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## **EUROPEAN SOCIAL CHARTER**

34<sup>th</sup> National Report on the implementation of  
the European Social Charter  
submitted by

### **THE GOVERNMENT OF GERMANY**

- Article 3, 11, 12, 13 and 14 for the period 01/01/2012  
- 31/12/2015
- Complementary information on Article 19§4  
(Conclusions 2015)

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**CYCLE XXI-2 (2017)**



**Berlin, December 2016**

**34th Report**

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

**for the period**

**1 January 2012 to 31 December 2015**

**(Articles 3, 7, 8, 11, 12, 13, 14, 16, 17 and 19)**

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 Confederation of German Employers' Associations (*Bundesvereinigung der Deutschen Arbeitgeberverbände*)

and

the Federal Executive Committee of the German Trade Union Confederation (*Bundesarbeitsrat des Deutschen Gewerkschaftsbundes*)

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## **Preliminary Remarks**

The 34th 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 does not refer to the individual provisions of the Charter unless either the remarks of the European Committee of Social Rights of the European Social Charter (by way of simplification hereinafter referred to as “the Committee”), in particular in the conclusions XX-2 and XX-4, give reason for this, or the revised questionnaire makes this necessary, or if relevant amendments in the material and legal situation have occurred.

Where the situation differs within Germany as a result of reunification, this 34th Report again makes a distinction between old and new *Länder* (federal states). The term “new *Länder*” refers to the *Länder* of Brandenburg, Mecklenburg-Western Pomerania, Saxony, Saxony-Anhalt, Thuringia, and the eastern part of Berlin.

## **Article 3 – The right to safe and healthy working conditions**

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

#### First Ordinance Amending the Ordinance on Occupational Health Care

On 31 October 2013, the First Ordinance Amending the Ordinance on Occupational Health Care (*Erste Verordnung zur Änderung der Verordnung zur arbeitsmedizinischen Vorsorge*) (Federal Law Gazette I p. 3882) entered into force. This amending ordinance has further strengthened occupational health care. Company doctors are the experts when it comes to assessing the links between work and health. In the context of occupational health care, they assess these links at individual level, educate employees about personal health risks, and offer them advice. Occupational health care thus constitutes an important supplement to technical and organisational measures to promote safety and health at work.

Occupational health care does not relate solely to traditional health hazards, such as exposure to hazardous substances or noise. If employees suspect, for example, that there is a connection between a mental disorder and their work, the company doctor is a first point of contact for them. It is important for company doctors to enjoy the employees’ trust. The amending ordinance introduced new terminology and clarifications to make it clearer that occupational health care is not about demonstrating physical fitness to fulfil job requirements and that there is no obligation to undergo an examination. Instead, the focus is on individual education and advice, including on issues relating to maintaining employability.

The amending ordinance also includes updates in the annex on the health care which must be offered in the case of dangerous activities, and on mandatory health care which must be provided in the case of especially dangerous activities. This has brought occupational health care up to state-of-the-art standards. In the case of all other activities, occupational health care is to be provided on request. Overall, the protection of employees’ health has been enhanced.

### Amendment of the Safety and Health at Work Act

On 25 October 2013, two clarifying provisions on psychological stress in the Safety and Health at Work Act (*Arbeitsschutzgesetz*) entered into force (see Article 8 no. 1 of the Act of 19 October 2013, Federal Law Gazette I p. 3836). Section 4 no. 1 of the Safety and Health at Work Act now stipulates: "Work shall be shaped so as to avoid, as far as possible, any risk to life and physical and mental health and to keep the remaining risk as low as possible". At the same time, a new number 6, "psychological stress at work", was incorporated into Section 5 (3) of the Act. This has made it absolutely clear that psychological stress may not be treated differently to physical impacts in the context of safety and health at work.

### Ordinance on Safety and Health Protection at Workplaces Involving Biological Agents (Biological Agents Ordinance)

The Ordinance on Safety and Health Protection at Workplaces Involving Biological Agents (*Verordnung über Sicherheit und Gesundheitsschutz bei Tätigkeiten mit biologischen Arbeitsstoffen*) was revised in 2013 (Federal Law Gazette I p. 2514). The revision transposes into national law Council Directive 2010/32/EU of 10 May 2010 implementing the Framework Agreement on prevention from sharp injuries in the hospital and healthcare sector concluded by the European Hospital and Healthcare Employers' Association (HOSPEEM) and the European Public Services Union (EPSU). The provisions of the Biological Agents Ordinance were also adapted to take account of recent scientific and technical developments. This applies in particular to the annexes on laboratories and on biotechnology, which now reflect the current state of science and technology. The revised ordinance helps to improve the protection of workers' safety and health, especially in health service facilities.

### Self-employed workers

In the current reference period, there continue to be a wide range of measures in Germany to promote the health and safety of self-employed workers. In legal terms and in terms of Germany's position, there have been no changes compared to the period covered by the last report.

## **Paragraph 2 – Enforcement of the regulations by measures of supervision**

### Statistical surveys on the work of the labour inspectorate in Germany

Information about inspections carried out by the labour inspectorate and the occupational accident insurance funds is available from the overviews provided at the following link:  
<http://osha.europa.eu/fop/germany/de/statistics/statistiken/suga/suga2010>.

## Inspections

Labour inspectorate			Occupational accident insurance funds	
Year	Inspections	Companies inspected	Inspections	Companies inspected
2012	267,008	110,207	603,483	337,345
2013	242,503	99,999	599,605	297,941
2014	220,540	89,204	584,573	286,569
2015	206,197	83,284	585,131	292,294

## Supervisory personnel

Year	Labour inspectorate	Occupational accident insurance funds
2012	3,007	2,802
2013	2,935	3,090
2014	3,229	2,538
2015	3,319	2,486

As the statistics only record the size categories of the companies in question, it is not possible to state the exact number of employees covered by the inspections.

According to the labour inspection authorities of the *Länder*, insofar as they have reduced the number of inspections in the reference period, this is due to fewer human resources being available in many of the *Länder* as a result of budget consolidation measures. In addition, the introduction of system checks in some *Länder* means that inspections are no longer categorised by individual provisions or legal areas. The project group on safety and health at work set up by the *Länder* Committee on Safety and Health at Work and Safety Technology (LASI) is therefore currently working on a revision of the report.

Insofar as there has been a decline in the number of measures of supervision carried out by the occupational accident insurance funds in recent years, these figures do not signify a reduction in the preventive measures undertaken by the occupational accident insurance funds and public-sector accident insurers, according to the German Statutory Accident Insurance organisation (*Deutsche Gesetzliche Unfallversicherung*). Instead, it argues, they reflect a reorientation and diversification in the prevention work carried out in the workplace which is not yet depicted in the structure of the Safety and Health at Work (SuGA) statistics. To improve the quality of prevention, the occupational accident insurance funds are increasingly making use of a mix of various preventive services, such as advice, skills development or campaigns, alongside supervision or inspections. As this expanded approach must – including on grounds of cost – largely be implemented with the existing human resources, the weight given to “supervision” is shifting within the field of prevention, including in statistical terms.



## **Figures/statistical surveys on work-related accidents and diseases in Germany**

Detailed information on work-related accidents and diseases is available in the Federal Government's Report on Safety and Health at Work and Work-Related Accidents and Diseases in the Federal Republic of Germany in 2014 (<http://osha.europa.eu/fop/germany/de/statistics/statistiken/suga/suga2014>). The figures for 2015 are not yet available.

The numbers of reportable and fatal accidents at work have continued to fall in the reference period, in line with the long-term trend. The number of fatal accidents at work fell from 677 to 639 between 2012 and 2014, and reached a historic low of 606 in 2013.

A slight increase in work-related diseases has been recorded. This is due, in particular, to changes in the legislation on work-related diseases and greater awareness on the part of workers, experts in safety and health at work, and medical experts.

### **Paragraph 3 – Measures to hold consultations with the social partners**

Germany has already been pursuing a coherent policy in the field of safety and health at work for decades, with the involvement of the social partners. The concrete goals for this policy are being updated again by the Joint German Occupational Safety and Health Strategy (*Gemeinsame Deutsche Arbeitsschutzstrategie – GDA*), the stakeholders in which include, in addition to the Federation and the *Länder*, the occupational accident insurance funds and the social partners as key players in the field of safety and health at work (strategy stakeholders).

The strategy stakeholders act in the field of prevention on the basis of jointly defined goals for safety and health at work. During the reference period, the focus has been on the following three goals since 2013:

- Improving the organisation of occupational safety and health systems in the workplace
- Reducing work-related health risks and musculoskeletal disorders
- Protecting and improving health in the case of work-related psychological stress.

To implement these goals, several work programmes in fields of activity with special risks have been implemented across Germany, using standard criteria, and have been reviewed in terms of their benefits for companies and workers.

Further information on the Joint German Occupational Safety and Health Strategy can be found on the following website: <http://www.gda-portal.de>.

## **Article 7 – The right of children and young persons to protection**

### **Paragraph 2 – Higher minimum age in certain occupations**

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### Paragraph 3 – Ensuring that young people receive the full benefit of their education

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### Paragraph 4 – Working hours of young workers and apprentices

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### Paragraph 5 – Fair pay for young workers and apprentices

***The table below provides information in response to the Committee’s request for details of the lowest (net) wages paid to workers aged between 15 and 17, and the lowest wages paid to adult workers.***

Attention is drawn to the fact that, in the current regional collective agreements, separate wages for under-18s have only been agreed in four sectors. The other collective agreements no longer differentiate between adolescent and adult workers.

#### Training allowances paid to apprentices and wages under collective agreements in selected sectors

In the table below, the first figure in each field shows the gross monthly amount in euros, while the second figure shows the net monthly amount in the case of a person with tax class 1 – an unmarried person with no children – and after deduction of social-security contributions. For each sector, a western German and an eastern German collective agreement are shown by way of example (where possible).

As at: 31 August 2014

Economic sector	Training allowances paid to apprentices				Starting wage for adult workers who have completed a vocational training programme	Lowest wage for young workers who have not completed a vocational training programme
	1st year	2nd year	3rd year	4th year		
	Gross Net	Gross Net	Gross Net	Gross Net		
€ per month						
Horticulture and landscaping, western Germany	620	720	810	-	2276	-
	493	573	645		1499	
Horticulture and landscaping, eastern Germany	620	720	810	-	2174	-
	493	573	645		1445	
Chemical industry, Bavaria	833	887	965	1039	2676	1990
	663	706	766	815	1707	1350
Chemical industry, eastern Germany	846	892	938	987	2700	1979
	673	710	746	780	1716	1342
Steel industry, Germany	798	819	860	912	2087	-
	635	652	684	726	1400	

Economic sector	Training allowances paid to apprentices				Starting wage for adult workers who have completed a vocational training programme	Lowest wage for young workers who have not completed a vocational training programme
	1st year	2nd year	3rd year	4th year		
	Gross Net	Gross Net	Gross Net	Gross Net		
€ per month						
Metal and electrical industries, Bavaria	915 728	964 765	1026 806	1068 833	2706 1723	-
Metal and electrical industries, Saxony	890 704	941 745	992 730	1043 812	2543 1629	-
Forest products industry, Bavaria	680 541	730 581	800 637	850 676	2340 1535	-
Forest products industry, Saxony	636 503	678 537	720 570	762 603	2079 1389	-
Paper industry, Bavaria	862 686	940 748	1007 793	1092 849	1873 1287	-
Paper industry, eastern Germany	748 595	809 644	872 694	971 770	2026 1367	-
Printing industry, Schleswig-Holstein/ Hamburg/Mecklenburg- Western Pomerania	882 702	933 742	984 778	1035 812	1674 1178	-
Printing industry, Saxony/Saxony-Anhalt/ Thuringia	882 698	933 739	984 774	1035 807	1910 1299	-
Textile industry, south Bavaria	772 614	833 663	912 726	988 781	1661 1173	-
Textile industry, eastern Germany	667 531	718 571	770 613	821 653	1995 1351	-
Confectionery industry, Lower Saxony/Bremen	710 565	795 633	881 701	992 784	2291 1507	1673 1178
Confectionery industry, eastern Germany	647 515	751 598	852 678	930 740	2195 1457	1649 1158
Baking industry, North Rhine-Westphalia/ Koblenz/Trier	430 342	550 438	670 533	-	1570 1124	-
Baking industry, Brandenburg	430 342	550 438	670 533	-	1413 1044	-
Construction, western Germany	685 545	942 750	1231 937	-	2674 1703	-
Construction, eastern Germany	602 479	744 592	973 771	-	2458 1593	-
Painting and decorating, western Germany (excluding Saarland)	505 402	555 442	690 549	-	2175 1446	-
Painting and decorating, eastern Germany	505 402	555 442	690 549	-	1827 1260	-
Wholesale and foreign trade, Lower Saxony	746 594	820 653	873 695	-	1950 1326	-
Wholesale and foreign trade, Saxony-Anhalt	694 552	762 606	806 641	-	1785 1237	-

Economic sector	Training allowances paid to apprentices				Starting wage for adult workers who have completed a vocational training programme	Lowest wage for young workers who have not completed a vocational training programme
	1st year	2nd year	3rd year	4th year		
	Gross <i>Net</i>	Gross <i>Net</i>	Gross <i>Net</i>	Gross <i>Net</i>		
€ per month						
Retail, Berlin	624 497	703 559	804 640	-	1863 1280	-
Retail, Saxony/Thuringia/Saxony-Anhalt	625 495	705 558	805 637	-	1862 1274	-
Private transport industry, Hesse	680 541	725 577	770 613	-	2075 1393	-
Private transport industry, Thuringia	530 422	550 438	630 501	650 517	1909 1304	-
Private banking sector, Germany	876 697	938 746	1000 789	-	2308 1516	-
Private insurance industry, Germany	853 679	928 739	1007 793	-	2436 1582	-
Hotel and catering industry, Bavaria	692 551	780 621	869 692	-	1983 1346	-
Hotel and catering industry, Thuringia	530 422	630 501	680 541	-	1546 1112	-
Private waste management industry, Germany	610 485	660 525	730 581	800 637	1844 1269	-
Housing sector, Germany	775 617	885 704	995 785	-	2745 1738	-
Public service (Collective Agreement for Public Sector Trainees – Special Part – Vocational Training Act), Germany	833 663	883 703	929 739	993 784	1996 1351	-
Public service (Collective Agreement for Public Sector Trainees – Special Part – Caring Professions), Germany	956 760	1017 800	1118 865	-	2054 1382	-

**Average training allowances paid to apprentices under collective agreements**

As at: 31 August 2014

Year of vocational training	Western Germany		Eastern Germany	
	Gross	<i>Net</i>	Gross	<i>Net</i>
€ per month				
1st year	691	550	638	508
2nd year	764	608	707	563
3rd year	876	697	849	676
4th year	767	610	708	563

No calculations have been provided regarding the remuneration for trainee officials in the civil service as, unlike all of the wages listed here, their remuneration is not liable to social-security contributions and therefore would not fit in with the system of gross/net calculations for pay which is liable to social-security contributions.

