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## **1961 EUROPEAN SOCIAL CHARTER**

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

**THE GOVERNMENT OF GERMANY**

Article 1, 9, 10, 15 and 18  
for the period 01/01/2015 - 31/12/2018

**CYCLE XXII-1 (2020)**

Berlin, June 2020

**Supplementary remarks  
considering the appendix to the**

**37th Report**

**of the Government of the  
Federal Republic of Germany  
for the period**

**1 January 2015 - 31 December 2018**

**(Articles 1, 9, 10, 15 and 18)**

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 the Report shall be sent to the Confederation of German Employers' Associations

and

the Federal Executive Committee of the Confederation of German Trade Unions.

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## **APPENDIX**

*Under the European Social Charter member states are committed to ensuring the effective exercise of the right to work and the objective of high and stable employment (full employment). However, changes — and potential threats — resulting from globalisation and rapid technological developments such as automation require robust and comprehensive strategies and responses, in particular education and training. In order for the labour force to be responsive to evolving needs, the policy measures adopted have to be adequately resourced and implemented vigorously and proactively. The measures must rest firmly on guarantees of basic labour rights such as non-discrimination in access to employment, equal pay for women and men and dismissal protection as well as of the rights of persons who are or may be vulnerable to particular disadvantage in the labour market, such as persons with disabilities and migrants and refugees.*

*In pursuance of the above States Parties are invited to provide the following information pertaining to the reference period 2015-2018:*

### **Article 1 § 1**

*Please provide details of labour market policy measures specifically designed to support specific groups or communities, such as: young people who have not yet entered the labour market, persons in geographical areas and communities with distinct levels of underemployment (quality) or unemployment (quantity) or experiencing severe or chronic unemployment as well as migrants and refugees.*

The employment agencies start **vocational guidance and counselling measures** in general education schools up to three years before the end of school. This reaches most young people because school is compulsory. The employment agencies also provide **placement into vocational training, preparation for vocational training and support of vocational training.**

**Career counselling** for those in school can also take the form of individual counselling. With the introduction of **lifelong career counselling** (Lebensbegleitende Berufsberatung - LBB) before and during working life, the Federal Employment Agency has expanded its services for people who need vocational guidance and career counselling. For young people, this means an earlier start to career guidance in schools. LBB now begins one year earlier - two years before school ends - and incorporates more interactive formats so that students have "more direct" contact with types of jobs. Moreover, the presence of career counsellors in schools is expanded so that counselling talks and consultation hours can mostly be offered on site.

The **initiative "Klischeefrei"** (No clichés) was launched in 2016 by the Federal Government. It is committed to providing young people with modern, gender-neutral counselling on careers and courses of study. As of May 2019, 172 partners from the fields of education, policy-making, business and research had joined the initiative. The aim of the initiative is to enable young people to find jobs that match their strengths, interests and life plans and that they enjoy regardless of their gender.

An **office for the initiative** has been set up with funds from the Federal Government and is based at the Federal Institute for Vocational Education and Training (BIBB). It manages a portal providing information and materials, and it enables the actors involved in career guidance to exchange information relevant to their everyday work. In addition, it provides advice and information to its partner institutions. It also maintains the **website [www.klischee-frei.de](http://www.klischee-frei.de)** and is supported by the "Kompetenzzentrum Technik-Diversity-Chancengleichheit e.V.". In addition to background information and a calendar of current events on the topic of gender-equitable advice on careers and study courses, the website offers "examples of good practice".

During the last two school years **career entry support** is offered at selected lower secondary general education schools and special needs schools (Haupt- und Förderschulen) offering continuous support to lower-attaining students, helping them to successfully finish school and enter the labour market. Career entry counsellors establish a personal relationship with the young people. On the basis of this they draw up a support plan and implement it together with the young people and other stakeholders such as parents or teachers. Since the school year 2014/2015, the Federal Government has allocated a total of roughly one billion euros for career entry support through 2020. Around 500 million euros of this come from the European Social Fund run by the Federal Ministry of Labour and Social Affairs and from funds of the Federal Employment Agency.

**Assisted training** facilitates support for young people and the companies they are training in before and during in-company vocational training. Support for trainees is designed in such way as to ensure individual, continuous support and a stable training relationship. The object of the support measures can include preparation for vocational training (e.g. career counselling, profiling, job application coaching) and support provided during the training period (e.g. tutoring). Socio-pedagogical support plays an important role throughout.

**Activation assistance for young people** (section 45 of Book III of the Social Code)(SGB III): Activation and job integration measures can, among other things, provide targeted support for the integration of persons seeking training placement, unemployed young persons and young job seekers.

**Introductory training**, section 54a of Book III of the Social Code: In-company introductory training is an offer meant to build a bridge to vocational training for young people with obstacles to placement who do not have a training place. Introductory training can be supported for a period of six to a maximum of 12 months.

Young people are also supported through **wage subsidies and start-up subsidies**. The integration grant is a long-established support instrument designed to provide targeted support for the integration of job seekers with obstacles to placement into employment subject to social security contributions. In 2017, the employment of jobseekers under 25 years of age received promotion above their share of the unemployed.

The share of people under the age of 25 in integration support measures was 12.2 percent. When starting a business, young people can either be supported by the start-up grant or by the programme **Gründerkredit-StartGeld** [Start-up Loan - Start-up Money] offered under the European Recovery Programme.

With "**STAFFEL - Soziale Teilhabe durch Arbeit für junge erwachsene Flüchtlinge und erwerbsfähige Leistungsberechtigte**", the federal programme for social participation through work for young adult refugees and those qualifying for benefits", young adult refugees and nationals are jointly introduced to employment or training in order to integrate them into the labour market and society in the long term. Participants must be eligible for benefits under Book II of the Social Code (SGB II) and be between 25 and 35 years old. Participants should learn from and with each other.

