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# 1961 EUROPEAN SOCIAL CHARTER

39th National Report on the implementation of
the European Social Charter

submitted by

## THE GOVERNMENT OF GERMANY

Articles 2, 4, 5 and 6

for the period 01/01/2017 – 31/12/2020

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## CYCLE 2022

**Berlin, January 2022**

# 39th Report

**of the Government of the Federal Republic of Germany**

**for the period**

**1 January 2017 - 31 December 2020**

**Labour Rights**

**To be presented according to the provisions of Article 21 of the European Social Charter,**

**whose instrument of ratification was deposited on 27 January 1965.**

**Pursuant to Article 23 of the European Social Charter, copies of the report will be provided to the Confederation of German Employers' Associations**

**and**

**the Federal Board of the German Trade Union Confederation.**

## Appendix

## Questions on Group 3 provisions (Conclusions XXII-3 (2022))

## Labour rights

This questionnaire covers Thematic Group 3 - Labour rights, comprising Articles 2 (right to just conditions of work), 4 (right to fair remuneration), 5 (right to organise), 6 (right to bargain collectively) and Articles 2 (right of workers to be informed and consulted) and 3 (right of workers to take part in the determination and improvement of working conditions and working environment) of the Additional Protocol.

However, the Committee will pursue the targeted and strategic approach adopted in 2019 and continued in 2020 (Conclusions XXII-1 (2020) and XXII-2 (2021) respectively). It is therefore not asking that national reports address all accepted provisions in the Group. Certain provisions are excluded, except:

- when connected to other provisions which are the subject of specific questions
- when the previous conclusion was one of non-conformity
- When the previous conclusion was one of deferral due to lack of information
- When the previous conclusion was one of conformity pending receipt of specific information.

Moreover, given the magnitude, implications and expected longer-term consequences of the COVID-19 pandemic, the Committee will pay particular attention to pandemic-related issues. In this connection, it is relevant to note that the reference period for Conclusions 2022 is 1 January 2017 to 30 December 2020. The Committee draws attention to relevant parts of its Statement on COVID-19 and social rights adopted on 24 March 2021.

Given the date of transmission of this questionnaire, the Committee requests that state reports be submitted by **31 December 2021** (and not the usual deadline of 31 October).

### ESC Part I – 2. All workers have the right to just conditions of work.

Article 2 of the Charter guarantees the right of all workers to just working conditions, including reasonable daily and weekly working hours (Article 2§1), annual holiday with pay (Article 2§3) and weekly rest periods (Article 2§5).

The Committee refers to its long-standing jurisprudence on what constitutes reasonable working hours and recalls that the defined outer limits must not be exceeded except in situations of force majeure. In this respect, it also recalls that overtime work must be paid at an increased rate of remuneration pursuant to Article 4§2 of the Charter.

New forms of work organisation such as teleworking and work from home practices often lead to de facto longer working hours, inter alia due to a blurring of the boundaries between work and personal life. Consideration must therefore be given to ensuring that home-based workers can disconnect from the work environment.

The Committee has been alerted to grievances repeatedly expressed in some sectors of economic activity about working hours (upwards of 80 hours per week for example in the

health sector / hospital work). Allegedly, the pandemic and the demands placed on healthcare as a result of the COVID-19 crisis exacerbated this for many workers.

There is also a higher risk of abuse of working hours in the catering industry, sub-contracted non-unionised hospitality industry work, domestic and care work.

As regards the platform or gig economy, workers may be confronted with long working hours and inadequate rest periods in order to make a decent living, or they may have to accept unreasonable numbers of gigs in order not to lose the "privilege" of getting more or "better" work from the platform.

Precarious and low-paid workers, including in the gig economy and those on zero-hour contracts, are particularly vulnerable to the impacts of the COVID-19 crisis and States Parties must ensure that these categories of workers enjoy all the labour rights set out in the Charter. This includes not only those pertaining to safe and healthy working conditions, reasonable working hours and fair remuneration (see below), but also rights relating to notice periods, protection against deduction from wages, dismissal protection, trade union membership, information and consultation at the workplace (notably Articles 4 and 5 of the Charter and Articles 2 and 3 of the Additional Protocol).