Compared to the last report, the following changes have taken place in relation to the public service:

A separate collective agreement exists for apprentices in the public service at federal and municipal level, in the form of the Collective Agreement for Public Sector Trainees (*Tarifvertrag für Auszubildende des öffentlichen Dienstes – TVAöD*) of 13 September 2005 (last amended by Amending Agreement No. 5 of 29 April 2016). In principle, this collective agreement covers all training occupations in the public service and is supplemented by specific regulations. The collective agreement's "Special Part for Apprentices in Occupations Regulated by the Vocational Training Act" (*Besonderer Teil des Berufsbildungsgesetzes*) contains provisions relating to apprentices in training occupations, and the "Special Part for Apprentices in the Caring Professions" (*Besonderer Teil Pflege des BBiG*) contains provisions relating to apprentices who are training for the caring professions. These parts also contain regulations concerning the pay received by apprentices.

Apprentices' pay in the public service is higher than average.

The following table shows the level of pay under Section 8 (1) of the current version of the Collective Agreement for Public Sector Trainees – Special Part for Apprentices in Occupations Regulated by the Vocational Training Act:

	from 1 March 2016	from 1 February 2017
in the first year	888.26 €	918.26 €
in the second year	938.20 €	968.20 €
in the third year	984.02 €	1,014.02 €
in the fourth year	1,047.59 €	1,077.59 €

while the next table shows the level of pay under Section 8 (1) of the current version of the Collective Agreement for Public Sector Trainees – Special Part for Apprentices in the Caring Professions:

	from 1 March 2016	from 1 February 2017
in the first year	1,010.69 €	1,040.69 €
in the second year	1,072.07 €	1,102.07 €
in the third year	1,173.38 €	1,203.38 €

### **Paragraph 6 – Inclusion of time spent on vocational training in the normal working time**

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### **Paragraph 7 – Paid annual holidays**

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### **Paragraph 8 – Prohibition of night work**

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### **Paragraph 9 – Regular medical examination**

Germany is not affected by the request for a report on this contained in Conclusions XX-4 (2015).

### **Paragraph 10 – Protection against physical and moral dangers**

#### Protection of children and young people from sexual violence and exploitation

The Federal Government is constantly pursuing the goal of improving the protection of children and young people from sexual violence and exploitation.

The German Criminal Code (*Strafgesetzbuch*) provides for tiered levels of protection of sexual self-determination for those under the age of 18. This reflects the fact that people increasingly develop the capacity for sexual self-determination as they grow older and mature. On this basis, engaging in sexual activity with persons under the age of 14 is absolutely prohibited and criminalised by Sections 176 et seq. of the Criminal Code (“Sexual abuse of children”). By contrast, engaging in sexual activity with persons under 16 or under 18 is not prohibited in principle, provided it is ensured that the sexual activity is not abusive, as would be the case if it took place within a relationship of dependence or in exchange for payment, for example. In this framework, the protection of young people under criminal law is ensured by Section 174 of the Criminal Code (“Sexual abuse of individuals placed in the charge of another”), Section 180 of the Criminal Code (“Causing minors to engage in sexual activity”) and Section 182 of the Criminal Code (“Sexual abuse of adolescents”), in particular.

With regard to the subject of sexual exploitation, which was raised by the Committee, Section 180a (2) no. 1 and Section 232a (1), second alternative, of the Criminal Code should also be noted. Under Section 180a (2) no. 1 of the Criminal Code, anyone who provides a dwelling or, on a commercial basis, an abode or a residence to a person under the age of 18 for the exercise of prostitution is guilty of an offence. Under Section 232a (1), second alternative, of the Criminal Code, an offence is committed by anyone who induces a person under the age of 21 to engage in or continue to engage in prostitution or to engage in exploitative sexual activity with or in the presence of the offender or a third person or to suffer sexual acts on their own person by the offender or a third person.

The distribution, acquisition and possession of child pornography is an offence under Section 184b of the Criminal Code, if the child pornography material has as its subject sexual activity performed on, by or in the presence of a person under the age of 14 (child), or depicts a fully or partially unclothed child in an unnatural, sexually suggestive pose, or depicts in a sexually suggestive manner a child’s unclothed genitals or buttocks. The distribution, acquisition and possession of juvenile pornography is an offence under Section 184c of the Criminal Code, if the juvenile pornography material has as its subject sexual activity performed by, on or in the presence of a person aged 14 or over but under the

age of 18, or depicts a fully or partially unclothed person of this age in an unnatural, sexually suggestive pose.

Persons under the age of 18 who have been the victims of one of these offences do not face prosecution on the basis of these provisions. If a person under the age of 14 commits one of the above offences, for example by engaging in sexual activity with another person under the age of 14 (Section 176 (1) of the Criminal Code), he or she is below the age of criminal responsibility and therefore cannot be prosecuted. Offenders who are aged 14 or over but under the age of 18 at the time of the offence can be prosecuted on the basis of the Youth Courts Act (*Jugendgerichtsgesetz*); in the case of offenders aged between 18 and 21, the specific circumstances determine whether they are prosecuted primarily on the basis of the provisions of the Youth Courts Act or of the criminal law which applies to adults.

The protection of children and young people from sexual violence and exploitation continues to be based on the overarching strategy to ensure protection from sexual violence, which the Federal Government produced in 2014 following the recommendations made by the Round Table on the Sexual Abuse of Children and on the basis of the Action Plan to Protect Children and Young People from Sexual Abuse and Exploitation.

The overarching strategy is based on five pillars, which aim to improve:

- criminal law and law enforcement,
- protection in criminal proceedings,
- the realisation of girls' and boys' rights,
- support and therapy for victims,
- and action against privacy violations in the digital media.

In the framework of this overarching strategy, the Federal Government has taken the following measures and initiatives, among others, to improve the protection of children from sexual violence:

The nationwide initiative to prevent sexual abuse, which the Federal Government has been running since 2010 together with the Federal Centre for Health Education, has been extended until the end of 2018. Children aged between 8 and 12 are made aware of the issues, educated and empowered in an age-appropriate manner, via individual partnerships with the *Länder*. The initiative also reaches out to parents and specialists, and the participating schools are put in touch with regional support and counselling services.

To improve the support and counselling services for victims and ensure closer links between the available services, the Federal Government has been supporting, since 1 January 2016, the development of a federal coordination office for the specialised counselling centres for people affected by sexual violence in childhood. The new structure at federal level is based on a strategy which has been drawn up in partnership with these organisations.

As well as supporting national institutions and associations such as the Federation of Child Protection Centres or the German Society for the Protection of Children, the Federal Government has for many years also funded the "*Nummer gegen Kummer*" hotline for children and young people. Children and young people can call a free telephone number and

receive advice anonymously from trained staff. Since 2003, parents have also been able to access advice anonymously via email or telephone.

In cooperation with non-governmental organisations, the Federal Government has worked with experts to draft a nationwide cooperation strategy to improve the protection of victims in the case of the trafficking of minors. The aim is to ensure adequate protection measures and comprehensive support measures for potential and actual minor victims of human trafficking. The nationwide cooperation strategy is also intended to contribute to effective action to combat this crime, irrespective of whether it is committed for sexual or labour exploitation. The draft of the cooperation strategy is expected to be finalised and agreed before the end of 2016, and will subsequently be presented to the *Länder* as a recommendation for cooperation between the *Länder*.

The Schools Against Sexual Violence Initiative, which is run by the Independent Commissioner for Matters relating to the Sexual Abuse of Children and the education authorities of the *Länder*, aims to ensure that the more than 30,000 schools in Germany develop strategies to ensure protection from sexual violence. This enables schools, firstly, to become places where children and young people receive help, and at the same time to ensure that there is no place for abuse in schools themselves. The initiative supports schools in developing tailored protection strategies by offering them a wide range of information services (an information pack and a specialised portal for head teachers and teaching staff). All of the *Länder* are working with the Abuse Commissioner. The initiative was launched in September 2016 in North Rhine-Westphalia, with the other *Länder* due to have joined by the end of 2018. A study on the current situation of the specialised counselling centres, commissioned by the Abuse Commissioner, was published in early 2016 and is available online.<sup>1</sup> In July 2016, the Abuse Commissioner wrote to all competent ministers, the heads of government of the *Länder* and the local authority central organisations, and asked them to address the areas requiring action that were identified by the study. This expressly includes the inadequate financial and human resources of the specialised counselling and prevention centres.

With regard to measures taken (in law) to combat sexual exploitation of children through the use of internet technologies, it should first be noted that, under current German law, everyone who makes content available online is, in principle, responsible for that content. In addition to the general provisions of civil and criminal law, the Telemedia Act (*Telemediengesetz*) contains provisions on service providers' responsibility in relation to telemedia of their own or of third parties which they keep ready for use, or to which they give access. Under Sections 7 to 10 of the Telemedia Act, service providers are in principle not responsible for the information of third parties which they transmit or store for their users. Nor are they obliged to monitor the information which they transmit or store without reasonable suspicion, or to search this information for indications of illegal activity. The Telemedia Act's provisions thus implement the binding requirements of Articles 12 to 15 of Directive 2000/31/EC on electronic commerce of 8 June 2000. The Member States are also barred from introducing obligations of this kind.

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<sup>1</sup> [https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Presse\\_Service/Hintergrundmaterialien/Expertise\\_Fachberatungsstellen.pdf](https://beauftragter-missbrauch.de/fileadmin/Content/pdf/Presse_Service/Hintergrundmaterialien/Expertise_Fachberatungsstellen.pdf).



To ensure that online child pornography is deleted as quickly as possible, there is close cooperation in Germany between the Federal Criminal Police Office (*Bundeskriminalamt*) and the three internet complaint offices run by the nationwide organisation jugendschutz.net, eco – Association of the Internet Industry, and the German Association for Voluntary Self-Regulation of Digital Media Service Providers (FSM). Any member of the public can call the complaint offices' hotlines and anonymously report content which is generally harmful to young people or which constitutes child pornography. When the complaint offices receive reports of child pornography, they cooperate closely with the Federal Criminal Police Office, which launches the necessary law enforcement action where appropriate. To ensure that child pornography content is deleted, the internet provider which is physically storing the data must generally be informed. In principle, the provider is informed both by the police and by the complaint offices. If the child pornography content was acquired abroad, the complaint offices forward the relevant information to the competent INHOPE partner organisation at the same time as they report the content to the Federal Criminal Police Office. INHOPE is the umbrella organisation of internet hotlines worldwide which receive complaints about illegal online content. In cases where no INHOPE partner organisation exists, the (German) complaint offices can also contact the host provider directly. Experience in Germany has shown that hotlines are a key element in ensuring the rapid removal of child pornography material.

November 2014 saw the establishment of the “Network against Abuse and Sexual Exploitation of Children – No Grey Areas on the Internet”, a joint initiative of I-KiZ – the German Centre for Child Protection on the Internet, jugendschutz.net (the competence centre for the protection of minors on the internet), the German Association for Voluntary Self-Regulation of Digital Media Service Providers, and Google. The network's aim is international condemnation of and action to combat depictions of the sexual exploitation of children (defined as persons under the age of 18, in accordance with the UN Convention on the Rights of the Child) which fall in the grey area, i.e. depictions which show children in sexual poses, violate their privacy rights and traumatise them, but which are not (yet) banned or punishable in all countries. The Federal Government has been the patron of this network since its establishment. It also supports I-KiZ, the “Grey Areas” competence centre at jugendschutz.net and the work of the complaint offices in the framework of the network.

## **Article 8 – The right of employees to protection**

Insofar as the persons concerned (migrant workers) are in employment, they are compulsory members of the statutory health insurance system and are protected accordingly. If they are not members as a result of employment, they receive fallback membership of either the statutory or private system, for which contributions must be paid.

### Right to maternity leave and maternity benefit

There has been no change in the legal situation by the end of the reference period. Since 2016, work has been taking place in Germany on a reform of maternity legislation.

