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EUROPEAN SOCIAL CHARTER

Comments submitted by

Confederation of German Employers´ Associations (BDA)

concerning the 2nd National Report on the implementation of the European Social Charter (REVISED)

submitted by

THE GOVERNMENT OF GERMANY

Articles 2, 3, 4, 5, 6, and 20

Comments registered by the Secretariat

on 27 June 2025

CYCLE 2024

Collective bargaining autonomy not to be weakened by statutory obligation

Comments of the BDA on the 42nd report of the Federal Government on the revised European Social Charter of the Council of Europe

27 June 2025

Summary

With a view to the 42nd report of the Federal Government on the revised European Social Charter (RESC) of the Council of Europe of April 4, 2025, the BDA makes a different assessment, particularly with regard to freedom of association and the right to collective bargaining. Some important additions and clarifications are necessary regarding equal pay between men and women and the reconciliation of work and care in Germany.

Contrary to the German government's position, strengthening collective bargaining commitment cannot be achieved through a statutory collective bargaining obligation: Such a statutory collective bargaining obligation neither promotes trust in collective bargaining autonomy nor does it demonstrably increase the number of collective agreements. State intervention in collective bargaining autonomy, such as a federal collective bargaining law or facilitating the declaration of collective agreements as generally binding, is therefore not an effective way to promote collective bargaining.

In order to minimise existing legal uncertainties in the area of labour dispute law, legal regulations are needed that exclude political strikes and ensure the reference to collective bargaining.

The Pay Transparency Act has not had any significant impact to date because the equal pay requirement is complied with in companies. The causes of pay differences are less due to discrimination and more to structural factors such as the different employment histories of women and men. Therefore, further regulations are not necessary.

In smaller companies without statutory entitlement to care leave, employees nevertheless have the right to apply to their employer for the conclusion of an agreement on a similar period of career leave.

In detail

The right to organize and bargain collectively – Article 5 and Article 6 of the RESC

Strengthening collective bargaining coverage

The Federal Government's report lists various measures to strengthen collective bargaining coverage (Article 5 and Article 6, section 3, p. 91; section 14, p. 101). In addition, it should be

noted that a strong social and collective bargaining partnership and a high level of collective bargaining coverage are right objectives. However, state intervention in the form of a federal collective bargaining law is not the appropriate way to achieve these goals. Such a statutory collective bargaining obligation neither promotes trust in collective bargaining autonomy nor does it demonstrably increase the number of collective agreements. On the contrary, it would cause considerable costs and contradict the government coalition's declared aim of consistently reducing bureaucracy.

It is therefore essential that a possible future federal collective bargaining law is reduced to a minimum in terms of bureaucracy, verification obligations and controls. A non-bureaucratic approach is particularly necessary for companies bound by collective agreements and those that apply collective agreements through reference clauses. These should be largely exempt from the obligation to provide evidence and documentation.

Further simplification of the declaration of general applicability of collective agreements (in accordance with the 2015 Act to Strengthen Collective Bargaining Autonomy) is also the wrong way to strengthen collective bargaining coverage. The proposals being discussed to simplify the process are mainly concerned with cancelling out the voting rights of employers or the collective bargaining committee, abolishing the joint application for the declaration of general applicability by both parties to the collective agreement or softening the requirements for the declaration of general applicability of this collective agreement. None of this is in the interests of collective bargaining autonomy, is detrimental to social partnership and harbours considerable risks in terms of collective bargaining policy. The conclusion of collective agreements is therefore made more difficult rather than more favourable.

Labour dispute law

In the absence of statutory regulation, the current situation with regard to industrial action law is characterised by legal uncertainty. The increasing politicisation of collective bargaining disputes also adds to this. However, political objectives do not fall within the scope of the right to strike. Labour disputes are an expression of freedom of association and part of collective bargaining autonomy. If political concerns are mixed up with collective bargaining demands, a central prerequisite of the fundamental right to freedom of association is undermined - namely that coalitions are protected by the Basic Law in order to shape working conditions. In order to strengthen collective bargaining and promote the acceptance of collective agreements, clear legal regulations are required for the right to industrial action. This overdue task must no longer be left to the labour courts but must be addressed by the legislator directly. Above all, a clear framework is needed to ensure that labour disputes always have a clear link to collective bargaining, they may only be used as a last resort and that neither political nor wildcat strikes are acceptable.

Reconciliation of work and care – Article 4 of the RESC

In addition to the report, it should be mentioned that in companies below the thresholds in which employees are not legally entitled to a carer's leave of absence, they have the right to apply to their employer to conclude an agreement on a corresponding leave of absence (Art. 3 para. 6a of the Caregiver Leave Act and Art. 2a para. 5a of the Family Caregiver Leave Act). The employer must respond to the application within four weeks of receipt. The employer is required to provide reasons for any rejection of the application. During such leaves of absence, there is also special protection against dismissal in accordance with Art. 5 para. 1 sentence 2 of the Caregiver Leave Act.

Fair remuneration – Article 4 of the RESC

The Second Evaluation Report of 2023 on the Pay Transparency Act makes it clear that the Act has no statistically significant effect on equal pay. The low request for information of 4% in the past shows that the equal pay requirement is being complied with in companies. The declared part of the pay gap of 6% cannot be equated with discrimination either. The Federal Statistical Office itself points to inadequacies in the underlying statistics. Many wage-relevant influencing factors are not taken into account here. This is often not mentioned and ultimately leads to a distorted picture. The high bureaucratic burden for companies and the actual effect of the law are therefore already disproportionate. The tightening of the EU Pay Transparency Directive will not change this. On the contrary, it sets the wrong course.

The principle of 'equal pay for women and men for equal work' is a matter of course for employers. Women and men are paid equally by the same employer if they perform the same work. Collective labour agreements in particular guarantee fair and appropriate remuneration that is non-discriminatory. The actual causes of the pay gap can be traced back above all to the different employment and professional behaviour of women and men and the unequal distribution of family care work. Such problems must be tackled by society as a whole.

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