**Article 2 – The right to just conditions of work**

With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake:

1. to provide for reasonable daily and weekly working hours, the working week to be progressively reduced to the extent that the increase of productivity and other relevant factors permit;

a) *Please provide updated information on the legal framework to ensure reasonable working hours (weekly, daily, rest periods, ...) and exceptions (including legal basis and justification). Please provide detailed information on enforcement measures and monitoring arrangements, in particular as regards the activities of labour inspectorates (statistics on inspections and their prevalence by sector of economic activity, sanctions imposed, etc.).*

**Germany*:***

As regards the **general legal framework**, reference is made to the previous reports. In addition to this, the following updates were made:

**aa) Amendments to the Working Time Act (Arbeitszeitgesetz, ArbZG)**

During the reporting period, the Working Time Act (Arbeitszeitgesetz, ArbZG) was amended in the area covered by Article 2 (1) of the Charter concerning exceptions in extraordinary cases (Section 14 ArbZG), see aaa), and concerning monitoring and provisions concerning fines (Sections 17 and 22 ArbZG), see bbb).

**aaa)** The Act to Facilitate Easier Access to Social Security and on the Deployment and Protection of Social Service Providers due to the Corona Virus SARS-CoV-2, the so-called Sozialschutz-Paket (Social Protection Package, Federal Law Gazette I 2020, 575), introduced an authorisation to issue ordinances into the ArbZG with Section 14 (4). This authorised the Federal Ministry of Labour and Social Affairs to

issue limited exceptions to the ArbZG in exceptional emergencies with nationwide impact, particularly nationwide epidemics, for a limited period of time with the agreement of the Federal Ministry of Health. During the COVID-19 epidemic emergency, the arrangement (valid only for a limited period until 31 December 2020) aimed **to help maintain public safety and order, the health care system, the system of providing care, services of general interest and the supply of essential goods to the population.**

On the basis of this statutory authorisation, the ordinance on derogations from working hours legislation due to the COVID-19 epidemic (COVID-19-Arbeitszeitverordnung, COVID-19-ArbZV) was issued on 7 April 2020, came into force on 8 April 2020 and expired on 31 July 2020. For the limited period stated above and exclusively for those jobs specified in the ordinance, it allowed derogations from the provisions of the ArbZG, particularly regarding maximum working hours, minimum rest periods and the general prohibition against working on Sundays and public holidays. The derogations were meant to help ensure the orderly functioning of society during the current state of affairs due to the SARS-CoV-2 epidemic.

**bbb)** Article 6 of the Act on Occupational Health and Safety Inspections (Gesetz zur Verbesserung des Vollzugs im Arbeitsschutz, the so-called Arbeitsschutzkontrollgesetz, ArbSchKontrG, Federal Law Gazette I 2020, 3334) has bolstered the provisions on monitoring and fines in Sections 17 and 22 ArbZG. In addition to being able to **demand documentation of working hours and collective agreements** (or company-level agreements or service-level agreements) as the act provided for until now, under the new Section 17 (4) ArbZG, authorities can also demand other documentation or business records directly or indirectly providing information on compliance with the ArbZG. This facilitates audits. In Section 22 (2) ArbZG, the framework of fines, unchanged since 1994, has been updated. The **maximum fine for violations of regulations to protect working hours has been doubled. Since 1 January 2021 it has been EUR 30,000.**

### bb) The Ordinance on Working Hours in Inland Waterway Transport (Binnenschifffahrts-Arbeitszeit-Verordnung, BinSchArbZV)

Legislation of 11 November 2016 (Federal Law Gazette I 2500), which entered into force 17 November 2016, added an authorisation to issue ordinances to Section 21 (1) ArbZG. This was to **allow derogations for inland shipping crews** to the provisions of the legislation to transpose into national law the Directive on inland waterway transport (Council Directive 2014/112/EU of 19 December 2014 implementing the European Agreement concerning certain aspects of the organisation of working time in inland waterway transport, concluded by the European Barge Union (EBU), the European Skippers Organisation (ESO) and the European Transport Workers' Federation (ETF)). The Ordinance on Working Hours in Inland Waterway Transport (Binnenschifffahrts-Arbeitszeit-Verordnung, BinSchArbZV) of 19 July 2017 and the authorisation provision inserted in Section 21 ArbZG transposed the content of the Directive on inland waterway transport. This made enacting special regulations on working hours for transport staff in implementing the Directive possible. It was also possible to adapt them to the special working and living situation in the inland waterway transport sector and to set down the necessary conditions for protection of transport staff.