## **Article 11 – The right to protection of health**

### **Preventive care programmes for children**

Preventive care programmes for children remain key instruments in ensuring that health problems do not arise in the first place. Continuity is very important in this context. For this reason, the action programme mentioned in the 26th Report, “Early Assistance for Parents and Children and Social Early-Warning Systems”, with which the Federal Government supports the protection of children under the age of three from neglect and mistreatment, has been developed further. The expansion and development of the early assistance networks is to be strengthened. Since 2012, this has also included the Federal Initiative for Early Assistance and Family Midwife Networks, which has been anchored in the Federal Child Protection Act (*Bundeskinderschutzgesetz*). The Federation is making 51 million euros available annually for this on a permanent basis. [www.fruehehilfen.de](http://www.fruehehilfen.de).

## **Article 12 – The right to social security**

### **Paragraph 1 – Establishment of a system of social security**

#### **Pension insurance:**

##### Statistical part including explanation of the relevant provisions

Social insurance benefits in accordance with Article 12 paragraph 1 of the Charter – to the extent that they are wage replacement benefits – are required to be set at a level such that they bear a reasonable relation to the previous earnings.

In order to maintain continuity in reporting to the Council of Europe, the examination of the minimum standards is performed in the same way as in the 45th General Report by the Federal Republic of Germany on the Implementation of the European Code of Social Security as amended by its Protocol (minimum standards on the basis of ILO Convention No. 128).

The calculations generally relate to 2015.

#### **1. Definition of the minimum standards to be complied with**

Under Article 65, paragraph 6c, in Part XI of the European Code, the minimum standards are to be calculated for an employee whose earnings are equal to 125 percent of average earnings. Based on the average earnings of insured persons under Annex 1 and Annex 10 of Book VI of the Social Code (SGB VI), the following earnings figures result (€ per year):

	Western Germany	Eastern Germany
Pay in accordance with SGB VI Annex 1, in 2015	34,999	
Conversion factor in accordance with SGB VI Annex 10, in 2015		1.1717
<b>125% x average earnings</b>	<b>43,749</b>	<b>37,338</b>

The table below shows the net income figures that result for such an employee – without children and with children – after deducting taxes and social insurance contributions. Under Articles 27 D, 55 D and 61 D read in conjunction with Article 6, account may also be taken of protection effected by means of insurance which, although not made compulsory, is subsidised and supervised by public authorities and covers a substantial part of insured persons. This applies to insurance policies under the second and third pillar of the pensions system. For reasons of simplicity, a company pension and a state-subsidised supplementary ‘Riester’ pension plan are represented in the calculations that follow by a private pension plan.<sup>2</sup>

The number of active members of company pension schemes (the second pillar) has increased since 2001 from 14.6 million to 20.1 million, and the number of Riester plans, which in 2001 had just been introduced, has increased to most recently 16.5 million.

	Married, without children		Married, with two children	
	Western Germany	Eastern Germany	Western Germany	Eastern Germany
Gross wages	43,749	37,338	43,749	37,338
+ Child benefit	0	0	4,512	4,512
Gross income	43,749	37,338	48,261	41,850
– Social insurance contrib.	8,958	7,645	8,848	7,552
– Taxes	4,818	3,229	4,313	2,844
<b>Net income</b>	<b>29,973</b>	<b>26,464</b>	<b>35,100</b>	<b>31,454</b>

Under the provisions of the European Code of Social Security (Part XI; Protocol), the minimum standards to be complied with are as follows:

Case	Provided for in Part ... of the European Code of Social Security	Standard beneficiary	Required level of benefits as percentage of net income
Old age	V	Man with wife of pensionable age	45
Invalidity	IX	Man with wife and two children	50
Survivors	X	Widow with two children	45

<sup>2</sup> Assumptions used in the analysis:  
Savings amount: 4% of gross income; interest rate: 4.0%; administration expenses: 10% of contributions.

## 2. Old-age pension benefits

### Pension calculation

Pensions are calculated on the basis of four factors as follows:

- Earnings points
- Entry factor individually applicable for the relevant number of earnings points (personal earnings points = earnings points x entry factor)
- Pension type factor (e.g. for old-age pensions, 1.0 in the general pension insurance scheme and 1.3333 in the miners' pension insurance scheme)
- Current pension value (since 1 July 2015, €29.21 for western Germany and €27.05 for eastern Germany).

The pension formula can be expressed as follows:

Personal earnings points x pension type factor x current pension value = gross monthly pension

The earnings points are the ratio of personal earnings during the pension insurance year to the average earnings of all insured persons in the relevant calendar year. For an average earner, this means 1 earnings point per year. The entry factor is based on when the old-age pension begins to be paid: If an insured person takes up the option of early retirement, the longer period over which the old-age pension is paid out as a result of it being claimed early is compensated for by reducing the entry factor – which is 1 for an old-age pension that is not claimed early – by 0.003 points for each month of early retirement. This results in an 0.3% reduction in the old-age pension for each month that it is claimed before attainment of the applicable retirement age. The pension type factor varies relative to an old-age pension according to the contingency covered by the type of pension concerned. The current pension value is the current monthly equivalent in euros of 1 earnings point for the purposes of calculating old-age pensions.

As well as contribution periods, certain non-contributory periods are additionally taken into account in the calculation of pensions. Periods when an insured person was unable to make compulsory contributions such as during military service (substitute periods) and periods when contributions could no longer be made on account of early invalidity or death (added periods) are taken into account with the effect of increasing the pension. Other non-contributory periods include credited periods. These are grouped into counted credited periods (such as during technical college courses and maternity leave), which have the effect of increasing the pension, and uncounted credited periods (such as periods of unemployment or incapacity), which do not directly increase the pension.

The current pension value is as follows:

	<b>Western Germany</b>	<b>Eastern Germany</b>	
1 July 2012	€28.07		€24.92
1 July 2013	€28.14		€25.74
1 July 2014	€28.61		€26.39
1 July 2015	€29.21		€27.05

The contribution assessment limit for western Germany is as follows:

	<b>General pension insurance</b>	<b>Miners' pension insurance</b>
For calendar year 2012	€67,200	€82,800
For calendar year 2013	€69,600	€85,200
For calendar year 2014	€71,400	€87,600
For calendar year 2015	€72,600	€89,400

The contribution assessment limit for eastern Germany is as follows:

	<b>General pension insurance</b>	<b>Miners' pension insurance</b>
For calendar year 2012	€57,600	€70,800
For calendar year 2013	€58,800	€72,600
For calendar year 2014	€60,000	€73,800
For calendar year 2015	€62,400	€76,200

#### Minimum standard

Under the European Code of Social Security, the rate of benefit is to be determined for an employee whose earnings are equal to 125 percent of average earnings after 30 years of employment and a pensionable age of 65. As the benefit amount can be affected under German pension law by periods such as unemployment, child-rearing or education and training, the pension calculation additionally incorporates 12 months of Federal Volunteer Service, three years of education and training and two years of technical college in addition to the 30 years of employment in order to arrive at a more realistic biography. Such a short period of employment is not the norm for men in Germany. Over 83 percent of males entering retirement in 2015 have insurance biographies of 35 years or more.

Old-age pension retirement age in 2015 by number of insurance years

	<b>Men</b>	<b>Women</b>	<b>Total</b>
Less than 35	16.8	43.3	30.9
35 or greater	83.2	56.7	69.1

As the table below shows, based on a 30-year insurance biography, the net old-age pension expressed as a percentage of the net income of an employee whose earnings are equal to 125 percent of average earnings is 67.0 percent in western Germany and 68.2 percent in eastern Germany, and is thus above the minimum standard of 45 percent. The calculations include a personal pension saving.

		Old-age pension	
		Western Germany	Eastern Germany
1	Years of employment	30	30
2	Total earnings points (EP)	40.49	40.49
3	Current pension value (€/EP/month)	29.21	27.05
4=2x3	Gross pension (€ per year)	14,193	13,144
5	Social insurance contributions	1,497	1,387
6	Private pension plan	6,500	5,547
7=4-5+6	Net income in old age	19,195	17,304
8	Net income from employment	28,663	25,356
9=7/8	<b>Percentage</b>	<b>67.0</b>	<b>68.2</b>

#### Further information

In addition to supervision of compliance with the minimum standards, further information is to be reported on the estimated number of individuals, the number of pensioners and the development of prices in relation to the development of pensions and wages.

Million	2014	2015
<b>Insured persons at 31 Dec.</b>	53.3	x
Actively insured	36.5	x
Passively insured	16.8	x
<b>Pensioners at 1 Jul.</b>	20.6	20.8

The cost of living, wages, and pensions changed as follows in Germany in the period 2014 to 2015:

Year-on-year change (%)	2015
<b>Consumer prices</b>	0.28
<b>Wages</b>	2.85
<b>Pension value at 1 Jul. (western Germany)</b>	2.10

As the table shows, the 2.10 percent rise in pensions in western Germany in 2015 was

behind average wage growth but ahead of inflation. This is an outcome of reform efforts in recent years to secure intergenerational equity and financial sustainability in the statutory pension insurance system while ensuring that pensioners share in the growth of the economy. The annual current pension value is consequently determined with reference to wage and salary growth and additionally to changes in the 'Riester' factor and the sustainability factor, which act to slow the rise in the current pension value.

The pension adjustment rates (%) were as follows in the reporting period:

<b>Reporting date</b>	<b>Western Germany</b>	<b>Eastern Germany</b>
1 July 2013	0.25	3.29
1 July 2014	1.67	2.53
1 July 2015	2.10	2.50

### **3. Invalidation benefits**

#### Minimum standard

Under the European Code of Social Security, the rate of benefit is to be determined for the selected employee (125 percent of average earnings) in the event of invalidity after 15 years of employment.

In the calculation of a reduced earning capacity pension under German pension law, the number of years is topped up to age 62 by including an added period that is credited with the average pension entitlement earned in prior employment. Alongside an increase in the added period from age 60 to age 62, in a change introduced in 2014 under the Act Improving Pension Benefits (*RV-Leistungsverbesserungsgesetz*), an assessment is now carried out to determine whether the last four years prior to invalidity reduce the pension entitlement. If they do, they are no longer included in calculation of the entitlement in future years. This improvement applies to all insured persons whose reduced earning capacity pension began or begins on or after 1 July 2014 (entry date). Additionally, since the 2001 reform, the reduced earning capacity pension is decreased by a maximum of 10.8 percent if claimed early. In addition to the 15 years of employment, 12 months of Federal Volunteer Service, three years of education and training and two years of technical college are assumed. In the event of invalidity, there is also an invalidity pension under a private pension plan.

As the table below shows, the married employee with two children<sup>3</sup> assumed here attains a net pension benefit rate in the event of full loss of earning capacity of 65.1 percent in western Germany and 67.5 percent in eastern Germany. The required minimum standard of 50 percent is thus complied with.

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<sup>3</sup> Both children are assumed to be born after 1992.

		Reduced earning capacity pension	
		Western Germany	Eastern Germany
1	Years of employment	15	15
2	Total earnings points (EP)	56.19	56.19
3	Entry factor	0,892	0,892
4=2x3	Personal earnings points	50.12	50.12
5	Current pension value (€/EP/month)	29.21	27.05
6=4*5	Gross pension (€ per year)	17,568	16,269
7	Child benefit	4,512	4,512
8	Social insurance contributions	1,853	1,716
9	Private pension plan	1,969	1,680
10=6+7-8+9	Net income in old age	22,195	20,745
11	Net income from employment	34,104	30,715
12=10/11	<b>Percentage</b>	<b>65.1</b>	<b>67.5</b>

#### 4. Survivors' benefits

##### Minimum standard

Under the European Code of Social Security, the rate of benefit is to be determined for the survivors of the selected employee (125 percent of average earnings) in the event of death after 15 years of employment. In the calculation of the benefit, 12 months of Federal Volunteer Service, three years of education and training and two years of technical college are credited in addition. The law concerning surviving dependants' pensions was fundamentally reformed in the 2001 pension reform. The new law applies to couples married in 2002 or later and to married couples who were both under the age of 40 on 1 January 2002. In the calculation of the surviving dependant's pension, as with the reduced earning capacity pension, an added period is credited and the pension is decreased if claimed early. A widow is paid 55 percent of the husband's (theoretical) pension entitlement calculated in this way. Under the new law, a widow's pension is also increased if she is credited with child-raising periods. As the table below shows, the widow with two children assumed here attains a pension benefit rate, relative to the net income of the deceased husband, of 54.4 percent in western Germany and 56.9 percent in eastern Germany. This exceeds the required minimum standard of 45 percent. Here, too, survivor's benefits under a private pension plan are included in the calculations.



		Western Germany	Eastern Germany
1	Years of employment	15	15
2	Total earnings points (EP)	46.76	46.76
3	Entry factor	0,892	0,892
4	Supplement for children	5.45	5.45
5=2*3+4	Personal earnings points	47.16	47.16
6	Pension type factor	0.55	0.55
7	Current pension value (€/EP/month)	29.21	27.05
8=5*6*7	Widow's gross pension (€ per year)	9,092	8,420
9	Orphan's gross pension (2 children)	5,738	5,314
10	Total gross pensions (€ per year)	14,830	13,734
11	Child benefit	4,512	4,512
12	Social insurance contributions	1,565	1,449
13	Private pension plan	787	672
14=10+11-12+13	Net income in old age	18,565	17,469
15	Net income from employment	34,104	30,715
16=14/15	<b>Percentage</b>	<b>54.4</b>	<b>56.9</b>

The great majority of surviving dependants' pensions currently being paid come under the previous law, under which the pension benefit rate, relative to the net income of the deceased husband, was 53.6 percent in western Germany and 56.0 percent in eastern Germany. The pension type factor of 0.6 also differs from that under the new law. No supplement is paid for children, however.