In addition to the promotion of employment relationships, the participants' situations are stabilised, supported and promoted with the help of accompanying measures such as guidance, support, counselling and coaching. The programme started at the end of May 2016 and ended on 31 December 2019.

The overall concept "**MitArbeit**", which was conceived in 2017, will further reduce **long-term unemployment**. The overall concept is based on a holistic approach. The aim is to increase the employability of people who have been unemployed for a very long time through intensive support, individual counselling and effective assistance, while at the same time offering them more employment options on the general or social labour market. The most important element of this overall concept was the draft of an act on the creation of new participation opportunities on the general and social labour market (Gesetz zur Schaffung neuer Teilhabechancen auf dem allgemeinen und sozialen Arbeitsmarkt (Teilhabechancengesetz)), which came into force on 1 January 2019. For further details see article 10 section 4.

The promotion of **continuing vocational training** in line with Book III of the Social Code (SGB III) is a core element of labour market policy. Through vocational training, it makes an important contribution to securing the supply of skilled labour and to maintaining or improving individual employability. Not only unemployed workers and workers threatened with unemployment are eligible to participate. Workers in employment can also receive further training support under certain conditions.

In many cases, lack of vocational qualifications or having inadequate qualifications is the cause of long-term unemployment. The long-term unemployed have full access to further training support through job centres, especially to obtain vocational qualifications that significantly improve integration opportunities.

Legislation to strengthen continuing education and training (the **Gesetz zur Stärkung der beruflichen Weiterbildung und des Versicherungsschutzes in der Arbeitslosenversicherung, AWStG**) came into force on 1 August 2016. It improved and developed the instruments for the promotion of continuing education in the Books II and III of the Social Code (see also the answer to Article 10 section 3).

The explicit aim is to improve access to continuing vocational training for low-skilled workers, the long-term unemployed and older workers. Measures include promoting basic skills and a further training premium.

Legal regulations for continuing vocational training are intended in particular to strengthen continuing vocational training that is related to vocational qualifications while improving the framework conditions for such training and to reduce the number of drop-outs.

Studies have shown that employees without vocational qualifications have an above-average risk of unemployment and less stable career trajectories. That continuing vocational training in particular may be required for permanent integration is made clear by an addition to section 4 (2) 2 of Book III of the Social Code that states that it is to be expected that especially workers without vocational qualifications participating in continuing vocational training supported under section 81 will need long-term integration.

In order to improve the integration of the long-term unemployed and unemployed persons with severe obstacles to placement, the maximum length of activation and vocational integration measures or parts of activation and vocational integration measures implemented with or by an employer has been extended from six to twelve weeks for people falling in this category. The scheme also aims to support the integration of this group of people by increasing their recruitment into continuing vocational training. Often it is not known what knowledge, skills and abilities the persons concerned have. Measures for activation and labour market integration carried out in the run-up to further training can help to clarify the target occupation and thus also the educational goals of subsequent vocational training.

The amendment integrates an existing exception in Book II of the Social Code for the long-term unemployed and those under 25 years of age with severe obstacles to placement into the regular instruments of Book III of the Social Code and extends it to people over 25 years of age. This means that low-skilled unemployed persons falling under the legal categories of Book III of the Social Code can also benefit from these longer measures.

The same applies to so-called non-beneficiaries, as well as those entitled to benefits under the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz), who receive support for job placement under Book III of the Social Code and who have severe obstacles to placement. The regulation also applies to basic security for job seekers in line with section 16 (1) 2 (2) of Book II of the Social Code.

The **Zukunftsstarter-Initiative** launched by the Federal Government and the Federal Employment Agency (BA) is aimed primarily at recruiting young adults without vocational qualifications into initial or continuing vocational training with the aim of obtaining vocational qualifications. From the start of the initiative (1 August 2016) through the end of 2018, around 30,000 young adults receiving basic income support for jobseekers benefitted from this.

With the **WeGebAU** programme for further training for low-skilled and older employees in companies, the Federal Employment Agency supports unskilled workers and employees in small and medium-sized enterprises by assuming the costs of further training. For vocational qualifications being obtained at a later stage it is also possible to subsidise the continued payment of remuneration during the training.

The employment agencies offer vocational guidance to all those who are in employment. The type and scope of the counselling is based on the need of the person seeking advice. Counselling may therefore include, for example, the provision of information and advice on career development or career changes, the situation and development of the labour market and occupations, and vocational training possibilities. Legislation on opportunities for skills development (**Qualifizierungschancengesetz**) came into force on 1 January 2019. It strengthens the right to further training counselling as part of career counselling. Since March 2017, the Federal Employment Agency has been running the pilot project on lifelong career guidance (Lebensbegleitende Berufsberatung). It will establish systematic advisory services for employees with low qualifications or persons particularly affected by the increasing use of digital technologies. Its widespread introduction into the workforce is planned to start in 2020.

Early integration into the labour market is an essential component of the social integration of **refugees** and reduces the risk of later long-term unemployment. For this reason, the potential of asylum seekers who have been granted temporary resident permits with good prospects of staying should be assessed at an early stage.

With the exception of the advisory services pursuant to the first subdivision of the first division of chapter three, the placement support services available to the Federal Employment Agency in the context of active employment promotion generally require that the person concerned is permitted to undertake gainful employment.

#### Labour market policy measures for female refugees

In the project “Women with refugee backgrounds found companies”, female refugees were introduced to self-employment in three phases culminating in the founding of their own companies. During the project's work, many hurdles had to be overcome, such as participants' lack of language skills, a lack of knowledge about business and administration in Germany, but also, for example, a lack of understanding of authorities. Different ways of reaching the target group were tried.

In addition, awareness was raised among key decision-makers and stakeholders about the concerns of female entrepreneurs with refugee backgrounds (including banks, start-up support providers, chambers of commerce and crafts, migrant organisations). Work was done to increase the presence of female entrepreneurs with refugee backgrounds in the media. Here the project carried out important networking and awareness-raising work for the target group.