### cc) The Act on the Protection of Working Mothers (Mutterschutzgestz, MuSchG)

In complement to the general legal framework concerning working hours, Section 4 of the **Act on the Protection of Working Mothers** (Mutterschutzgesetz, MuSchG)

contains specific provisions concerning rest periods and the prohibition against overtime work.
Section 4 (1) stipulates that employers **are not to employ pregnant or breastfeeding women 18 years old or older in any activity that requires them to work in excess of eight and one-half hours a day or 90 hours in two weeks**. Employers are not to employ pregnant or breastfeeding women under 18 years old in any activity that requires them to work in excess of **eight hours a day or 80 hours in two weeks**. The two-week period includes Sundays. Employers may not have a pregnant or breastfeeding woman work in excess of the contractually agreed weekly working hours on the average for a month. If there are multiple employers, the working hours must be added together.
Section 4 (2) stipulates that employers must grant pregnant or breastfeeding women an uninterrupted rest period of at least eleven hours after the end of the working day.

Section 5 MuSchG sets a standard for the **prohibition against night work** for pregnant and breastfeeding women.
According to this section, employers may not have pregnant or breastfeeding women work between 8 PM and 6 AM. In exceptional cases, they may work until 10 PM if the requirements of Section 28 MuSchG are met. According to Section 28 (1) MuSchG, the supervisory authority may permit a pregnant or breastfeeding woman to work between 8 PM and 10 PM at the employer's request, if the following conditions are met:

1. the woman agrees to do so expressis verbis,
2. according to a statement by a doctor, there is no reason for her not to work until 10 PM and
3. in particular an irresponsible risk to the pregnant woman or her child from working alone can be ruled out.

Employers must include **workplace maternity protection risk assessment documentation when applying to the supervisory authority**. Pregnant or breastfeeding women may revoke their agreement to work with effect for the future at any time.

Section 6 MuSchG sets a standard for the prohibition against work on Sundays and holidays for pregnant and breastfeeding women.
According to Section 6 (1), employers may not employ pregnant or breastfeeding women on Sundays or public holidays.

An exception applies if the following conditions are met:
1. the woman agrees to do so expressis verbis,
2. an exception to the general prohibition against work on Sundays and public holidays is permitted under Section 10 of the Working Time Act (Arbeitszeitgesetz),
3. the woman is given an alternative day off each week following an uninterrupted rest period at night of at least eleven hours, and
4. in particular an irresponsible risk to the pregnant woman or her child from working alone can be ruled out.
Pregnant or breastfeeding women may revoke their agreement to work with effect for the future at any time.

Section 8 MuSchG also contains provisions to protect pregnant and breastfeeding women working at home.
Section 8 (1) stipulates that the contracting party or intermediate may only commission work to be done at home from a pregnant woman doing home-based work (or from a woman in an equivalent situation) if the amount and the deadlines permit the work to be carried out during an eight-hour working day on weekdays.
Section 8 (2) stipulates that the contracting party or intermediate may only commission work to be done at home from a breastfeeding woman doing home-based work (or from

a woman in an equivalent situation) if the amount and the deadlines permit the work to be carried out during a seven-hour working day on weekdays.

Section 9 (3) MuSchG contains provisions on the interruption of work for pregnant and breastfeeding women.
According to these provisions, employers must ensure that pregnant or breastfeeding women can briefly interrupt their work while at the workplace to the extent necessary for them. Employers must also ensure that pregnant or breastfeeding women can lie down, sit down and rest in a suitable situation during breaks and work interruptions.

**dd) Federal Public Service Bargaining Agreement (TVöD)**
There have been no changes since the 35th report for employees covered by the federal public service collective bargaining agreement (TVöD): The collectively agreed average work week has been 39 hours since 1 October 2005. Otherwise, the provisions of collective bargaining legislation are conform with Article 2 (1) of the Charter.

b) *The Committee would welcome specific information on proactive action taken by the authorities (whether national, regional, local and sectoral, including national human rights institutions and equality bodies, as well as labour inspectorate activity, and on the outcomes of cases brought before the courts) to ensure the respect of reasonable working hours; please provide information on findings (e.g. results of labour inspection activities or determination of complaints by domestic tribunals and courts) and remedial action taken in respect of specific sectors of activity, such as the health sector, the catering industry, the hospitality industry, agriculture, domestic and care work.*

**Germany*:***

Responsibility for the implementation, supervision and monitoring of the working hours standards lies with the supervisory authorities of the Länder.

