10	9

Length of service				
Less than one year	11.07	10.08	11.87	15
1 to 2 years	13.06	11.52	14.46	20
3 to 5 years	15.30	13.27	16.87	21
6 to 10 years	17.88	15.17	20.10	25
11 to 15 years	19.56	16.52	21.91	25
16 to 20 years	20.42	17.83	22.52	21
21 to 25 years	22.30	19.15	24.39	21
26 to 30 years	22.82	19.94	24.87	20
31 und mehr Jahre	23.69	20.83	25.75	19

Quelle:
https://www.destatis.de/DE/ZahlenFakten/GesamtwirtschaftUmwelt/VerdienstArbeitskosten/VerdienstunterschiedeMaennerFrauen/Tabellen/GPG_Arbeitsplatz.html

As regards the Committee's question of whether the Equal Treatment Act (AGG) provides for other forms of compensation in addition to the payment of lost wages, the following should be noted:
Section 15 of the Equal Treatment Act regulates claims for compensation or damages. Section 15§1 of the Equal Treatment Act (AGG) provides for full compensation of the material damage caused by a violation on the part of the employer of the prohibition of discrimination set out in section 7 of the Equal Treatment Act.
In accordance with section 15§1 of the Equal Treatment Act, the injured party may claim appropriate compensation for non-material loss in addition to the payment of compensation for material damage. The amount of compensation must be appropriate. When determining the amount of compensation, the national courts are bound by ECJ's decisions. According to ECJ case law, compensation must have a preventive and dissuasive effect. In the case of discrimination regarding pay, there is no ceiling on compensation payable to employees.

As regards the Committee's request to be kept informed of any developments of jurisprudence regarding non-discrimination with respect to remuneration, the following should be noted:
Labour court statistics only provide data on the total number of claims for payment (legal action for non-payment of wages) and do not indicate the grounds for legal action.
In all other respects, reference is made to the previous report (27th Report).

Paragraph 4 – Protection against reprisals

We cannot accept the Committee's view that in cases where an employment relationship is terminated in accordance with sections 9 and 10 of the Protection against Unfair Dismissal Act (KSchG), courts should be free to decide upon the amount aimed at compensating the damage caused by the termination.

As explained in detail in the previous report (27th Report), the federal government takes the view that with the principle of vested rights protection (Bestandsschutzprinzip) German legislation fully complies with Article 4§3. A dismissal on the part of the employer because an employee is lawfully exercising a legal right, including the right to non-discrimination with regard to pay, is a so-called disciplinary or retaliatory dismissal, which is prohibited and invalid pursuant to section 612a of the Civil Code (BGB) in conjunction with section 134 of the Civl Code (BGB).
The employer's obligation to continue the employment relationship and to retroactively pay any unpaid salary or wages provides full compensation for the damage suffered by the employee as a result of an invalid dismissal.

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

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

Moreover, it should be noted that section 9 and 10 of the Protection against Unfair Dismissal Act only apply to severence pay to be fixed by court decision. They do not apply to individual agreements. The ceilings set out in section 10 of the Protection against Unfair Dismissal Act may be exceeded in court or out-of-court settlements or in termination agreements. As it is up to the workers to file an application with the court for termination of employment, they can also decide whether in return for the termination of employment

they receive severance pay negotiated individually or severance pay fixed by court decision.

Article 5: The right to organise

Reference is made to the previous reports.

Article 6: The right to bargain collectively

Paragraph 1 – Joint consultation

In the period from 1949 to the end of 2012 a total of 397,000 collective agreements were concluded of which about 68,000 were still in force at the end of 2012. The number of companies with company agreements amounted to approximately 10,100 at that point in time. In the period from 2009 to 2012 a total of about 22,900 collective agreements were newly registered in the register of collective agreements. This included about 14,000 company agreements.

Paragraph 2 - Machinery for negotiations

In principle, civil servants also enjoy freedom of association in accordance with Article 9 para. 3 of the Basic Law. They have the right to form trade unions or professional associations (see section 116 para. 1 of the Act on Federal Civil Servants, section 52 of the Act on the Status of Civil Servants). When civil service regulations are being prepared, the central organisations of the relevant trade unions are to be involved in accordance with section 118 of the Act on Federal Civil Servants, section 53 of the Act on the Status of Civil Servants.

The basic employment conditions of civil servants are not based on collective agreements that are the result of negotiations but are rather regulated by law. Furthermore, civil servants' pay is not being fought for and agreed upon by collective bargaining parties but laid down unilaterally by Parliament as legislator. Civil servants do not have a right to strike. In accordance with the jurisprudence of the Federal Administrative Court, the inadmissibility of civil servants' strikes as a traditional principle of the professional civil service is provided for by constitutional law in Art. 33 para. 5 of the Basic Law (see decisions of 19 September 1984 - BVerwG 1 D 38.84 and of 3 December 1980 - BVerwG 1 D 86.79).