A wealth of material on the topic of starting companies and refugee women was gathered in Germany for the first time in the project. The experiences of female refugees who have been in Germany for some time and have founded companies were also analysed and included.

The project participants are given support with mentoring, internships, consulting and coaching in the development of business ideas, their implementation and market testing. Over 100 women participated in the project in various ways. Ten project participants founded a company with the support of the project.

An overview of the results of the project containing recommendations will be published in the summer of 2020.

Project sponsor: JUMPP - Ihr Sprungbrett in die Selbstständigkeit (JUMPP - Your springboard to independence, Frankfurt am Main. Methodical monitoring: Institut für Mittelstandsforschung der Universität Mannheim (ifm), Duration: 2017 to 2019.

As part of the protection strategy for refugees in refugee accommodations, the equality-policy model project "POINT – Potentiale integrieren" (POINT - Integrating Potential) was also launched in Berlin in 2017. The three-year project pursued a holistic approach (coaching, training measures, psychosocial support, child care) and the goal of integrating female refugees with good prospects of remaining into the labour market. The women were supported by so-called "POINT.Sisters", who volunteered to assist them in their daily lives. Of the 116 women who received support during the pilot project, more than 65% were integrated into the labour market or completed labour market-related training.

### **Legislation to accelerate the asylum procedure**

**(Asylverfahrenbeschleunigungsgesetz)** of 20 October 2015 introduced the special provision of section 131 of Book III of the Social Code for the integration of foreigners with residence permits. This established the possibility to grant asylum applicants with permission to reside the benefits necessary for early integration into the labour market. This was valid for a limited period of time (initially until 31 December 2018, then extended until 31 December 2019).

This means that the waiting period for permission to be allowed to undertake gainful employment should be used, e.g. in order to carry out competence assessments and measures for activation and labour market integration with employers, if the other conditions of the respective benefits are also fulfilled.

An act to promote the employment of foreigners (**Ausländerbeschäftigungsförderungsgesetz**) of 8 July 2019 eliminated the limitation of the special provision previously contained in section 131 and integrated it into the general provisions.

Section 39a, which is new, describes the principle already contained in section 131 that the benefits of the second subdivision of the first division of chapter three can also be provided to asylum seekers who have been granted temporary resident permits with good prospects of staying. This makes it possible to provide the placement support services necessary for early integration into the labour market for an unlimited period of time, which can help integrate asylum seekers who have been granted temporary resident permits with good prospects of staying in Germany into work more quickly once they are allowed to work.

*Please include statistical information on the overall impact of employment policy during the reference period: economic growth indicators, unemployment rates broken down by gender, age and duration, public expenditure on passive and active labour market measures as a share of GDP, number of participants in active measures (training), activation rate (participants/unemployed ratio).*

Indicator	2015	2016	2017	2018
GDP growth rate in real terms	1,7	2,2	2,5	1,5
GDP per capita growth rate in real terms	0,9	1,4	2,1	1,2
Unemployment rate (UR; ILO-definition; in %)	4,6	4,1	3,8	3,4
UR under 25	7,2	7,1	6,8	6,2
UR 25-74	5,3	5,1	4,8	4,2
UR male	5,0	4,5	4,1	3,8
UR female	4,2	3,8	3,3	2,9
Long-term unemployed as a share of total unemployment	38,8	37,2	34,5	34,1
public expenditure on passive labour market measures*	1,6	1,6	1,6	1,5
public expenditure on active labour market measures*	0,7	0,7	0,7	0,7
Number of participants in labour market measures (stock)	809.375	868.376	893.292	843.354
Activation rate (national definition; in %)	17,6	19,3	20,9	21,0

\* in percent of GDP; including mandatory unemployment insurance (contribution budget) and basic security benefits for job-seekers (federal budget))

## **Article 1 § 2**

*Please provide updated information on legislation prohibiting all forms of discrimination in employment in particular on grounds of gender (if not accepted Article 20/Article 1 AP), race, ethnic origin, sexual orientation, religion, age political opinion, disability (if not accepted Article 15§2), including information on remedies.*

*Please indicate any specific measures taken to counteract discrimination in employment of migrants and refugees.*

*Please indicate what measures have been taken to assess the prevalence of the problem of exploitation of vulnerability, forced labour, modern slavery?*

*Does legislation exist to deal with the phenomenon of exploitation of vulnerability, forced labour, modern slavery and does it make provision for the identification and protection of victims, enable prosecution of exploiters, or otherwise provide reporting requirements for businesses to detail actions taken to investigate their supply chains for forced labour, due diligence in public procurement to guarantee funds are not inadvertently supporting modern slavery? Are there regular inspections of sectors such agriculture, construction, hospitality, manufacturing and domestic work, which are particularly affected by labour exploitation?*

*Please provide information on any measures taken to protect workers in the “gig economy” or “platform economy whose employment is very often precarious, against exploitation.*

There have been no legal amendments in the field of the General Act on Equal Treatment (Allgemeines Gleichbehandlungsgesetz - AGG) in the period under review (1 January 2015 to 31 December 2018). This is why updated information on legislation cannot be provided.

Section 7 in connection with section 1 of the AGG sets out a comprehensive discrimination ban in respect of employment and occupation. According to these provisions, employees must not be discriminated against on grounds of race, ethnic origin, sex, religion, belief, disability, age or sexual identity.

For the enforcement of this discrimination ban, employees have comprehensive rights, such as the right to make complaints in their companies (section 13 of the AGG) and a right to withhold performance (section 14 of the AGG). Outside their companies, employees can also turn to the labour courts (section 15 of the AGG).

For detailed information on the legal provisions of the AGG, we refer in particular to the 25th Report on the Application of the European Social Charter (ESC).