The required minimum standard of 45 percent is also complied with under the old law, as the table below shows.

		Western Germany	Eastern Germany
1	Years of employment	15	15
2	Total earnings points (EP)	46.76	46.76
3	Entry factor	0,892	0,892
4	Supplement for children	0.00	0.00
5=2*3+4	Personal earnings points	41.71	41.71
6	Pension type factor	0.60	0.60
7	Current pension value (€/EP/month)	29.21	27.05
8=5*6*7	Widow's gross pension (€ per year)	8,772	8,123
9	Orphan's gross pension (2 children)	5,738	5,314
10	Total gross pensions (€ per year)	14,510	13,437
11	Child benefit	4,512	4,512
12	Social insurance contributions	1,531	1,418
13	Private pension plan	787	672
14=10+11-12+13	Net income in old age	18,278	17,203
15	Net income from employment	34,104	30,715
16=14/15	<b>Percentage</b>	<b>53.6</b>	<b>56.0</b>

		Western Germany	Eastern Germany
1	Years of employment	15	15
2	Total earnings points (EP)	46.76	46.76
3	Entry factor	0,892	0,892
4	Supplement for children	0.00	0.00
5=2*3+4	Personal earnings points	41.71	41.71
6	Pension type factor	0.60	0.60
7	Current pension value (€/EP/month)	29.21	27.05
8=5*6*7	Widow's gross pension (€ per year)	8,772	8,123
9	Orphan's gross pension (2 children)	5,738	5,314
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11	Child benefit	4,512	4,512
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13	Private pension plan	787	672
14=10+11-12+13	Net income in old age	18,278	17,203
15	Net income from employment	34,104	30,715
16=14/15	<b>Percentage</b>	<b>53.6</b>	<b>56.0</b>

***In reply to the question asked by the European Committee of Social Rights in its 2013 Conclusions as to the minimum level of unemployment benefit under the contribution-financed scheme:***

It is essential to distinguish in Germany between unemployment benefit under Book III of the Social Code (SGB III) and basic income support for job seekers under Book II of the Social Code (SGB II). Unemployment benefit under SGB III is a benefit under the unemployment insurance scheme to which insured persons are entitled, without any needs test, in the event of unemployment for a specific period. It is financed out of employee and employer contributions. The benefit amount depends on the income subject to insurance earned by the unemployed person prior to unemployment and on whether the person must pay maintenance for a child (the amount then being 67 percent of assessable earnings) or not (60 percent). There is not a fixed minimum level of unemployment benefit under the unemployment insurance scheme.

If unemployment benefit is not sufficient to secure an unemployed person's living expenses, in case of need the person can apply in addition for basic income support for job seekers under SGB II. Basic security benefits for job seekers under SGB II comprise a tax-financed welfare system to meet the living expenses of entitled individuals capable of earning who are unable to meet their living expenses out of their own income or savings or out of assistance provided under other social benefit systems that take precedence, such as unemployment insurance. In this way, the community of the insured does not have to meet benefits for which no contributions have been paid and unemployed persons have sufficient security in the event that their unemployment benefit under SGB III is not enough to cover their living expenses.

The duration of unemployment benefit payments is as shown in the table below.

After employment subject to social insurance contributions totaling at least ... months	At age ... or over	Months
12		6
16		8
20		10
24		12
30	50	15
36	55	18
48	58	24

***The European Committee of Social Rights recalls in its 2013 Conclusions that within the meaning of Article 12 paragraph 1 of the Charter the legislation should provide for a reasonable initial period during which an unsuitable job offer can be rejected without losing unemployment benefit. The position in this regard is as follows:***

Under the law concerning employment promotion, unemployed persons can generally reject unreasonable job offers without benefit being suspended. This right is not subject to any time limitation.

The reasonableness criteria are partly set out in Section 140 of Book III of the Social Code (SGB III). Firstly, this sets out **general reasons** for a job offer to be deemed unreasonable. The employment on offer must thus not be in breach of provisions on working conditions stipulated by law or in collective or works agreements, or of provisions on occupational safety and health. Consequently, for example, employment would be deemed unreasonable if the pay level breached the Minimum Wage Act which entered into force on 16 August 2014. Secondly, circumstances are set out in which employment would be unreasonable for **personal reasons**. These reasons can only be determined with reference to the individual circumstances of the unemployed person in question. They relate to the question of reasonableness in terms of commuting time and pay levels. A job offer would thus be unreasonable if the pay were to be significantly lower than assessable earnings for the purpose of determining unemployment benefit (20 percent lower pay is deemed reasonable in the first three months; 30 percent lower in the next three months; and from the seventh month onwards a job offer would only be deemed unreasonable if the pay were to be less than the unemployment benefit).

The reasons set out in Section 140 of SGB III comprise a **non-exhaustive catalogue** of reasons why a job offer may be deemed unreasonable. A job offer can also be deemed unreasonable for other reasons; for example, employment would be considered unreasonable if accepting or performing the employment would violate the constitutional rights of the unemployed person or if it were contrary to the objectives of SGB III. In determining reasonableness, the interests of the unemployed person and those of all contribution payers must be balanced against each other.

As a fundamental rule, employment promotion assistance, which includes job placement, is required in particular to promote individual employability by maintaining knowledge, skills and abilities and to counter inferior employment. Local employment agencies aim to attain these

objectives in their placement activities. Accordingly, their priority is on placing unemployed claimants of unemployment benefit in employment commensurate with the claimants' qualifications.

If an unemployed person refuses to accept a reasonable offer of employment, their unemployment benefit is suspended for three weeks on the first occasion, six weeks on the second occasion and twelve weeks on any subsequent occasion.

The number of benefit suspensions due to rejection of employment under SGB III has developed as follows:

Year	Benefit suspension due to rejection of employment
2010	24,167
2011	26,966
2012	27,597
2013	17,072
2014	15,135
2015	12,889

It is to be noted in connection with these figures that rejection of employment resulting in benefit suspension can have very diverse reasons (pay level, working hours, commuting distance, etc.). Only a small number of job offers are likely to have been rejected because the unemployed person felt that the employment on offer was below their qualification level. The Federal Employment Agency (BA) does not provide statistical analysis linking information on the duration of benefit suspension to the grounds for suspension. It is therefore not possible to give precise information on the duration of benefit suspensions due to rejection of job offers.

In particular, the figures below also include suspensions due to voluntary unemployment, which can also result in benefits being suspended for six or twelve weeks.

Year	3-week suspensions	6-week suspensions	12-week suspensions
2010	44,989	9,859	183,141
2011	42,705	10,406	175,801
2012	40,398	10,288	169,948
2013	30,690	7,766	170,040
2014	30,430	7,740	182,079
2015	29,627	7,457	185,062

## **Paragraphs 2 and 3 – Onward development of the system of social security**

Important legislative changes in the reporting period 2012-2015

### Statutory pension insurance

#### Act Improving Pension Benefits (RV-Leistungsverbesserungsgesetz)

The following improvements in pension law were implemented with effect from 1 July 2014 under the 2014 Act Improving Pension Benefits:

- Unreduced pension from age 63
- Extension of the child-raising periods able to be credited for children born before 1992
- Improvements in reduced earning capacity pensions
- Adjustments to annual expenditure on participation assistance (rehabilitation budget; entered into force retroactively as of 1 January 2014)

#### Unreduced pension from age 63

Special provision has been made for persons with a particularly long insurance record to claim an unreduced old-age pension from as early as the age of 63. To qualify, a person must have paid compulsory contributions for a minimum of 45 years, either through employment, self-employment, long-term care, or periods of child-rearing until a child is ten years old. Periods for which voluntary contributions have been paid can also be taken into account provided that there are at least 18 years' worth of compulsory contributions. To avoid special hardship due to short-term interruptions in a person's employment biography caused by unemployment, periods claiming unemployment benefit are also counted.

Periods claiming short-time allowance (and predecessor benefits) and other wage replacement benefits under the law concerning employment promotion are likewise taken into account. To avoid false incentives for early retirement, periods claiming wage replacement benefits provided under employment promotion policies are not taken into account if they are in the last two years before retirement (rolling cutoff date). To prevent hardship, however, such periods are nonetheless taken into account – including in the last two years before retirement – if they are a result of the employer filing for insolvency or permanently going out of business. Conversely, periods of sustained or long-term unemployment (claiming unemployment benefit II or the former unemployment assistance) are not taken into account as they comprise periods claiming welfare benefits and not insurance benefits.

The entry age for the pension at 63 is to be raised in stages to 65, the current minimum age for the exceptionally long service pension. The first stage, beginning 1½ years after the new arrangements came into force in 2016, is a two-month increase for individuals born in 1953. The minimum age will be raised by a further two months for each subsequent birth year. The minimum age of 65 has already been regained for individuals born in 1964.

Insured persons' year of birth	Increase by ... months	to age:	
		years	months
1953	2	63	2
1954	4	63	4
1955	6	63	6
1956	8	63	8
1957	10	63	10
1958	12	64	0
1959	14	64	2
1960	16	64	4
1961	18	64	6
1962	20	64	8
1963	22	64	10

This improvement applies on retirement on or after 1 July 2014.

Extension of the child-raising periods able to be credited for children born before 1992 (mothers' pension)

For mothers and fathers of children born earlier than 1992, pensions benefits now better reflect child-raising periods than they did before enactment of the Act Improving Pension Benefits. An additional twelve months is credited to the child-raising period for mothers and fathers whose children were born before 1992 and who retire on or after 1 July 2014. Mothers and fathers then already in retirement are paid a supplement equal to the increase in pension yields that they would have gained from the additional child-raising period. This change was made as an administrative simplification so that pension insurance funds did not have to recalculate some 9.5 million pensions. For mothers who were already in retirement in 1986 when the child-raising period was first introduced and therefore paid a child-raising allowance, the allowance was topped up by the same amount.

All mothers and fathers for whom child-raising was previously taken into account consequently received an increase in pension yields accruing from one year of child-raising for each child born before 1992.

Improvements in reduced earning capacity pensions

Two changes result in better provision for people with reduced earning capacity: Firstly, they are treated as if they had continued working for an additional two years on their previous average income (with the added period extended by two years from age 60 to 62 and credited on the basis of the individual's average earnings). Secondly, the last four years before the reduction in earning capacity are not counted if doing so reduces the value of the added period (for example because the person went part time or had time off ill before retirement). This improvement solely applies on retirement on or after 1 July 2014.

Adjustments to annual expenditure on participation assistance (raising of the rehabilitation budget cap)

In light of double-digit growth rates, pension insurance expenditure on participation assistance was capped from 1997 (the rehabilitation budget cap) and the annual budget for

such expenditure (the rehabilitation budget) was indexed to gross wages and salaries. A demographic component has therefore been introduced to ensure that primarily demographically driven additional funding needs are taken into account in annual budgeting for participation assistance. The demographic component is included as a separate factor alongside the projected trend in gross wages and salaries per employee. This measure came into force retroactively as of 1 January 2014.

### **Pension adjustment**

Pensions are adjusted as of 1 July each year on the basis of the statutory pension adjustment formula. The statutory pension is a wage replacement benefit and in principle tracks wages.

To maintain intergenerational equity in sharing the burdens of demographic change, pension adjustments additionally include changes in two further variables alongside adjustment-relevant wage growth: Firstly, pension adjustments take into account changes in workers' expenditure on retirement provision in a pension expenditure factor. Secondly, they take into account the development of the ratio of the number of pensioners to the number of contribution payers in a sustainability factor for the purpose of adjusting the pensions.

Up to and including 2013, the pension expenditure factor took into consideration both changes in the general pension insurance contribution rate and the annual increases in the retirement provision component that commenced with the 2003 pension adjustment (the 'Riester ladder'). The eight-step increase in the retirement provision component reduced the pension adjustment by approximately 0.65 percentage points each year. This ensured that the increasing burden on the current working generation was reflected in pension adjustments that added to their retirement provision. The 2008 pension adjustment act deferred the fifth and sixth steps of the eight-step Riester ladder in 2008 and 2009 to give pensioners a greater share in the economic upturn then underway. This increased the pension adjustment by 0.64 percentage points in 2008 and 0.63 percentage points in 2009. To ensure the long-term stability of pension finances and maintain intergenerational equity, the mitigating effect of these two steps was not cancelled entirely, but was deferred to 2012 and 2013. From the 2014 pension adjustment onwards, the allowance made in the pension adjustment formula for changes in current employee expenditure on retirement provision is restricted to changes in the general pension insurance contribution rate. Accounting for the expenditure on additional retirement provision no longer has any mitigating effect in its own right on pension adjustments from 2014.

The change in the ratio of pensioners to contribution payers normalised for the average earner and standard pensioner is incorporated into the pension adjustment formula via the sustainability factor. Due to demographic trends, the impact of the sustainability factor on pension adjustments will be negative in future years.

In the years 2005, 2006 and 2010, use was made of a safety clause first introduced in 2004 and expanded to a 'pension guarantee' in 2009. Pensions were consequently not reduced in those years even though strict application of the adjustment formula would have resulted in a reduction. The decision not to allow pension values to fall was right in order to safeguard pensioners' trust in the security of their pensions. However, use of the safety clause must not be allowed to result in a long-term burden on contribution payers. The omitted pension

reductions were therefore accrued in an adjustment backlog. By applying a rule of reducing any positive pension adjustment by half from the 1 July 2011 pension adjustment onwards, this adjustment backlog was eliminated by 2012 in eastern Germany and by 2014 in western Germany, thus maintaining intergenerational equity.