In the reference period, the ban on strikes for civil servants was subject of several court proceedings. All proceedings related to the participation in strikes of teachers who were civil servants. In its decision of 15 December 2010 (Az. 31 K 3904/10.0) the Administrative Court Düsseldorf ruled that civil servants still did not have a right to strike in Germany. Nevertheless, the imposition of a disciplinary measure because of a person's participation in a strike was inadmissible if the civil servant was not engaged in the core area of public administration involving the exercise of state authority. In such cases, disciplinary proceedings would rather have to be suspended because this was the only way to take account of Article 11 of the European Convention on Human Rights. In its decision of 27 July 2011 (Az. 28 K 574/10.KS:D) the Administrative Court Kassel stated that the ban for civil servants to go on strike generally applicable according to Article 33 para. 5 of the Basic Law had been further developed by Article 11 of the European Convention on Human Rights in so far as it now applied only to those civil servants engaged in the area involving the exercise of state authority. In contrast, the Administrative Court Osnabrück ruled on 19 August 2011 (Az. 9 A 1/11 and 9 A 2/11) that the traditional principles of the professional civil service in accordance with Art. 33 para. 5 of the Basic Law continued to include a general ban on strikes for civil servants. A function-related differentiation constituted an infringement of Art. 33 para. 5 of the Basic Law as interpreted by the Federal Constitutional Court.

Meanwhile, decisions have been rendered by higher courts in which the ban on strikes for civil servants has been confirmed. In its decision of 07 March 2012 (Az. 3d A 317/11.0) the Higher Administrative Court North-Rhine/Westphalia overruled the above-mentioned decision of the Administrative Court Düsseldorf. It stated that the freedom of association was restricted for civil servants by the traditional principles of the professional civil service as laid down in the Basic Law. The reference to the European Convention on Human Rights would not make any difference in this regard. In the Federal Republic of Germany, the said Convention had the status of a simple federal law and had thus to be measured against the requirements of the higher-ranking Basic Law. The Higher Administrative Court Lower Saxony argued similarly in two decisions of 12 June 2012 (Az. 20 BD 7/11 and 20 BD 8/11): Even if Article 11 of the European Convention on Human Rights was taken into account, it had to be assumed that civil servants were not allowed to go on strike in Germany. This ban on strikes constituted a fundamental constitutional principle that could only be changed by the constituent power.

The Federal Administrative Court has granted leave for the appeal against the above-mentioned decision of the Higher Administrative Court North-Rhine/Westphalia because of the fundamental importance of the matter at issue. In the appeal proceedings (Az. 2 C 1/13; pending) it will have to be clarified whether the jurisprudence of the European Court

of Human Rights on the right to strike for members of the public service (see judgment of 21 April 2009 - 68959/01) is of relevance to the validity of the constitutional ban on the right to strike for civil servants or to the sanctioning under disciplinary law of infringements of the ban on strikes. According to the Trade Union for Education and Science, constitutional complaints have been lodged with the Federal Constitutional Court against the decisions of the Higher Administrative Court Lower Saxony.

No changes have occurred in the reference period with regard to the ban on strikes for civil servants employed with the privatised undertakings who are not on leave.

Paragraph 3 - Machinery for conciliation and arbitration

With regard to conciliation and arbitration procedures to settle collective labour disputes between employers and employees or their organisations, a distinction has to be made between public arbitration procedures on the one hand and procedures based on individual and autonomous agreements on the other in the Federal Republic of Germany. Both forms of arbitration procedures are always aimed at concluding a collective agreement and at preserving industrial peace and are thus an effective instrument for de-escalation in collective bargaining disputes.

Public arbitration procedures

First of all, it has to be stated that there is no form of compulsory public arbitration in the Federal Republic of Germany. Voluntary public arbitration is subsidiary to the arbitration procedures based on voluntarily agreed provisions in collective agreements. Consequently, it is used only if collectively agreed arbitration procedures do not exist or have failed. The legal basis of voluntary public arbitration is provided by the Control Council Act No. 35 on Mediation and Arbitration Procedures dated 20 August 1946. The Control Council Act No. 35 was not repealed by the Act to Adjust Occupation Law of 23 November 2007 which means that it continues to apply as law in force in accordance with section 1 para. 2 of the Act to Adjust Occupation Law. It provides that arbitration committees may become active only at the level of the federal states and only if they have been called in by both bargaining partners. The proposal for an agreement made by the arbitration committee in which the stakeholders are equally represented is binding only in so far as both bargaining partners agree to it. These regulations ensure that the autonomy in collective bargaining protected in Art. 9 para. 3 of the Basic Law is preserved.