In the first funding period of the federal programme "Demokratie leben!" ("Living Democracy") from 2015-2019, model projects were funded in the programme area "active commitment and diversity in the world of work and business", which focused on democracy-promoting measures in the context of training. The aim of these model projects was to test and further develop joint plans in workplaces and companies in order to counteract discrimination in the workplace. For example, in the project "Open Doors - Open Minds", in cooperation with companies and organisations, young refugee women received support during their vocational orientation and political education through internships, mentoring, coaching and seminars."

Compliance with the provisions on the statutory minimum wage and sector-specific minimum wages is controlled by the authorities of the customs administration.

Their many responsibilities also include the fight against undeclared work and certain forms of labour exploitation. In their comprehensive inspections, they pursue a risk-oriented approach. As a result, selective inspections are repeatedly carried out in sectors that are particularly at risk; in addition to the construction industry, these include the meat industry, the hotel and catering industry, agriculture and the transport sector.

Enforcement and inspection with regard to safety and health at work is one of the tasks of the Länder within the framework of statutory occupational safety and health. In addition, the statutory accident insurance funds and occupational accident insurance funds have enforcement and advisory tasks within the scope of their statutory responsibilities.

In 2018, “fair integration” was included in the “Integration through Qualification (IQ)” funding programme as a new action field. In the framework of this programme, refugees can learn about the working conditions, labour law provisions and existing counselling and support structures in Germany.

With the “Fair mobility” project, the Federal Government has been supporting EU citizens working in Germany, especially those from Central and Eastern Europe, with counselling and information services on labour and social law conditions on the German labour market since 2011. Some of the most frequent topics on which counselling is provided are remuneration, the minimum wage, termination of employment, employment contracts, working hours and holidays.

The “Finanzkontrolle Schwarzarbeit” (FKS, Fiscal Control Illicit Work) is a special unit of the German Customs Authority with the main task to tackle illegal employment. It has seen an enhancement of its competencies in summer 2019 and is now also responsible to identify exploitative labour conditions, forced labour and human trafficking.

The German National Action Plan on Business and Human Rights includes supply chain issues as one component. The German Government established guidelines in 2018 and supports structures with a target of 50 percent of companies required to report on human rights measures incorporated into their operations by 2020, including trafficking in supply chains.

The Federal Government is also responsible for coordinating the fight against human trafficking with regard to victim protection issues. In order to protect particularly vulnerable groups from exploitation, numerous measures were taken in the reporting period 2015-2018. The Federal Government promotes nationwide networking to combat human trafficking. The Federation-Länder working group on trafficking in human beings was established in the late 1990s under the leadership of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). The BMFSFJ also supports the KOK -- the national coordination group against trafficking in human beings, which unites

39 specialist counselling centres under its roof. This ensures close cooperation and a continuous exchange with practitioners.

On 1 July 2017, legislation on the regulation of the prostitution trade and the protection of persons engaged in prostitution (Gesetz zur Regulierung des Prostitutionsgewerbes sowie zum Schutz von in der Prostitution tätigen Personen, the Prostituiertenschutzgesetz or ProstSchG for short) came into force.

For the first time in Germany, a legal framework for legal prostitution was established. The aim of the legislation is to strengthen the rights of sexual self-determination of prostitutes, to create a legal basis to ensure acceptable working conditions, to limit dangerous forms of prostitution and to combat crime in prostitution such as human trafficking, violence and exploitation of prostitutes and pimping.

In the long term, the introduction of an obligation to register in person and of regular health counselling will ensure that prostitutes receive reliable information on their rights and on health and social support services. In particular, persons who are largely controlled by others and not provided information by third parties and who are brought into prostitution businesses by third parties are offered the opportunity to establish contact with third parties outside prostitution and to learn about support services.

The certificate of registration may not be issued if the person is not of legal age, the person is under 21 years of age and there are factual indications that the person is being or will be induced to prostitution by third parties or there are factual indications that the person is being or will be induced to prostitution by third parties or is being or will be exploited by third parties by taking advantage of a difficult situation, the persons' helplessness if caused by the person's being in a foreign country or the person's personal or economic dependence.

The introduction of a licensing requirement for the prostitution trade is linked to an examination of the person's reliability and the obligation to create binding minimum standards for places of prostitution. The legal framework also serves to improve the regulatory instruments for monitoring the prostitution trade and to exclude dangerous forms of prostitution. The Federal Government is striving to continuously improve national cooperation and national and international reporting on the fight against human trafficking. This includes the establishment of a national reporting unit on human trafficking (legal obligation from the Council of Europe and EU) and a Federal Government coordination mechanism. An interministerial consultation process took place in 2017.

On the basis of this coordination within the Federal Government and within the framework of the Federation-Länder working group on trafficking in human beings, the Federal Government has since continued its consultations on the further development of structures at the federal level. The aim of these in-depth considerations is to improve overall coordination and policy coherence in the fight against all forms of human trafficking at the federal level. On 31 January 2020, the Federal Government initiated the establishment of a monitoring body to combat violence against women and human

trafficking. On 25 March 2019, the three Federation-Länder working groups working in the field of combating human trafficking held a joint forum. The discussions focused on GRETA's recommendations for improving the existing coordination efforts and exchange of information at the federal level as well as current legislative projects, data and developments concerning trafficking in human beings in Germany.

In cooperation with ECPAT Deutschland e.V. (working group for the protection of children against sexual exploitation) and the KOK (the national coordination group against trafficking in human beings), the nationwide cooperation plan for the improvement of victim protection in cases of trafficking of minors was published on 18 October 2018. The aim is to provide adequate protection for children and adolescents against trafficking and exploitation, to support victims and ensure effective prosecution, while avoiding possible re-traumatisation or re-victimisation. Organisational and communicative structures are to be established or expanded in Germany, which will enable long-term, person-independent cooperation between the specialists locally. A coordinated cooperation mechanism is to help to better identify affected persons and to introduce adequate protection measures more quickly. In March 2019 the practical guide to identifying and reacting to trafficking in and exploitation of children and young people (Handel mit und Ausbeutung von Kindern und Jugendlichen erkennen und reagieren) was published on basis of this. It aims to help at the practical level in the areas of gaining confidence in dealing with (potentially) affected minors and getting a feeling for the forms in which these acts of violence occur in Germany.