### **2012 pension adjustment**

The pension adjustment as of 1 July 2012 was based on adjustment-relevant wage growth of 2.95 percent in western Germany and 2.28 percent in eastern Germany. The arithmetic effect of changes in employee expenditure on additional retirement provision was to reduce the annual adjustment by 0.65 percentage points. The sustainability factor had the arithmetic effect of increasing the pension adjustment by 2.09 percentage points. In total, on a strictly arithmetical basis, the adjustment formula implied a pension adjustment of 4.40 percent in western Germany and 3.37 percent in eastern Germany.

As of 1 July 2012, however, the adjustment backlog was still in the process of being eliminated. The final outcome for western Germany was thus a 2.18 percent increase in the current pension value as of 1 July 2012. In eastern Germany, the adjustment backlog (east) had already been reduced to a point such that the pension adjustment only had to be decreased by the amount needed to eliminate the backlog. The outcome was a pension adjustment of 2.26 percent for eastern Germany as of 1 July 2012.

### **2013 pension adjustment**

The wage growth relevant to the pension adjustment as of 1 July 2013 was 1.50 percent in western Germany and 4.32 percent in eastern Germany. The larger adjustment-relevant wage growth in eastern Germany was mainly due to the fact that pay subject to compulsory contributions relevant to the 2013 pension adjustment had increased more rapidly in eastern Germany than in western Germany. A major cause of this was an increase in the contribution assessment limit (east) in 2011. The sustainability factor had the effect of reducing the adjustment by 0.72 percentage points. The pension expenditure factor also had a net effect of reducing the adjustment by 0.26 percentage points, with a 0.5 percentage point change in the retirement provision component resulting in an 0.65 percentage point negative impact on the adjustment while a cut in the contribution rate as of 1 January 2012 (from 19.9 percent to 19.6 percent) had the arithmetical effect of increasing the adjustment by 0.39 percentage points.

Arithmetically speaking, these figures would have resulted in a pension adjustment of 0.50 percent for western Germany. The adjustment backlog was still in the process of being eliminated in 2013, however. The pension adjustment in western Germany was therefore 0.25 percent. In eastern Germany, the adjustment backlog (east) had already been fully eliminated in 2012. The pension adjustment in eastern Germany was 3.29 percent.

### **2014 pension adjustment**

The wage growth relevant to the pension adjustment as of 1 July 2014 was 1.38 percent in western Germany and 1.78 percent in eastern Germany. The pension expenditure factor had



the arithmetic effect of increasing the adjustment by 0.92 percentage points, as the general pension insurance contribution rate had fallen from 19.6 percent to 18.9 percent as of 1 January 2013 and the 'Riester ladder' (change in expenditure on subsidised personal retirement provision) was applied for the last time in the 2013 pension adjustment. The sustainability factor had the effect of reducing the 2014 pension adjustment by 0.19 percentage points.

The remaining adjustment backlog was eliminated in western Germany with the 2014 pension adjustment by reducing the arithmetically derived 2.13 percent pension adjustment to the extent needed to cancel out the remainder of the backlog. In the final outcome, the current pension value – applicable in western Germany – was adjusted by 1.67 percent and the current pension value (east) – applicable in eastern Germany – was adjusted by 2.53 percent.

### **2015 pension adjustment**

The 2015 pension adjustment was based on adjustment-relevant wage growth of 2.08 percent in western Germany and 2.50 percent in eastern Germany. The pension expenditure factor had no impact on the pension adjustment as the general pension insurance contribution rate, at 18.9 percent, was the same in 2014 as it had been in 2013 and the 'Riester ladder' had ceased to be applied. The sustainability factor had the effect of increasing the adjustment by 0.01 percentage points.

The final outcome was thus a 2.10 percent increase in the current pension value and a 2.50 percent increase in the current pension value (east) as of 1 July 2015.

### **Contribution rate 2012-2015**

There was a noticeable decrease in the general pension insurance contribution rate in the period 2012 to 2015. The contribution rate was 19.6 percent in 2012, 18.9 percent in 2013 and 2014, and has been 18.7 percent since 2015.

### **Statutory occupational accident insurance**

Securing and extending the high-quality statutory occupational accident insurance system in the Federal Republic of Germany was the express, primary aim of several reforms.

As in the previous reporting period, the main focus of these reforms was on securing the organisation of statutory occupational accident insurance for the long term and strengthening its organisational foundations by further reducing the number of providers. This aim has been systematically further advanced in the years covered by the present report:

- 1 January 2013 saw the establishment of Sozialversicherung für Landwirtschaft, Forsten und Gartenbau (SVLFG – Social Insurance for Agriculture, Forestry and Horticulture) as a single national provider in agricultural occupational accident insurance. This combines previous schemes under Länder law, the horticultural social insurance scheme and the agricultural social insurance scheme in a single provider.

- As of 1 January 2015, the Federal occupational accident insurance fund and the German railways occupational accident insurance fund merged to form the new Unfallversicherung Bund und Bahn (UVB – Federal and Railways Accident Insurance).

Other major legislative changes in the reporting period were as follows:

- Insurance cover under statutory occupational accident insurance has been improved and extended by various measures, including the following:
  - Insurance cover was extended as of 1 January 2012 to include all participants in labour market policy measures.
  - From 1 August 2012, living organ donors are compensated by statutory occupational accident insurance for any harm to health in connection with donating.
  - In addition, occupational accident insurance cover was extended as of 22 April 2015 to the participation of children in pre-school language lessons.
- The list of illnesses recognised as occupational illnesses under the statutory conditions was supplemented with four further illnesses as of 1 January 2015. In particular, white skin cancer as a result of natural ultraviolet irradiation is now recognised as an occupational illness.
- The monetary benefits under statutory occupational accident insurance (accident benefits, surviving dependants' pensions and care allowance) have been increased as follows in line with the adjustment in monetary benefits under statutory pension insurance:

<b>Cut-off date</b>	<b>Western Germany</b>	<b>Eastern Germany</b>
– as of 1 July 2012	2.18%	2.26%
– as of 1 July 2013	0.25%	3.29%
– as of 1 July 2014	1.67%	2.53%
– as of 1 July 2015	2.10%	2.50%

***The European Committee of Social Rights asks what is the share of persons insured against sickness and invalidity benefits out of the total workforce.***

Old-age pension provision – in terms of statutory pension insurance – includes the insurance of employees against invalidity (reduced earning capacity pension). The share of persons insured against invalidity and with old-age pension provision is thus identical.

***The European Committee of Social Rights asks what is the minimum level of old-age pension in order to assess the adequacy of the pension system. It further asks for information on the effects of pension adjustments and other changes in the pension system on the minimum pension level.***

As there is no minimum pension under the German pension system, it is not possible to provide this information. The individual pension level depends on the contributions paid (i.e.

an insured person's individual employment history and earnings). The conditions for a standard old-age pension are met in Germany with as little as five years' employment even on very low part-time earnings.

Due to the direct link between an insured person's earnings and later pension level, the use of an at-risk-of-poverty threshold value (at 50% of the median equivalent income) also does not appear to be a suitable indicator for determining the adequacy of retirement provision. The level of equivalent income is notably determined by household composition (e.g. single-person or multi-person household) and by the presence or absence of other income (in addition to the pension). The question of whether the pension level is adequate can only be meaningfully answered in relation to the earnings subject to compulsory contributions on which it is based.

For this reason, the ratio of the net pension to net income for a worker earning 125 percent of the average income continues to be used as the indicator. In 2015, this ratio was 67 percent for an old-age pensioner in western Germany and 68.2 percent in eastern Germany. This is equivalent to a monthly pension of approximately €1600 (western Germany) or €1440 (eastern Germany).

## **II. Other information**

The statistical data on pension insurance (Article 12§1: Establishment of a system of social security) has been updated on the basis of the previous report.

### **Paragraph 4 – Equal treatment of nationals of other Parties in respect of social security**

***In reply to the request for a list of the bilateral and multilateral agreements stipulated in this provision and for information on how these enable implementation of the principles set out under a) and b) for the various social security benefits:***

#### **Multilateral agreements:**

There is no change relative to the previous reporting period; in relation to the **EU Member States, the EEA (and Switzerland)**, there apply as before Regulation (EC) No 883/2004 on the coordination of social security systems, Regulation (EC) No 987/2009 on the coordination of social security systems, and Regulation (EU) No 1231/2010 extending Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 to nationals of third countries who are not already covered by these Regulations solely on the ground of their nationality.

#### **Bilateral agreements:**

##### **Social security agreements:**

There were the following changes during the reporting period:

A social security agreement was entered into with the Republic of Albania in September 2015 (Agreement of 23 September 2015 between the Federal Republic of Germany and the Republic of Albania Concerning Social Security – no yet in force). Negotiations on a social security agreement with the Republic of Moldavia were entered into in 2015.

A full list of the bilateral agreements entered into by Germany in the field of social security is attached.

The agreements each include – among other things – the principle of equal treatment for the branches of social security they cover.

## **Article 13 - The right to social and medical assistance**

### **Paragraph 1 Support and medical care for people in need**

#### Health care and long-term care insurance cover for persons eligible for benefits under Book II of the Social Code

As a basic principle, insurance is compulsory under the statutory health insurance system and the social long-term care insurance system for employable persons eligible for benefits under Book II of the Social Code who are drawing long-term unemployment benefit. Unless they are insured for free as a family member in the statutory health insurance system and the social long-term care insurance system, individuals drawing social allowance (i.e. people who are not employable but who live in a joint household with an employable person) receive a subsidy from the job centre for the contribution amount to be paid to the health insurance or long-term care insurance system. Individuals who were most recently insured under the private health insurance system receive a subsidy from the job centre to cover their contributions to the private health insurance system.

***Regarding the request by the Committee of Experts for clear, updated information concerning the average contribution for additional services and benefits, the Federal Government states the following:***

The benefits provided under basic income support for job-seekers factor in monthly basic needs (particularly for food, clothing, personal hygiene, household effects, household energy, personal daily needs, including participation in social and cultural life), the actual costs of accommodation and heating (including electric heating) up to what is considered reasonable, as well as additional needs in certain circumstances in life (e.g. additional needs for pregnant women, single parents, costly foods on medical grounds, decentralised warm water supply), needs regarding education and participation (for people under 25) or for special needs (e.g. to furnish an apartment for the first time, including household appliances).

With regard to benefits to cover basic needs, heating and accommodation expenses and additional needs, where applicable, the following average values applied for the month of May 2016: a single person had total monthly needs of €719 on average (€312 of which were for housing expenses). The average amount of benefits to cover the cost of living stood at €628. The difference between the total average needs and the average amount paid in benefits stems from the fact that low-income, low-asset individuals can also be entitled to top-up benefits under basic income support for job-seekers. In such cases, the needs are already covered in part by the income or assets to be considered of the persons eligible for benefits, with a resulting reduced entitlement to benefits under the basic income support system for job-seekers.

Owing to allowances in place, income from gainful employment, for example, is not factored in to some extent, with the result that the average household budget of a single person amounted to €756 in May 2016. For the sake of completeness it should also be noted that the providers of basic income support also cover the contributions and subsidies towards health insurance and long-term care insurance.

***Regarding the request by the Committee of Experts for information that it is possible to lodge an appeal with an independent committee against decisions concerning social and medical assistance, and that free legal aid is provided where necessary.***

Action against a decision by a social benefit agency regarding the provision of social assistance can first be taken by the party concerned in a social administrative proceeding, in order to check the admissibility and appropriateness of the administrative decision. Pursuant to Section 64 of Book X of the Social Code, no fees and charges are levied for these procedures before the authorities.

If the party concerned does not agree with the final social administration decision, he or she can appeal the decision before the Social Court. Independent judges are appointed to the Social Courts and are not subject to any orders or instructions or any other outside influence. The right to be able to have the decision of government agencies reviewed by independent courts is guaranteed by the Constitution in Germany in Article 19 (4) of the Basic Law (*Grundgesetz*). No court fees apply to proceedings before Courts of Social Jurisdiction for insured parties, benefit recipients and people with disabilities.

In principle, all parties involved can represent themselves in proceedings before the Social Court or Higher Social Court. Individuals are entitled to legal aid for representation in court if legal representation by a lawyer is stipulated by law (e.g. before the Federal Social Court), or if the opponent is represented by a lawyer, or if representation by a lawyer is deemed necessary (Section 73a of the Social Courts Act (*Sozialgerichtsgesetz*) in connection with Section 121 (2) of the Code of Civil Procedure (*Zivilprozessordnung*)). To qualify for legal aid, the applicant must be unable to cover the cost of a lawyer, or only able to pay the cost in part or in instalments, due to his or her personal and economic circumstances, and the intended prosecution or legal defence must have a sufficient chance of success and must not appear to be in bad faith. Even before legal proceedings are opened the costs of legal counsel are covered under the Legal Advice Act (*Beratungshilfegesetz*) if the party concerned is unable to bear the costs of legal counsel due to his/her personal and financial circumstances, no other reasonable possibility of assistance is available and the use of the legal advice services does not appear to be in bad faith (Section 1 of the Legal Advice Act). In such cases the party concerned must always pay a small token of maximum €15 towards the legal counsel. The purpose of the law is to enable an eligible party to receive information on the prospects of winning the case (prosecution or legal defence) before getting involved in a (judicial) legal dispute.