Of the data available for the reporting period, it can be said that the number of supervisory staff in the occupational health and safety authorities of the Länder (in terms of numbers of full-time position equivalents) has remained steady at a high level (annual average of supervisory staff: 2,943).

The same applies to the number of inspections by the occupational health and safety authorities for compliance with the working hours legislation (annual average: 16,782). There were 10,332 complaints or violations registered by the authorities on an annual average. There were an average of 631 warnings, fines and criminal charges for violations of the working hours legislation.

c) *Please provide information on law and practice as regards on-call time and service (including as regards zero-hours contracts), and how are inactive on-call periods treated in terms of work and rest time as well as remuneration.*

**Germany*:***

**aa) On-Call Time**

German law on working hours distinguishes between several different levels of intensity of work. In addition **to full-time work**, these are essentially:

- the kind of **on-call time known as Arbeitsbereitschaft**: Periods during which employees must be present at the workplace and, while not having to work the entire time, generally have, however, certain obligations in terms of monitoring and observing in order to take up work at any time without being requested to do so by a third party at their own discretion.

- the kind of **on-call time known as Bereitschaftsdienst**: Periods during which employees are available at a place designated by the employer, on or off the premises of the organisation, in order to be able to take up the full work activity immediately when called upon, if necessary.

- the kind **of on-call time known as Rufbereitschaft**: Periods during which employees are available at a place of their choosing in order to be able to take up the work from there when called upon, if necessary.

For both Bereitschaftsdienst and Arbeitsbereitschaft**, their full duration must be included when determining the maximum daily and weekly working hours.** Rufbereitschaft is not included when determining working hours, but rather counts generally as time off **if there is no call to work**. The time employees are called upon to work during Rufbereitschaft is included when determining working hours.

For the kinds of work described, German law contains no explicit provisions concerning entitlement to the minimum wage, neither under the Act Regulating a General Minimum Wage (Mindestlohngesetz, MiLoG) nor other regulations (minimum working conditions ordinances under the Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (Arbeitnehmer-Entsendegesetz, AEntG)). Case law has also not yet comprehensively decided how to deal with the kinds of work described above in terms of minimum wage requirements. Case law does seem to indicate that a distinction must be made between the following kinds of work subject to the minimum wage

- the kind of on-call time known as **Arbeitsbereitschaft** and
- the kind of on-call time known as **Bereitschaftsdienst**,

on the one hand,
and the kind **not** considered subject to minimum wage

- the kind of on-call time known as **Rufbereitschaft**

on the other hand (cf. Federal Labour Court (BAG), judgement of 11 October 2017 - 5 AZR 591/16).

The periods that fall under that ("Arbeitsbereitschaft" and "Bereitschaftsdienst") and are thus subject to minimum wage do not have to be remunerated at the minimum wage, however, **when considered in isolation**. By contrast, it is **sufficient if all hours worked on the statutory due date are remunerated on average at the minimum wage** (cf. Federal Labour Court (BAG), judgement of 25 May 2016 - 5 AZR 135/16).

Apart from these regulations, remuneration is a matter of agreement as set out in employment contracts or collective agreements. If there is no agreement, Section 612 of the German Civil Code (BGB) applies.

**In the federal public service collective bargaining agreement (TVöD),** on-call time called **Bereitschaftszeit** is defined as time both during which the employee must be available at the workplace or another location designated by the employer in order start working either on their own or upon being told to, and also during which the time is mostly passed without doing work. A prerequisite for assigning that on-call time called Bereitschaftszeit is that this kind of on-call time occurs regularly and in a significant amount. If this is the case, half of the Bereitschaftszeit on-call time is considered (factorisation) to be collectively agreed working hours. In contrast to the kind of on-call time called Bereitschaftsdienst, the kind of on-call time called Bereitschaftszeit does not have to be listed separately in the period between the beginning and end of the regular working day. The sum of the factorisation of the kind of on-call time called Bereitschaftszeit and the full-time work may not exceed the hours of a regular working week. Moreover, the sum of full-time working hours and the kind of on-call time called Bereitschaftszeit may not exceed 48 hours per week on average. At federal level, it is also a prerequisite that the kind of on-call time called Bereitschaftszeit only applies if the beginning and end of the working day, including the kind of on-call time called Bereitschaftszeit, is specified for groups of employees by the organisation.
The kind of on-call time called Bereitschaftszeit does not entail additional remuneration. However, in line with the principles outlined above, the statutory minimum wage according to the Act Regulating a General Minimum Wage (Mindestlohngesetz, MiLoG) applies to remuneration for the kind of on-call time called Bereitschaftszeit. This obligation is met if employees receive gross wages that are not less than the product of their total hours and the statutory minimum wage. There are rules for exemptions that apply to staff in caretaking services, emergency services and coordination centres.