Taking into account current developments in the area of human trafficking and in cooperation with KOK, the national coordination group against trafficking in human beings,, the Federal Government organised webinars on the topic of "introduction to the phenomenon of human trafficking - background, identification and protection of trafficked persons", in which almost 500 people participated. The last webinars took place at the end of January 2020. The webinars are aimed at employees of the authorities responsible for the registration procedure under the legislation to protect prostitutes (Prostituiertenschutzgesetz).

### Platform economy

In the period under review, no specific measures were taken for people working in the platform economy. However, they benefit from a number of legal improvements introduced in the period under review for dependent employees (including the introduction of the general statutory minimum wage) and for self-employed persons (including the decision to reduce by more than half the minimum contributions to the statutory health insurance scheme for voluntarily insured self-employed persons with effect from 1 January 2019).

In addition, there are voluntary initiatives and projects that aim at increasing transparency and improving working conditions in the platform economy such as the [Code of Conduct of the Deutsche Crowdsourcing Verband](#) and the ombudsperson's

office set up by the metal workers' union IG Metall and the Crowdsourcing Verband as well as the trade union project "[FairCrowdWork](#)".

The Federal Government is closely monitoring current developments in the platform economy. Good working conditions and social security must be guaranteed also in this sector.

Platform activities can take on different forms of dependent employment and self-employment as well as main and secondary employment. In general, dependent employees have social security coverage. Their employers are required to pay social security contributions whereas self-employed persons have to insure themselves. In their general terms and conditions, platforms often state that their services are provided by (individually) self-employed persons. However, the terminology used by the contracting parties is not relevant for the assessment of a person's employment status in legal terms but rather the way in which a contract is actually carried out. On the basis of an overall assessment, all circumstances of an individual case are taken into account. Employers/clients are obliged to check whether the contracts that they conclude involve an employment relationship or a self-employed activity. If an examination in a specific case reveals that social security contributions are payable but have not been paid, the relevant payments are claimed retroactively. As a rule, payments are claimed retroactively for the whole period of employment. The retroactive claim is subject to the limitation period. As a rule, the four-year limitation period would apply in these cases. In Germany, companies that have notified the social insurance institutions of at least one dependent employee are regularly checked every four years by the competent pension insurance fund for compliance with the relevant notification and contribution-related obligations. In addition, the monitoring unit for undeclared work (Finanzkontrolle Schwarzarbeit - FKS) carries out random and ad-hoc inspections of companies which may include checks on a person's employment status. Depending on the results of these inspections, companies may be required to pay social security contributions retroactively, surcharges may be imposed and criminal or administrative offence proceedings may be initiated."

## **Article 10 § 1**

*Please state what strategies and measures are adopted to match the skills acquired through vocational education and training with the demands of the labour market, especially demands resulting from globalisation and technological developments, and thus to bridge the gap between education and work.*

Demographic, technological and skills-related structural changes pose major challenges for the labour market. In this context, workers have to continuously adapt to the changing skills requirements through job-related continuing education and training. More fundamental professional reorientation may also be required.

Through continuing education and training measures provided for under Books III and II of the Social Code unemployed but also, under certain conditions, employed workers, can maintain and improve their professional skills. The **WeGebAU** [Continuing Vocational Education and Training for Low-Skilled Workers and Older Employees in Companies] initiative of the Federal Employment Agency aims to convince older and low-skilled workers and their companies to participate in skills development measures. On the one hand, WeGebAU is aimed at workers who have no vocational qualifications at all (low-skilled workers) and who are eligible for support under section 81 (2) of Book III of the Social Code for support to complete vocational qualifications. Support can also be provided for certification-relevant partial qualification modules that gradually lead to completion of vocational qualifications. The support is available irrespective of the size of the company providing the employment and also includes the possibility of receiving a subsidy for the continued payment of wages during the time of continuing education and training (section 81 (5) of Book III of the Social Code).

The Skills Development Opportunities Act (**Qualifizierungschancengesetz**) entered into force on 1 January 2019. It gives all employees access to skills development support and is generally independent of the level of training, age and company size. Existing support instruments that were previously only available to low-skilled workers, workers at risk of unemployment and workers in small and medium-sized enterprises are now generally open to all employees.

The **Skills Development Opportunities Act** also improves the promotion of continuing education and training for employed workers whose work can be replaced by technologies, who are otherwise affected by structural changes or who want to take up further training in a bottleneck occupation.

*Please provide information on measures taken to integrate migrants and refugees in vocational education and training.*

The **promotion of training for foreigners** is particularly challenging. So far, access has been subject to numerous conditions and has therefore been significantly restricted. In order to be able to support foreigners who are not subject to an employment ban more broadly with the necessary services, new rules have been established for access to vocational training support which is now largely independent of residence requirements: The Act to Promote the Employment of Foreigners (entry into force on 1 August 2019), the access of foreigners to vocational training support, including pre-vocational programmes under Books III and II of the Social Code, has been fundamentally revised, simplified and extended. The Act promotes the integration of refugees and facilitates the immigration of skilled workers and the mobility of Union citizens. In addition, German language training for asylum applicants with permission to reside and refugees whose deportation has been temporarily suspended has been opened more widely in order to make it easier for them to take up jobs that cover their needs as well as possible.