***Regarding the request by the Committee of Experts for information as to whether all non-nationals who are citizens of the Parties to the European Social Charter have the same right to social assistance as German citizens, the Federal Government states the following:***

In its statement, the Committee of Experts outlined that benefits under basic income support for job-seekers are also provided to non-nationals who are habitually resident in Germany. However, there are exceptions to this principle, which the Committee of Experts also rightly presents in its statement. These exceptions comply with the European Free Movement Directive (2004/38/EC), which conclusively governs when European Union citizens should have access to tax-financed social welfare benefits in other Member States. In three rulings ("Dano"; "Alimanovic", "Garcia-Nieto"), the European Court of Justice (ECJ) in Luxembourg has also since confirmed that German law complies with the European Directive on Free Movement.

***Regarding the request by the Committee of Experts to specifically confirm that persons receiving social and medical assistance do not suffer from a diminution of their political and social rights either in practice or by law, the Federal Government states the following:***

The Federal Government specifically confirms that persons receiving social and medical assistance do not suffer from a diminution of their political and social rights either in practice or by law.

### **Paragraph 3 - Advice and assistance to people in distress**

Non-nationals are also entitled to assistance to overcome particular social difficulties provided that these individuals are likely to reside permanently in Germany.

***Regarding the request by the Committee of Experts for information as to whether foreign EU nationals are treated differently compared with foreign nationals of non-EU Charter states, the Federal Government states the following:***

All non-nationals are treated equally when it comes to access to benefits under the system of basic income support for job-seekers. Specifically, all non-nationals do not receive any benefits during the first three months of their stay in Germany unless they are in gainful employment. In keeping with the European Directive on the Freedom of Movement, EU citizens do receive benefits in the first three months of their stay if they had to give up their job or lost it involuntarily.

### **Paragraph 4 - Equal treatment of nationals of other Parties**

Pursuant to Section 4 of the Act on Benefits for Asylum Applicants (*Asylbewerberleistungsgesetz*), benefits are granted for medical and dental treatment, the provision of medication and dressings and other benefits required for recuperation, the improvement of health or the alleviation of illness or their consequences, limited to acute illnesses and pain. In addition, under Section 6 of the Act on Benefits for Asylum Applicants, additional benefits and services can be granted that are essential in individual cases to safeguard the health of the individual. This can also include treatment for chronic illnesses, necessary urgent medical rehabilitation measures or assistance which is needed from a medical point of view.

The Act on Benefits for Asylum Applicants applies to all foreigners who do not reside permanently in Germany and do not have a secure residence status, wherein benefits under Book XII of the Social Code are granted after asylum applicant benefits have been claimed for a period of 48 months. Contrary to conclusion XIX-2 (2009) regarding Article 13 (4), the right to claim benefits is not restricted to persons who have applied for asylum or other forms of refugee status. Rather, this right also applies to individuals unlawfully in the country (cf. Section 1 (1), nos. 4 and 5 of the Act on Benefits for Asylum Applicants).

## **Article 14 - The right to benefit from social welfare services**

### **Paragraph 1 - Social welfare services**

#### **Non-statutory welfare services**

***Regarding the question raised by the Committee of Experts as to whether access to social services is free in certain situations, the Federal Government states the following:***

In the system of basic support for job-seekers, social welfare services provide a wide range of employment promotion measures, such as vocational training opportunities and advisory services. Access to these services is an integral part of the provision of benefits by the agencies that provide basic support. The services are provided by a third party (social welfare services) as a service under the system of basic support for job-seekers and are therefore part of statutory benefits and services. All services and benefits to be provided by law under the system of basic support for job-seekers are available free of charge to individuals eligible for benefits.

***Regarding the request by the Committee of Experts for information on the ratio of staff to benefit recipients, the Federal Government states the following:***

In June 2016, there were roughly 80,000 people in full-time equivalent employment in the job centres, which provide basic support benefits for job-seekers. During the same period, there were 5,996,217 persons entitled to benefits under the system of basic support for job-seekers, which translates to a ratio of 1 to 75.

#### **Assistance and mentoring for prisoners**

With legislative powers for law enforcement transferred to the *Länder* on 1 September 2006, all the *Länder* have since adopted their own laws on the enforcement of youth custodial sentences and pre-trial detention. Since 1 October 2016, all the *Länder* also have their own legislation regarding the enforcement of prison sentences.

The laws of the *Länder* regarding the enforcement of prison sentences and youth custodial sentences all essentially contain the same rules and regulations to prepare prisoners and young offenders for integration, release and follow-up mentoring. Accordingly, the measures for the social and vocational integration of prisoners and young offenders must be timed to when the individual is expected to be released, and should support the individuals in organising their personal, financial and social affairs. From an early stage, the correctional

facility collaborates with the municipalities, employment agencies, the providers of social security and social assistance, the support facilities of other authorities, forensic outpatient clinics, voluntary welfare organisations and other persons and establishments outside law enforcement, particularly in order to ensure that the prisoners and young offenders have suitable accommodation and a job or training place following their release. Probation and supervision of conduct services are also involved in the social and vocational integration of the discharged offenders. Privileges must be granted six months prior to release from the correctional facility. Measures such as the transfer of prisoners and young offenders to integration units or their placement in transitional facilities outside law enforcement are also considered in order to prepare individuals for reintegration.

Other assistance to help released young offenders and prisoners rebuild their lives is provided by voluntary bodies such as the Federal Association to Support Ex-offenders (*Bundesarbeitsgemeinschaft für Straffälligenhilfe*), a government-sponsored organisation that brings together various associations. Assistance is also provided by *Länder*-based projects focussing on aftercare for released prisoners.

## **Article 16 – The right of the family to social, legal and economic protection**

### Protection against Violence Act (*Gewaltschutzgesetz*)

The Act on Civil-law Protection against Violence and Harassment (*Gesetz zum zivilrechtlichen Schutz vor Gewalttaten und Nachstellungen*), which entered into force on 1 January 2002, has proven its worth in practice.

Previously, jurisdiction for cases of protection against violence was shared among a number of courts. However, it has been concentrated with the family courts since 1 September 2009 to ensure the same judge processes all forms of violence or harassment recorded, and to subject proceedings to rules of procedure that are more guided by the principle of ex-officio investigation.

Since 1 September 2009, the courts have also been obliged by law to communicate orders under the Protection against Violence Act without delay to the competent police authority and other public authorities that are affected by the execution of the order. In this way, effective protection for the victim is to be ensured beyond the enforcement of the court decision by establishing information networks with the competent state authorities. This strengthens the goal of violence prevention as the authorities can take necessary urgent action in line with the court order issued if further assault is imminent.

Detailed statistical data have been available since 2006 which provide evidence of a moderate increase in proceedings under the Protection against Violence Act.

Local courts dealt with 47,623 proceedings under the Protection against Violence Act in 2012. With the number of proceedings at 47,521 in 2014, the situation has remained more or less unchanged but with a slightly downward trend. As the proceedings are now solely the remit of the family courts, the Federal Statistical Office will no longer provide separate statistics for the proportion of proceedings under civil law and family law.



### Out-of-court conflict resolution, mediation/family mediation:

Under Section 8 of the Mediation Act (*Mediationsgesetz*), the Federal Government is required to report to the German Bundestag by 26 July 2017 on the impact of the law on the development of mediation in Germany and on the situation concerning mediator education and (further) training. Among other issues, the evaluation should look at the need for financial support for mediation measures so that the debate in Germany on this matter can continue on the basis of solid empirical data.

The Federal Office of Justice is the central authority under the 1980 Convention on the Civil Aspects of International Child Abduction. Since 2009 it has lent support, based on a funding programme, in isolated cases to mediations in international procedures, particularly repatriation procedures, following consultation with the Federal Ministry of Justice and Consumer Protection. Limited funding is available in this context, and can be granted in international procedures for mediation through a central point of contact specialised in mediating in international family conflicts involving children (MiKK) if certain criteria are met and if the parties are needy (determined according to the criteria for legal aid).

Projects for the promotion of mediation are also in place at the *Länder* level. For example, in 2016 the Senate Administration for Justice and Consumer Protection in Berlin launched a pilot project for assistance with mediation costs in disputes under family law. The aim of the project is to give low-income families access to mediation services in the event of parent and child conflicts and family conflicts.

### Situation on the housing markets

The Federal Government does not have any data concerning the housing conditions of asylum-seeking Roma from countries outside the EU. Information of this nature would require a survey of population statistics and socio-economic data on the basis of ethnicity. For historical reasons Germany does not record statistics on affiliation to minority groups. The provision of affordable accommodation that meets the needs of the population is a central socio-political and housing policy goal. The Federal Government's housing policy seeks to offer housing to all segments of the population and does not differentiate by ethnicity. Relevant measures include relief for housing expenses by providing housing benefit and by paying accommodation expenses, as well as the promotion of social housing which supports households with difficulty accessing accommodation in the general housing market. This benefits, inter alia, low-income households, households with children, single parents, people with disabilities and other individuals in need of assistance. Provided they are no longer obliged to live in collective living quarters, asylum-seeking Roma families can receive a certificate of eligibility for subsidised housing (*Wohnberechtigungsschein*) under the same conditions as German families. With regard to the allocation of housing, compliance with the principle of equal treatment, which is enshrined in the German constitution, is also guaranteed in civil law by the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*) when individuals are searching for accommodation.

To improve the situation of tenants and their families who are looking for new, and specifically affordable, housing on tight housing markets, the German Bundestag adopted

the "Act to Control Rent Increases in Tight Housing Markets and to Strengthen the Purchaser-Pays Principle for Real Estate Brokerage (Tenancy Law Amendment Act)" (*Gesetz zur Dämpfung des Mietanstiegs auf angespannten Wohnungsmärkten und zur Stärkung des Bestellerprinzips bei der Wohnungsvermittlung (Mietrechtsnovellierungsgesetz)*), which entered into force on 1 June 2015. The Act allows *Land* governments to designate areas with tight housing markets for a period of five years. In these designated areas, the rent that may be charged on rented accommodation is capped at 10% above the usual rent that is charged for comparable accommodation in the area, which is more closely defined by law. To promote the construction of new buildings and building modernisation measures, exceptional arrangements permit higher rents in individual cases. In addition, the landlord is entitled to at least charge the same rent that the previous tenant paid. Further to this, the Act also stipulates that the party enlisting the services of a real estate broker must also pay for the brokerage fees incurred. This regulation also benefits tenants who, in the past, often had to pay real estate agents whom the landlord hired to find new tenants, particularly in large urban centres.

## **Article 17 – The right of mothers and children to social and economic protection**

### Adoption law

The European Convention on the Adoption of Children (revised) of 27 November 2008 entered into force in Germany on 1 July 2015. It replaces and modernises the 1967 European Convention on the Adoption of Children, to which the Federal Republic of Germany is a Party, with greater attention to the best interests of the child. The revised European Convention on Adoption sets out rules for the national substantive laws of the Member States.

### Guardianship and curatorship

The Act to Amend the Law on Guardianship and Custodianship (*Gesetz zur Änderung des Vormundschafts- und Betreuungsrechts*) of 29 June 2011 introduced improvements to the relationship of a guardian to his/her ward. Section 1793 (1 a) of the German Civil Code now specifically rules that every guardian - including official guardians - must maintain personal contact with the ward. Guardians should as a rule visit the ward once per month in his/her customary environment. Pursuant to Section 55 (2) sentence 4 of Book VIII of the Social Code, a youth welfare officer should have not more than 50 cases of guardianship or curatorship. This is to ensure that it is possible to maintain personal contact with each individual ward and that the official guardian can also adequately attend to the interests of each individual child.

Irrespective of this specific change, preparations for a comprehensive reform of guardianship law is currently underway. The primary goal of the reform is to place greater emphasis on the status of the ward as the subject of the guardianship and the responsibility of the guardian for the ward's upbringing. This seeks to better accommodate the rights of the ward to an upbringing, care and support for his/her personal development.

In addition, the provisions surrounding the care of property are due to be modernised and limited to the rules that are currently necessary and suitable to protect the property of the ward.

#### Inheritance law

Under German laws of succession, extra-marital children are treated the same as children born in wedlock and have the same legal rights as children born in wedlock to inheritance and to compulsory portions of the estate from their father and the father's family.

The law only makes provisions for a few - justified - exceptional cases. This concerns extra-marital children born before 1 July 1949 if the father's death occurred before 29 May 2009. Under these conditions, the former legal situation will continue to apply according to which extra-marital children do not have any right to inheritance from their fathers. The cut-off date of 29 May 2009 stems from the fact that the European Court for Human Rights passed its ruling on the case *B. / Germany* (individual complaint No. 3545/04) in Strasbourg the day before. The former legal situation had to continue to apply for earlier cases due to the legal status of the heirs which is protected under the German constitution and the constitutional principle of non-retroactivity. To comply with the requirements of the Convention to the greatest extent possible, legislators did, however, grant extra-marital children affected by this ruling the right to compensation for the value of the lost estate if said estate had fallen to the German state.

#### Act to Reform the Protection of Victims' Rights (*Opferrechtsreformgesetz*)

With the exception of the regulations concerning professional psycho-social support before, during and after legal proceedings, the Third Act to Reform the Protection of Victims' Rights (*Opferrechtsreformgesetz*) entered into force on 31 December 2015. With this Act, additional important steps have been taken to increase the level of protection afforded to victims in Germany. It implements the obligations of the Federal Republic of Germany deriving from Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime. Further to this, the regulations governing professional psycho-social support before, during and after legal proceedings introduce additional key improvements, particularly for children and young people who have been victims of violent crime and sexual offences. Starting on 1 January, 2017 these individuals have a legal right to free professional support and assistance throughout the entire criminal proceedings. In the case of other victims of serious violent crime and sexual offences, the court is to decide on a case-by-case basis whether psycho-social support should be provided.