Agreed arbitration procedures

To a very large extent, arbitration agreements concluded between the bargaining partners and laid down in collective agreements are applied in the Federal Republic of Germany. Therefore, they are of considerable practical relevance. Although the individual arbitration agreements differ sometimes considerably from each other, it is still possible to identify some common features of collectively agreed arbitration procedures:

- Equal representation of both collective bargaining partners in the arbitration body; sometimes provision is made for one or two neutral chairpersons, in addition.
- A so-called peace obligation applies during the period in which the arbitration procedure is taking place which is why industrial action is not permitted during this time.
- Prerequisite for an arbitration is the failure of negotiations. If negotiations fail, arbitration takes place either automatically or the arbitration body has to be called in within a certain period of time.
- After the failure of negotiations or after having been called in, the arbitration body must convene and submit a proposal for an agreement on the basis of a decision adopted unanimously or by majority.
- The proposal for an agreement submitted by the arbitration body must be adopted by both collective bargaining partners.
- If a proposal for an agreement fails to materialize of if it is not adopted by at least one collective bargaining partner, the arbitration procedure ends without result. Now it is possible to take industrial action.

Arbitration procedures are mostly determined by arbitration provisions laid down in collective agreements. The arbitration and mediation agreement concluded between the association of church hospital service providers and the trade union for the services sector Ver.di of 28 March 2012 may serve as an example in this regard. It can be found on the web at:

http://streikrecht-ist-grundrecht.de/sites/streikrecht-ist-grundrecht.de/files/2012-07-31_Schlichtung_VKKH_Verdi_Druck_neu.pdf

In the reference period, no major decisions were rendered by German courts and other judicial bodies on the nature or implementation of conciliation and arbitration procedures.

Based on media reports, the following examples of successful arbitration procedures are given in which conflicts were settled by the adoption of the arbitrator's proposal for an agreement and an escalation into a strike could be avoided:

Date	Sector	Employers' side	Employees' side	Arbitrator
12/03/2009	telecommunications	Deutsche Telekom AG	ver.di	Klaus von Dohnanyi (former mayor of Hamburg)
24/06/2010	pilots	Deutsche Lufthansa	Pilots' Association "Cockpit"	Klaus von Dohnanyi (former mayor of Hamburg)
16/01/2011	local and regional passenger rail services	Abellio, Arriva, BeNEX, Hessische Landesbahn, Keolis, Veolia Verkehr	Railways and Transport Union	Peter Struck (former German Defence Minister)
15/09/2011	air traffic control	Deutsche Flugsicherung (DFS)	Air Traffic Controllers' Union	Volker Rieble (LMU München)

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

Paragraph 4 - Collective action

Germany does not agree with the conclusions of the Committee of Experts on the situation in Germany with regard to the following points:

- strikes not aimed at achieving a collective agreement are prohibited, and
- the requirements that have to be met so that a group of workers can form a union that has the right to call a strike constitute an excessive restriction on the right to strike.

It can be seen from the previous reports that there have been opposite positions on these points for years. Therefore, these two aspects are not being dealt with again in the present report.

In so far as the Committee of Experts complains of a restriction on the right to strike caused by a non-uniform jurisprudence in provisional court relief proceedings, it has to be pointed out that differing decisions rendered by Higher Labour Courts in different although similar disputes cannot be taken to mean automatically that the courts concerned have

different legal opinions on the same issue of law. Rather can the reasons for divergent decisions also be attributable to differences in the underlying facts of the individual cases.

Moreover, the parties in provisional court relief proceedings are free to have the issues of law raised in these proceedings clarified by the supreme court by further pursuing them in proceedings on the merits. If no use is made of this option - for whatever reason - this cannot be taken to mean, however, that there is a restriction on the right to strike that has to be rectified by the legislator.

The Federal Government does not see any need to change the system of provisional court relief in matters relating to industrial action. This system has proved its worth in Germany and incidentally, the players have come to take it into account in their activities. Decisions of the labour courts as courts of first instance in provisional court relief proceedings may be reviewed following an appeal to a Higher Labour Court that renders a final decision. No further appeal is permitted. This serves the interest of the parties to the proceedings in a quick and legally certain clarification of the legal situation in a concrete case and thus the effectiveness of court relief which is constitutionally guaranteed for everybody by Art. 19 para. 4 of the Basic Law.