Refugees over 25 are the focus of the model cooperation **Kommit** (Kooperationsmodell mit berufsanschlussfähiger Weiterbildung), which started in October 2016. Together with the Federal Office for Migration and Refugees (BAMF), the umbrella organization of



German trade unions (DGB) and the employers' federation (BDA), the Federal Employment Agency has developed a model which can be used nationwide and which supports the occupational and social integration of people with a refugee background. It dovetails work with language learning, and skill-building measures leading to a certificate.

The model works in 4 phases: Phase I: Intensive language class (Integration Course); Phase II: Contact with a company. Combination of a labour market programme in a company with a language course (up to 14 weeks); Phase III: An occupation which is subject to social security insurance combined with a qualification which shall lead to a certificated part of a vocational training; Phase IV: If necessary social coaching for stabilizing the employment and ongoing skill-building measures till the official certified vocational training degree is reached.

The targeted promotion of certification-relevant partial qualifications within the framework of **WeGebAU** also gives refugees for whom longer retraining measures are not suitable a good opportunity to acquire their vocational qualifications step by step and in tandem with their work.

The national support programme "**Integration through Qualification (IQ)**" aims at improving the job prospects of adult migrants in Germany and has established structures for recognition counselling throughout Germany. In the current funding phase of the IQ funding programme, the focus will be not only on recognition and qualification counselling but also on skills enhancement through skills development programmes for migrants in the context of the Recognition Act and the topic of "intercultural opening".

### **Article 10 § 3**

*Please describe strategies and measures (legal, regulatory and administrative frameworks, funding and practical arrangements) in place to ensure skilling and re-skilling in the full range of competencies (in particular digital literacy, new technologies, human-machine interaction and new working environments, use and operation of new tools and machines), needed by workers to be competitive in emerging labour markets.*

The structural change concerning qualifications, the ongoing digital transformation of the world of work and growing demand for skilled workers make it necessary to step up efforts in the area of vocational certification-relevant continuing education and training and to further improve the framework conditions for successfully obtaining vocational qualifications. In 2017, a total of around 315,00 people from all groups of persons eligible under various legal provisions received support through continuing vocational training (2016: around 325,000 people), 37 per cent of which (2016 = 43 per cent) received support under Book II of the Social Code. In 2016, a total of some 62,000 people enrolled in qualification-related vocational training measures (2018: some 64,000 people).

On 1 August 2016, the Act to Strengthen Continuing Education and Training and Unemployment Insurance Coverage (**Gesetz zur Stärkung der beruflichen Weiterbildung und des Versicherungsschutzes in der Arbeitslosenversicherung (AWStG)**) introduced the following rules in the field of continuing education and training and unemployment insurance coverage: To prepare for certification-relevant further training, workers who have not completed vocational qualifications may receive support from employment agencies or job centres for the **acquisition of necessary basic skills**, in particular in reading, writing, mathematics, information technologies and communication technologies in order to enable them to successfully participate in certification-relevant continuing education and training.

In order to motivate more low-skilled workers to take part in certification-relevant continuing education and training and to encourage them to persevere, a **continuing training bonus** of 1,000 euros will be granted if they pass an intermediate examination as required by the training regulations and a bonus of 1,500 euros if they pass the final examination.

In order to support successful completion of training and also to strengthen the willingness of companies to provide sufficient retraining places, there is the possibility of providing **retraining assistance** where necessary.

The Act to Strengthen Continuing Education and Training and Unemployment Insurance Coverage makes it possible for workers to **develop their skills while receiving the transfer short-time work allowance**. Employees in outplacement agencies who are affected by restructuring measures will be given easier access to continuing vocational education and training. Any necessary skills development measures of older employees from the age of 45 and of low-skilled employees already during their time in the outplacement agency can be subsidised if the employer bears at least 50 percent of the training course costs. Funding also covers measures leading to completion of certification in a training occupation.

Furthermore, the **support of activation and occupational integration measures has been expanded** by extending the possible duration of activation and occupational integration measures conducted with or by an employer from six to twelve weeks. Against the background of the digital transformation, the Federal Government has set itself the goal of strengthening the promotion of continuing education and training and making it more flexible. The **Skills Development Opportunities Act**, which came into force on 1 January 2019, gives all employees access to skills development promotion irrespective of the level of training, age and company size. Existing support instruments that were previously only available to low-skilled workers, workers at risk of unemployment and workers in small and medium-sized enterprises are now generally open to all employees. The Skills Development Opportunities Act also improves the promotion of continuing education and training for employed workers whose work can be replaced by technologies, who are otherwise affected by structural changes or who want to take up further training in a bottleneck occupation.

## Article 10 §4

*Please indicate the nature and extent of special retraining and reintegration measures taken to combat long-term unemployment as well as figures demonstrating the impact of such measures (please include detailed statistics on long-term unemployment in your country, if not provided under Article 1§1).*

The **Participation Opportunities Act** (Teilhabechancengesetz) which entered into force on 1 January 2019 is the core of the “MitArbeit” overall concept (cf. answer to Article 1 section 1). The aim is to open up new job prospects for persons who have been unemployed for a very long time. To this end, two new standard instruments were included in Book II of the Social Code: “Participation in the labour market” in section 16 (i) of Book II and “Integration of long-term unemployed persons” in section 16 (e) - new of Book II.

The new support provided by section 16 (i) of Book II is intended to provide people furthest from the labour market long-term prospects through publicly subsidised employment, enabling them to participate in society. It is targeted at persons who are over 25 years of age, received benefits under Book II of the Social Code for at least six years within the last seven years and have not been employed or have only been employed for a short time during this period. Severely disabled persons and persons with at least one minor child living in a common household are required to have received benefits for five years. Support can be provided for up to five years. It includes a wage subsidy for employers which, in the first two years, amounts to 100 percent and is either based on the minimum wage, collectively agreed wage or canonical provisions. In the following years, the subsidy decreases by ten percent per year. In order to stabilise employment relationships, the beneficiaries receive holistic coaching. The costs of continuing education and training and internships with other employers are also eligible for support.