#### Penalties imposed in sentencing under juvenile criminal law

Table 2 below provides more detailed information on youth sentences, the sentence duration and the extent to which youth sentences have been suspended on probation. No figures are available yet for 2015. It should also be noted that figures for the entire Federal Republic have only been published since 2007.

Tab. 2: Total numbers sentenced to youth sentences and disaggregated by duration of youth sentence

absolute numbers

Year		Duration of youth sentence												
		total		6 months minimum sentence		more than ... up to and including...								
		total	of which suspended	total	of which suspended	6 - 9 months total	of which suspended	9 months - 1 year total	of which suspended	1 - 2 years total	of which suspended	2 - 3 years	3 - 5 years	5 - 10 years
2014	t	11 772	7 222	1 494	1 297	1 928	1 621	2 423	1 850	4 234	2 454	1 074	547	72
	m	10 967	6 635	1 338	1 162	1 746	1 464	2 214	1 692	4 015	2 317	1 044	541	69
	f	805	644	156	135	182	157	209	158	219	137	30	6	3
2013	t	13 187	7 991	1 692	1 470	2 117	1 783	2 656	1 976	4 811	2 762	1 281	564	66
	m	12 271	7 321	1 502	1 301	1 904	1 603	2 444	1 824	4 545	2 593	1 253	558	65
	f	916	630	190	169	213	180	212	152	266	129	28	6	1
2012	t	14 803	8 864	2 020	1 751	2 307	1 927	2 904	2 163	5 409	3 023	1 405	662	96
	m	13 865	8 190	1 817	1 577	2 093	1 756	2 683	1 992	5 150	2 865	1 374	655	93
	f	938	674	203	174	214	171	221	171	259	158	31	7	3
2011	t	16 168	9 948	2 122	1 878	2 745	2 281	3 232	2 441	5 820	3 348	1 486	646	117
	m	15 162	9 227	1 892	1 675	2 502	2 089	3 013	2 275	5 557	3 188	1 451	634	113
	f	1 006	721	230	203	243	192	219	166	263	160	35	12	4
2010	t	17 241	10 858	2 348	2 074	2 840	2 383	3 427	2 615	6 313	3 786	1 588	645	80
	m	16 139	10 051	2 134	1 880	2 598	2 184	3 184	2 440	5 948	3 547	1 559	637	79
	f	1 102	807	214	194	242	199	243	175	365	239	29	8	1
2009	t	18 684	12 010	2 548	2 307	3 224	2 749	3 901	2 991	6 537	3 963	1 733	647	94
	m	17 565	11 169	2 293	2 082	2 962	2 518	3 651	2 801	6 236	3 768	1 691	641	91
	f	1 119	841	255	225	262	231	250	190	301	195	42	6	3
2008	t	19 255	11 990	2 754	2 415	3 357	2 762	4 106	3 044	6 642	3 769	1 626	633	137
	m	18 137	11 184	2 498	2 187	3 108	2 559	3 846	2 856	6 333	3 582	1 592	625	135
	f	1 118	806	256	228	249	203	260	188	309	187	34	8	2
2007	t	20 480	12 425	3 363	2 645	3 516	2 864	4 113	2 954	7 080	3 962	1 639	648	121
	m	19 172	11 534	3 033	2 384	3 237	2 642	3 827	2 755	6 744	3 753	1 586	627	118
	f	1 308	891	330	261	279	222	286	199	336	209	53	21	3
2006	t	16 886	10 211	2 631	2 144	2 889	2 312	3 553	2 584	5 732	3 171	1 426	564	91
	m	15 632	9 329	2 337	1 903	2 595	2 069	3 265	2 383	5 414	2 974	1 384	548	89
	f	1 254	882	294	241	294	243	288	201	318	197	42	16	2
2005	t	16 641	10 106	2 654	2 193	2 886	2 278	3 454	2 461	5 723	3 174	1 327	514	83
	m	15 495	9 320	2 389	1 975	2 652	2 087	3 193	2 273	5 393	2 985	1 286	504	78
	f	1 146	786	265	218	234	191	261	188	330	189	41	10	5
2004	t	17 419	10 823	2 798	2 364	3 045	2 452	3 728	2 720	5 881	3 287	1 364	507	96
	m	16 265	9 980	2 516	2 127	2 801	2 246	3 455	2 519	5 564	3 088	1 337	496	96
	f	1 154	843	282	237	244	206	273	201	317	199	27	11	-
2003	t	17 288	10 642	2 633	2 182	3 042	2 426	3 673	2 638	5 955	3 396	1 392	490	103
	m	16 080	9 784	2 361	1 951	2 777	2 227	3 392	2 437	5 619	3 169	1 352	478	101
	f	1 208	858	272	231	265	199	281	201	336	227	40	12	2

Source: Federal Statistical Office (ed.) criminal prosecution, Table 4.1

The data up to 2006 refer to the former territory of the Federal Republic, including all of Berlin

Tab. 2: Total numbers sentenced to youth custody and disaggregated by duration of youth custodial sentence, absolute numbers

### Young people in pre-trial detention

***No intelligence is available regarding the request by the Committee of Experts for information on the number of cases in which courts have ordered the extension of pre-trial detention of young people and how the issue of proportionality has been addressed.***

According to the statistics of the Federal Statistical Office (publication of the Federal Statistical Office regarding the administration of justice; number of prisoners and detainees in German correctional facilities), the number of young people sitting pre-trial detention in Germany on 30 November 2015 totalled 339, of which 37 were female. The numbers have therefore begun to creep up slightly again for the first time following a sometimes significant downward trend - (2008: 558 / 2009: 435 / 2010: 468 / 2011: 405 / 2012: 358 / 2013: 348 / 2014: 338 / 2015 319 – on 31 March of each year). Current legal facts regarding the duration and place of pre-trial detention for young offenders are not available. The enforcement of pre-trial detention, youth custodial sentencing and imprisonment is the responsibility of the 16 *Länder*, and since 1 September 2006 the *Länder* have also been responsible for the legislation in this regard. All the *Länder* have since introduced legislation concerning pre-trial detention for young offenders and also have laws regulating the enforcement of youth custodial sentencing.

Under the provisions of the legislation of the *Länder*, to serve their youth custodial sentence young offenders must be held in specially dedicated young offender institutions, or in dedicated units of correctional facilities for adults, segregated from adult prisoners. If it is not possible to organise the segregation of young offenders from adult prisoners due to the low number of prisoners, to serve their sentence the young offenders can, by way of exception, also be held with prisoners convicted under general criminal law, provided this does not jeopardise the objective of enforcement. Young offenders and adult prisoners may, by way of exception, also be held together if this is to enable the young offender to take part in treatment and re-education measures.

The principle of segregation from other prisoners also applies when remanding young offenders in custody. According to the laws of the *Länder*, young pre-trial detainees must be held separately in special units of young offender institutions or other penal correction facilities or in separate facilities. Exceptions to this rule are only permitted under strict conditions, such as to enable the young person in pre-trial detention to work, to take part in educational measures or leisure activities, to hold the individual in a sick ward at a penal correction facility or in a prison hospital, or for reasons of safety and order at the penal correction facility, the enforcement body or for other important reasons. The young pre-trial detainees must always be protected against harmful influences in any case. In some *Länder*, pre-trial detainees under the age of eighteen (minors) should, if possible, be kept separate from the other young pre-trial detainees.

As an instrument for reintegration into society, the education and training of young offenders plays a key role in the *Länder* legislation concerning youth custodial sentencing: for educational reasons, young offenders have a priority obligation to take part in educational and vocational orientation measures, initial and continuing training measures or special measures for the promotion of their educational, vocational or personal development, or can be obliged to take part in such measures.

## Children in public care

The text written for the last report is still relevant. The Committee of Experts asks for up-to-date information on the situation of children taken into the public care, particularly the number of children in foster families and the number of children in children's homes. The Committee of Experts underlines the fact that in its concluding observations on the third and fourth periodic report the UN Committee on the Rights of the Child (CRC) recommends that Germany should improve its system of family support and ensure that placement of children in foster care is only used in the best interests of the child, and should also provide welfare services with adequate human and financial resources in order to make them available to all families faced with social and economic difficulties, including migrant families, particularly in overcoming the language barrier.

According to the Federal Statistical Office, in 2014 help to raise children outside the parental home in the form of full-time care in another family was provided in 69,823 cases, and there were 72,204 cases of care in a children's home and other forms of supervised accommodation. In 2014, there were 48,059 cases of children being taken into care under Section 42 of Book VIII of the Social Code.

## **Article 19 – The right of migrant workers and their families to protection and assistance**

### **Paragraph 1 – Assistance and information on migration**

Support is provided for the integration of immigrants who are legally and permanently resident in Germany. Immigrants receive access to state integration measures. The basic state integration service is the integration course. This has already been a subject of previous reports. In the face of increased integration needs due to the parallel rise in refugee immigration in 2015, integration courses have been and continue to be provided with additional staff and funding and to be adapted to the new challenges.

Immigrants with legal residence status and prospects of permanent residence additionally have access to migration advisory services. Within the Federal Government, responsibility for the Migration Advisory Service for Adult Immigrants (MBE) lies with the Federal Ministry of the Interior. Supplementary to the information provided on the Migration Advisory Service in previous reports, it may be added that the Service counsels clients in 22 languages. While the use of the German language is to be encouraged where possible, clients may also be counselled in their native language in order to be able to provide well-directed and compassionate counselling. In 2014, over one-third (35.8 percent) of all clients were counselled exclusively in their native language. 34 percent were counselled exclusively in German. The proportion of counselling sessions in which the German language is used currently stands at almost 45 percent.<sup>4</sup>

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<sup>4</sup> Among other changes made in a revision to the guidelines governing financial support, the possibility was added in 2016 of paying for interpreters' fees. This is to ensure a continued high level of understanding between counsellors and clients.

## Language of communication in the Adult Migration Advisory Service

Language	Percent
Native language	38.5%
German and native language	9.1%
German	34.0%
German and other common language	11.6%
Other common language	3.3%
Interpreter	6.3%

The Federal Office for Migration and Refugees (BAMF) continues to provide information material on residence and integration in Germany free of charge. BAMF makes publications available for downloading on its website together with information on useful contact addresses in important areas of life. In addition, it provides a telephone advice service on question of immigration, integration and naturalisation.

### ***In reply to the question by the Committee regarding integration course participants' contributions towards course costs:***

An integration course consisting of 660 teaching units costs a total of €2,574 per participant (as of 25 August 2016). Entitled participants must pay a cost contribution to BAMF equal to 50 percent of the price<sup>5</sup> applicable on registration with the integration course provider.

Participants who registered for an integration course from 1 July 2012 and before 1 January 2016 pay a cost contribution of €1.20 per teaching unit. For an integration course with 660 teaching units, this represents a total contribution of €792 per participant.

Additional courses are provided for specific target groups (literacy courses, integration courses for parents and women, youth integration courses and catch-up courses) with up to 960 teaching units, meaning a cost contribution of up to €1,152.

Entitled participants are also permitted one repeat of up to 300 teaching units of the language course if they have properly completed the integration course and have not successfully passed the German Test for Immigrants (Deutsch-Test für Zuwanderer/DTZ) at level B1 under the Common European Framework of Reference (CEFR). In such cases, the maximum funding period is 1,200 teaching units and the maximum cost contribution is €1,440.

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<sup>5</sup> The price per participant and teaching unit paid to course providers was increased on several occasions subsequent to the period covered by the report. Because the cost contribution per participant is based on the price applicable on the date of registration with the course provider, the cost contribution paid by participants may differ.

Following the price increase to €3.10 on 1 January 2016, the cost contribution per entitled participant registering with a provider from 1 January 2016 and before 1 July 2016 is €1.55 per teaching unit. For an integration course with 660 teaching units, this adds up to a total cost contribution per participant of €1,023 (for 960 teaching units €1,488 and for 1,200 teaching units €1,860).

The price was raised to €3.90 from of 1 July 2016. Participants who registered for a course from this date now pay a cost contribution of €1.95 per teaching unit. The cost contribution for an integration course with 660 teaching units, is thus €1,287 (€1,872 for 960 teaching units and €2,340 for 1,200 teaching units).

Course participants who have reached the maximum funding period of 1,200 teaching units may also repeat individual modules of the language course at their own expense or continue the course at their own expense. Participants who receive benefits under Book II of the Social Code (SGB II) or cost of living assistance under Book XII of the Social Code (SGB XII) or under the Asylum Seeker Benefits Act (AsylbLG) can be exempted from the cost contribution by BAMF. In addition, participants for whom the requirement to pay a cost contribution constitutes undue hardship with due regard to their personal and financial situation may be exempted from the cost contribution on application to BAMF.

***In reply to the Committee's request for confirmation of the understanding that temporary residents in Germany, such as posted workers, are not entitled to participation in an integration course:***

The objective of integration courses is to enable immigrants to participate in all areas of everyday social life. Integration courses are therefore directed at immigrants who are legally and permanently resident in Germany. Permanent residence is assumed if an immigrant receives a residence permit of at least one year's duration or has held a residence permit for more than 18 months.