The “Integration of long-term unemployed persons” instrument (section 16 (e) of Book II) provides two years of support of employment relationships of persons who are closer to the labour market but still need special assistance integrating into the labour market. To receive support, they must have been unemployed for at least two years and any placement efforts to integrate them into the labour market must have been in vain. In the first year, the subsidy is 75 percent of the regularly paid wage and 50 percent in the second year. Here, too, coaching to accompany employment is offered.

The unemployment statistics of the Federal Employment Agency for September 2019 stated provisional (i.e. extrapolated for the preceding three months) figures at federal level for support measures in accordance with section 16 (i) of Book II and section 16 (e) of Book II.

According to these figures, support is being provided under section 16 (i) of Book II in 27,615 cases and according to section 16 (e) of Book II in 5,994 cases nationwide. Thus, 33,609 employment relationships are currently being supported via the Participation Opportunities Act. The Federal Government considers this a very successful start.

Long-term unemployment (ILO definition) has decreased in recent years. The share of long-term unemployed persons in all unemployed shrank from 38.8 % to 31.1 % from 2015 to 2018. This is a remarkable success given that overall unemployment also fell. The employment rate decreased from 4.6 % in 2015 to 3.4 % in 2018. This trend is also reflected in long-term unemployment, as defined at national level, which has fallen steadily from 1.73 million people in 2007 to 0.81 million in 2018.

## Article 15 § 2

*Please provide information on progress made in ensuring persons with disabilities have access to employment on the open labour market , including recent non-discrimination measures and measures to promote employment. Please include figures on the number of persons with disabilities in employment and the number of unemployed.*

*Please provide up-dated information concerning obligations on the employer to take steps in accordance with the requirement of reasonable accommodation to ensure effective access to employment of persons with disabilities.*

The labour market situation of persons with severe disabilities in the years 2015 to 2018 is as follows:

### Persons with severe disabilities in employment

	2015	2016	2017	2018
Persons with severe disabilities in employment with employers subject to an employment obligation	1,030,222	1,051,492	1,073,641	1,100,052
Persons with severe disabilities in employment with employers not subject to an employment obligation	167,700	167,700	167,700	167,700
Total	1,197,922	1,219,192	1,241,341	1,267,752

### Unemployed persons with severe disabilities

	2015	2016	2017	2018
Unemployed persons with severe disabilities on annual average	178,809	170,508	162,373	156,621

### Promoting vocational participation of persons with disabilities in Germany

The self-determined participation of persons with severe disabilities in societal and working life is Germany's political goal. The Federal Government strongly supports the vocational integration of persons with disabilities, and in particular their employment in the general labour market. Books III, II and IX of the Social Code provide for a great variety of labour market policy instruments which are constantly being expanded. In the years 2015 to 2018 the Federal Employment Agency funded occupational rehabilitation including assistance for persons with severe disabilities as follows:

2015	2.4 billion €
2016	2.5 billion €
2017	2.5 billion €
2018	2.6 billion €

In line with the guiding principle of inclusion, the Federal Employment Agency's support policy is based on the principle of "as general as possible, as disability-specific as necessary". Consequently, the general benefits and services which can be granted to any jobseeker, are also available to persons with disabilities. If the disability-specific need requires more intensive assistance this can be provided in institutions specializing in the provision of such needs-oriented services (e.g. vocational youth training centres and vocational retraining centres for continuing education and training of persons with disabilities). The Federal Employment Agency can use a comprehensive set of instruments to promote the integration of persons with disabilities into training and employment, such as:

- Subsidies aimed at topping up training pay or a comparable remuneration
- Integration grants,
- Work trials,
- Subsidies to adjust a workplace to the needs of a person with disabilities
- and above all counselling and information.

The Federal Employment Agency supports the Federal Government's efforts to make the labour market more inclusive and - in addition to deploying its standard instruments - also participates in employment policy activities under the National Action Plan of the Federal Government to implement the UN Convention on the Rights of Persons with Disabilities in order to integrate persons with disabilities (see supplementary explanations below).

In the framework of supplementary occupational assistance, the integration offices of the Länder provide a wide range of personal, technological and financial support measures in order to help persons with severe disabilities to participate in working life.

Apart from the general obligation to ensure accessibility as stipulated in the Act on Equal Opportunities for Persons with Disabilities (BGG), persons with disabilities are entitled to a barrier-free work environment which must be accessible and fit for use without undue difficulties and in general without outside help. To fulfil this obligation, employers may obtain help from the integration offices in the framework of supplementary occupational assistance; this can include loans and subsidies for the disability-specific set-up and maintenance of workplaces and for the equipment of work and training places with the necessary assistive technology. Moreover, supplementary occupational assistance provided by the integration offices includes in particular the following services:

- Person-centred counselling for persons with severe disabilities and for employers (e.g. when selecting suitable workplaces and their disability-specific design).
- Assumption of costs for the necessary work assistance.
- Loans or subsidies to start and maintain a self-employed professional existence.
- Assumption of costs for professional coaching in order to secure the retention of the employment relationship entered into after the expiry of the supported employment measure.
- Subsidies to employers to settle their extraordinary burdens in respect of the employment of a person with severe disabilities if the employment relationship was at risk without the payment of this benefit (so-called reduced performance compensation).

In addition to this, the integration offices promote the establishment, expansion, modernisation and equipment of inclusion companies. Integration companies are companies which differ from normal companies insofar as they employ above-average numbers of specially affected persons with severe disabilities, i.e. 30 per cent or more. This means that integration companies offer employment to those persons with severe disabilities whose performance level is above the level required in sheltered workshops, but for whom it is difficult to find employment in the general labour market even with all the support offered. These persons are employed in jobs that are subject to mandatory social insurance coverage. Inclusion companies are an important instrument to encourage the transition from a workshop to the general labour market.

From 2015 to 2018, the integration offices subsidized the vocational participation of persons with severe disabilities from the revenue of the compensatory levy:

2015	520.08 million euros
2016	529.31 million euros
2017	555.88 million euros
2018	575.66 million euros

## **Federal Government activities to promote participation in the period under review**

The Federal Government pursues the goal to further increase efforts to promote the vocational integration of persons with disabilities into the general labour market - as required in Article 27 of the UN CRPD.

Employment policy activities laid down in the National Action Plan to the UN CRPD (NAP) and in the NAP 2.0 which was further developed in 2016, aim in particular at creating more opportunities for persons with disabilities on the general labour market. For this purpose the following measures were implemented or prepared in the years 2015 to 2018:

- With the help of the **Inclusion Initiative (action field no. 1) career orientation for pupils with severe disabilities**, in particular those with special needs, is currently subsidized with initial public financing amounting to 80 million euros from the national rehabilitation fund. This initial public financing aims at enabling the Länder to create structures for career orientation throughout Germany which they undertake to maintain and finance from their own funds and with co-financing from the Federal Employment Agency after the expiry of the initial public financing. This is also supported by the Ninth Act to amend Book II of the Social Code (9. SGB II-ÄndG) which provides that the integration offices are now also allowed by law to use funds from the compensatory levy revenue available to them to finance career orientation for young persons with disabilities. The medium term aim is to provide orientation to all pupils with disabilities in regular and special needs schools regarding their vocational options (together with their parents, teachers, potential service and funding providers).
- Opportunities in the general labour market following career orientation can of course only be seized if the corresponding training and workplaces are really available:
  - Since 2009, **supported employment** has offered new employment opportunities in the general labour market for persons with disabilities who would otherwise be likely to work in workshops for persons with disabilities; this instrument has been successfully established and achieved high integration and retention rates.
  - By **developing and promoting inclusion companies**, further employment opportunities are created in the general labour market.
    - A total of **150 million euros** from the national rehabilitation fund have been invested since 2016 in the framework of the “Inclusion Initiative II - InclusiveEmploymentForAll” (“Inklusionsinitiative II - AlleImBetrieb”) to create and expand training and workplaces in inclusion companies.
    - The category of persons who can be employed in inclusion companies has been extended by **long-term unemployed persons with severe disabilities**.
    - And supported employment in inclusion companies has now been made available to **mentally ill persons** who have a disability or are at risk of developing a disability and whose participation in another form of employment in the general labour market is particularly difficult on account of the type or severity of the disability or other circumstances.

- Apart from developing employment opportunities, it is important that the job placement agencies place job seekers with disabilities into regular training or employment in a tailored manner. Within the framework of the **Programme of the Federal Government to integrate and advise persons with severe disabilities in an in-depth approach**, the employment agencies, joint institutions and authorized municipal providers develop progressive concepts in addition to their standard tasks in order to integrate persons with severe disabilities into training and employment. For this programme, up to 80 million euros have been earmarked from the National Rehabilitation Fund.
  
- Thanks to the **Federal Participation Act** adopted in late 2016, the opportunities for labour force participation of persons with disabilities and incentives to promote engagement in gainful employment have been strengthened:
  - The deduction-free allowances that apply to income and assets of recipients of integration assistance and assistance towards long-term care before they have to contribute to the necessary assistance benefits and services have been increased significantly:
    - With effect from 2017, the **deduction-free allowances for earned income** were increased by up to 260 euros per month **and for cash assets** from 2,600 by 25,000 euros to 27,600 euros.
  
    - In 2020, the current system was replaced by a new system which is linked to income tax law. For the vast majority of persons with disabilities this will mean that they will be better off because now **an even smaller amount of their income is taken into account**, and they benefit from an **additional allowance for cash assets exempt from income testing** of around 50,000 euros and in particular from the **exemption of incomes and assets of their partners**.
  
  - Public sector bodies can now **favour** inclusion companies in the same way as workshop for persons with disabilities when **awarding public contracts**. This strengthens inclusion companies operating on the market.
  
  - Occupational participation assistance for persons with disabilities who are fully incapacitated for work have been enhanced on a **person-centred** basis. Since 2018, these persons have the opportunity to either work in a workshop for persons with disabilities or with **another provider** or to take up employment in the general labour market with the help of the **budget for work**.
    - The budget for work facilitates alternatives to employment in workshops for persons with disabilities. Elements of the new instruments are wage subsidies for employers and support (coaching) for employees.



- Other providers present alternatives for persons with disabilities who are entitled to working in a workshop for persons with disabilities, but refuse to work in such a workshop. Other providers can offer vocational training measures and/or benefits or services to promote employment.
- Moreover, the Federal Participation Act contributed to a reform of the law regulating **representation of employees with severe disabilities**. The representations of employees with severe disabilities play an important role in the selection of staff. They are important contact persons for those responsible for Human Resources and the driving force in the companies for advancing inclusion. To strengthen the role of the representatives of employees with severe disabilities, the following amendments have been made:
  - The voluntary engagement of representatives of employees with severe disabilities was strengthened, in particular by releasing them from their usual tasks and providing further training to them.
  - The representations of employees with severe disabilities have been legally strengthened by declaring individual measures (dismissals) void in case they were not involved in the decision-making.
- To increase employers' readiness to train and employ persons with disabilities, targeted training and counselling measures have been initiated.

With this portfolio of measures, targeted legal amendments, sustainable financial support and activities of all relevant labour market stakeholders are interlinked and complement each other with the aim to bring more persons with disabilities into employment in the general labour market, i.e. outside workshops for persons with disabilities.

As regards the employer's obligation to take measures according to the reasonable accommodation requirement in order to guarantee persons with disabilities effective access to employment, we refer to section 164 (4) of Book IX of the Social Code which determines individual and legally enforceable obligations. These obligations include the obligations of employers to equip the plant and the workplace in line with the needs of the person with disabilities.