***In reply to the Committee's question as to whether there are costs involved for EU migrants and German nationals wishing to take part, and how much these are:***

EU migrants and German nationals who, subject to the availability of places, are allowed to take part in an integration course because they do not possess sufficient command of the German language and have special integration needs are subject to the cost contributions stated above.

EU migrants and German nationals who receive benefits under Book II of the Social Code (SGB II) or cost of living assistance under Book XII of the Social Code (SGB XII) or under the Asylum Seeker Benefits Act (AsylbLG) and who are allowed to take part in an integration course can be exempted from the cost contribution by BAMF. An exemption from the cost contribution is also possible if persons in the group just mentioned have particular difficulty raising the funds to pay the cost contribution.

***In reply to the question by the Committee regarding the nature of the sanctions in the event of a breach of the obligation to participate in an integration course:***

Immigrants can be required to participate in integration courses by the foreigners authorities or by the providers of basic income support. In order to be able to respond to breaches to the obligation, a sanction system was introduced that operates on a "challenge and support" basis and is graded by level of intervention.

The sufficient command of the German language and basic knowledge of the legal and social system required for the granting of a permanent settlement permit are deemed to be fulfilled on passing the final test in an integration course. In addition, the qualification period for entitlement to naturalisation is reduced from eight years by one year on passing the German Test for Immigrants. In the event of a breach of the obligations or failure to attend, the foreigners authorities inform the person about the potential consequences for residence.



Immigrants who are recipients of unemployment benefit II and who fail to attend or are in breach of their obligation to participate may have that benefit reduced by 30 percent and in the event of repeated breach by an even larger percentage.

Furthermore, persons in breach of the obligation to participate may be required to pay the expected cost contribution in advance. Normally, the cost contribution is only charged for the next course module. In addition, a fine may be imposed and administrative enforcement measures may be taken.

Moreover, in the event of repeat or gross breach of the obligation to participate, extension of the temporary residence permit may be refused or the authorities may respond with discretionary expulsion.

***In reply to the Committee's request for information regarding usage statistics and impact assessments for the Migration Advisory Service for Adult Immigrants (MBE):***

The numbers served by MBE have been rising significantly for some years. As of the 31 December 2015 reporting date, a 50 percent increase in the number of counselling cases was registered within three years. This represents an annual increase of approximately 15 percent.

The statistics for MBE during the reporting period are as follows:

<b>Year</b>	<b>2014</b>	<b>2015</b>
Total number of counselling cases	175,500	205,500
Total number of persons served (including family members)	271,500	321,000
Total number of case management cases (total number of support plans)	48,423	60,600
Staff positions (full time)	477	592.57
Number of counselling cases per full-time position	1:368	1:347

For case management cases closed up to the end of 2014, there was a discernible improvement in financial situation relative to the situation at the commencement of counselling: Dependence on state transfer benefits fell from 62.7 percent to 57.5 percent. The receipt of unemployment benefit II fell from 47.8 percent to 34.4 percent.

The monitoring findings further confirm that efficient structuring, networking and collaboration with other services and with occupational and social integration providers significantly aid integration success: Thus, in collaboration with other specialised and general services, a precarious financial situation improved in 27.3 percent of registered cases. Only in 3.3 percent of cases was this possible without such collaboration.

The general rise in the number of counselling cases and the expected increase in counselling cases following the opening of MBE to asylum seekers with good prospects of permanent residence make it necessary for MBE to be provided with additional staff and funding. There was a perceptible increase in the MBE budget in 2015 and 2016. In 2015, the MBE budget was €34.2 million. In the 2016 budget, a total of €44.7 million was allocated for

MBE. With this larger budget and the additional €7.7 million in own funding from the non-statutory welfare associations through which MBE is provided, MBE staff numbers are to be increased by the end of 2016 to up to an estimated 1,200 employees across up to 740 positions.

#### **Paragraph 2 – Departure, journey and reception within the scope of the Residence Act**

The information provided in the last report continues to apply. It is to be added that responsibility for foreigners in difficulty lies with the respective consulate. Every German national can be provided with consular assistance in the form of an advance under Section 5 of the Consular Act (Konsulargesetz; generally travel money, emergency flight home, etc.).

#### **Paragraph 3 – Co-operation between social services of emigration and immigration states**

It is important for migrant workers to be provided with balanced advice without misleading propaganda about the country of destination. Emigrants from Germany have therefore come under the Emigrants Protection Act since as long ago as the end of the 19th century. This aims to ensure proper, objective information about entry opportunities and living conditions abroad and to protect against rash emigration.

Emigrant advisory services, which to an increasing extent also advise returnees, are maintained by non-statutory welfare associations and are supported financially by the Federal Government in the form of central federal coordination through Raphaelswerk e.V.. The Federal Office of Administration provides information among other things about emigration and returning. An element of the national coordination is the regular contact maintained by Raphaelswerk with authorities responsible for immigration to the main immigration countries (primarily their embassies in Germany).

#### **Paragraph 4 – Not less favourable treatment of migrant workers in respect of employment**

Germany is not affected by the reporting requirement resulting from Conclusions XX-4 (2015).

#### **Paragraph 5 – Equality regarding taxes and contributions**

Migrant workers are not treated less favourably as a fundamental rule with regard to taxes than German nationals. Their treatment with regard to taxes depends on whether they have their place of residence or habitual residence in Germany (see Section 1 (1) and (4) of the Income Tax Act (Einkommensteuergesetz). Tax treatment is thus independent of nationality.

## **Paragraph 6 – Facilitation of family reunion**

***The Committee concludes that the situation in Germany is not in conformity with Article 19 paragraph 6 on the grounds that the requirement for migrant workers to hold a temporary residence title for two years in certain circumstances before being entitled to family reunion is too restrictive. The following is stated in this regard:***

In order to be able to arrange to family reunion, migrant workers do not have to hold a temporary residence title that is restricted to two years but have to hold a temporary residence permit for two years, and this only applies if they are not the holder of a permanent settlement permit or an EU Blue Card, are not a foreigner who has been recognised as being entitled to asylum or who has been granted refugee status, have not been granted subsidiary protection, and do not hold an EU long-term residence permit or temporary residence permit as a researcher. A further distinction is made in the case of a temporary residence permit: Only in the case that they are newly wed must the foreign national living in Germany have held a temporary residence permit for two years in order to arrange a family reunion. If the foreign national living in Germany is already married, or if they are a foreigner who has been recognised as being entitled to asylum, a person who has been granted refugee status under the Geneva Convention Relating to the Status of Refugees, or a researcher, no such minimum time period applies. Germany continues to consider this arrangement necessary to prevent potential misuse of the provision for reunification of married couples.

***The Committee further concludes that the situation in Germany is not in conformity with the Charter on account of the requirement of basic proficiency in German prior to entry for family reunion. The following is to be noted in this regard:***

With regard to the requirement to prove language proficiency, the legal situation in Germany has now changed in favour of married couples. Proof of language proficiency is no longer required if the spouse arranging the family reunion is a resettlement refugee, a person granted refugee status, a person granted subsidiary protection or a foreigner who has been recognised as being entitled to asylum – provided that the marriage existed at the time the foreign national living in the Federal Republic of Germany established his or her main ordinary residence there. Furthermore, no proof of language proficiency is required if the spouse arranging the family reunion, by virtue of his or her nationality, may enter and stay in the federal territory without requiring a visa for a period of residence which does not constitute a short stay, or if he or she holds an EU Blue Card.

Likewise, proof of language proficiency is no longer required if the spouse wishing to immigrate for the purpose of family reunion is unable to provide evidence of a basic knowledge of German on account of a physical, mental or psychological illness; if under certain circumstances his or her need for integration is discernibly minimal or he or she would, for other reasons, not be eligible for an integration course after entering; or if the particular circumstances of the case mean that he or she is unable to or it is unreasonable to expect the spouse to undertake efforts before entering the country to acquire a basic command of the German language.

## **Paragraph 7 – Equality regarding legal proceedings**

Any party who, due to their personal and economic circumstances, is unable to pay the costs of civil litigation and – if necessary – of counsel, or is able to pay them only in part or only as instalments, is granted, on application, assistance with the costs, provided that the action they intend to bring or their defence against an action that has been brought against them has sufficient prospects of success and does not seem frivolous. If assistance with costs is granted, the party must, according to their financial situation, either pay nothing towards to the court costs and the costs of their own counsel or must solely pay in instalments laid down by law. Counsel is provided free of charge if the court appoints counsel, which must be specifically applied for. Access to assistance with costs is provided on a discrimination-free basis and enables migrant workers to apply for assistance with costs in the same way as German nationals.

For the exercise of rights outside of court proceedings, litigants in need are provided with state support under the provisions of the Legal Advice Act (Beratungshilfegesetz/BerHG; [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de)). A litigant is considered to be in need if they cannot mobilise the necessary resources due to their personal and economic circumstances. Furthermore, there must be no other possibilities for assistance, and the exercise of rights must not seem frivolous (Section 1, BerHG). Application for assistance towards legal advice are decided on by the local court (Section 4, BerHG). Assistance towards legal advice is provided through attorneys and counsels or through other consultants (Section 3, BerHG). Attorneys and counsels are required to provide legal advice (Section 49a of the Federal Lawyers' Act (Bundesrechtsanwaltsordnung)). The litigant in need must normally pay an assistance fee of €15 (Section 44 of the Attorneys Remuneration Act (Rechtsanwaltsvergütungsgesetz/RVG)) and Item 2500 of the Remuneration Schedule comprising Annex I of the Attorneys Remuneration Act (VV RVG)); the fee can also be waived, however. The remainder of the professional's remuneration is paid by out of state funds (Section 44, RVG; Items 2501-2508, VV RVG). Access to legal advice is likewise provided on a discrimination-free basis and enables migrant workers to apply for legal advice assistance in the same way as German nationals.

Section 185 (1) sentence 1 of the Courts Constitution Act (Gerichtsverfassungsgesetz/GVG) stipulates that an interpreter must be called in if parties participating in a hearing do not have command of the German language. The interpreter's task is to interpret the proceedings between the court and the parties who do not have command of the German language. The purpose of this stipulation is to guarantee the right to a legal hearing, the right to fair proceedings and the establishment of the truth, notably as concerns communication with witnesses, expert witnesses and also parties to proceedings. The right to call in an interpreter is inalienable. If the court is satisfied that a party has insufficient or no command of German, it must call in an interpreter without regard to the wishes of the party. Whether a party has command of the German language must be determined by the court ex officio.

The stipulations in Section 185 of the Courts Constitution Act apply for all hearings in which verbal communication is required before a court, including for hearings and taking of evidence before the judge delegated or requested, domestically or abroad, provided that the main proceedings are pending in Germany. (Foreign) migrant workers are entitled to access to the services of an interpreter in the same way as are all other persons who do not have

command of German. If, for example, a foreign defendant does not understand the German language, an interpreter must be called in without regard to the defendant's financial situation.

### **Paragraph 8 – Guarantees concerning deportation**

Germany provided detailed information in its previous report about the planned comprehensive revision of the law concerning expulsion. These plans were made law on entry into force of the Act Redefining the Right to Remain and Termination of Residence (Gesetz zur Neubestimmung des Bleiberechts und der Aufenthaltsbeendigung) (note: the Act entered into force on 1 August 2015, whereas the portion of it governing the law concerning expulsion entered into force on 1 January 2016). There is no longer a distinction between grounds for mandatory, regular and discretionary expulsion. Instead, general public interests in expulsion of a foreigner are balanced against the foreigner's individual interests in remaining, taking into account the circumstances of the particular case (see Section 53 et seqq. and in particular the stipulations in Section 54 on the interest in expulsion and in Section 55 on the interest in remaining).

Homelessness for a prolonged period (Section 55 (2) 5) and claiming social assistance benefits (Section 55 (2) 6) are no longer contained in the Act as grounds for discretionary expulsion constituting a public interest in expulsion specifically provided for in law.

Conversely, the possibility of expelling a foreigner if they use heroin, cocaine or a comparably dangerous narcotic and are not prepared to undergo a course of rehabilitation treatment or evade such treatment (Section 55 (2) 4) has been retained. Reference is made to the previous report, where it is set out in detail why retaining this possibility was necessary for reasons of public safety and order.

### **Paragraph 9 – Transfer of earnings and savings**

Migrant workers can benefit from the 2016 enactment in national law of the EU Payment Accounts Directive, which among other things concerns the right of access (for a reasonable fee) to an account into which earnings (wages) can be paid and from which transfers can be made. EU Directive 2014/92/EU on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the Payment Accounts Directive) was enacted in national law in 2016 with the Act on the Comparability of Fees Related to Payment Accounts, Payment Account Switching and Access to Payment Accounts with Basic Features (Payment Accounts Act/Zahlungskontengesetz). An important aspect of the Act is the introduction of the right for any consumer who is legally resident in the European Union (including Union citizens, third country nationals, asylum seekers and homeless persons) to access to a payment account with basic features (basic payment account). Basic payment accounts are subject to special consumer protection provisions. Specifically, any agreed fees must be reasonable; credit institutions making payment accounts available have limited scope for terminating the contract for a basic payment account; and for the event of refusal to enter into a contract for a basic payment account or of refusal to open a basic payment account, consumers have a special means of recourse in the form of an administrative procedure before the Federal

Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht/BaFin). The Act additionally contains stipulations among other things on ease of switching current accounts and on transparency regarding account costs.

**Paragraph 10 – Equal treatment for the self-employed**

Reference is made to the information provided on Article 19 paragraph 6 and paragraph 8 ESC, as no distinction is made between employed and self-employed migrant workers.