### bb) On-Demand Work (“Arbeit auf Abruf”)

In addition to periods when employees are obliged to be available to be called to work by their employers while present at a place determined by their employers (**Bereitschaftsdienst**) or at a place of their own choosing (**Rufbereitschaft**), **on-demand work** is an instrument that allows for flexible working hours arrangements. **This must be clearly differentiated from Bereitschaftsdienst and Rufbereitschaft:** It is possible to agree **on-demand work** (“**Arbeit auf Abruf**”) under the conditions of Section 12 of the Act on Part-Time and Fixed-Term Employment (Teilzeit- und Befristungsgesetz, TzBfG). According to this, on-demand work is when employers and employees **agree** that the work is to be done as the work comes up. **A certain amount of time to be worked is agreed**. Within the scope of the agreed amount of time, employers are entitled to call for the work to be done. The main characteristic of on-demand work is thus that the parties to the employment contract do not determine the specific placement of the working hours at the outset.

In order to protect workers and to ensure that working conditions are acceptable in terms of their social aspects, Section 12 TzBfG restricts the free arrangement of flexible working hours in the case of on-demand work in several respects:

Under Section 12 (2) TzBfG, only if employers inform on-demand workers of the placement of the working hours at least four days in advance are they obliged to do the on-demand work.

Employers must also agree with employees on a specified length of weekly and daily working hours. If the length of working hours is not specified, Section 12 (1) TzBfG applies a legal fiction: The Gesetz zur Weiterentwicklung des Teilzeitrechts -

Einführung einer Brückenteilzeit (the act on the further development of part-time work legislation and the introduction of the right to return from part-time to full-time work of 11 December 2018 (Federal Law Gazette I 2384)) stipulated that, starting 1 January 2019, in these cases twenty working hours per week, instead of the previous ten hours per week, is to be considered to have been agreed on and is to be remunerated for. This gives workers who do on-demand work a sufficiently secure basis for their planning and income.

If a minimum number of working hours per week has been agreed, the provisions added to Section 12 (2) TzBfG put legal limits on how much additional on-demand work can be called for: In this form of work, the share of additional work that employers can unilaterally demand may not exceed 25 percent of the agreed minimum working hours per week. If a maximum number of working hours has been agreed, the amount of reduction by contrast can be 20 percent of the working hours agreed. Based on the principle of proportionality, these legal regulations adequately balance employers' interest in flexibility and employees' interest in a secure basis for their planning and income: If employers want a relatively high level of flexibility, they must agree with employees on a high enough level of minimum working hours.

**These regulations illustrate that under Section 12 TzBfG (see also below under Article 4 (1) of the Charter) it is not possible to conclude zero-hour contracts for on-demand work.**

Employees are entitled to remuneration for hours worked as well as for hours agreed upon but not called for. This also applies when no amount of working hours per week was agreed and the 20-hour agreement fiction in line with Section 12 (1) 3 TzBfG applies.

As concerns employees' entitlement to continued payment of remuneration in cases of public holidays or illness, Section 12 (4) and (5) TzBfG stipulate that the continued payment of remuneration in case of illness or on public holidays is to be calculated according to the principle of reference on the basis of the average working hours of the three months prior to the beginning of the illness or the public holiday.

**In 2019, approximately five percent of employees did on-demand work.** That means that the percentage of employees using these forms of flexibility concerning working hours (as holds for other forms of flexibility as well), decreased between 2015 and 2017 and has remained at this low level since then (cf. Backhaus/Wöhrmann/Tisch, BAuA-Arbeitszeitbefragung: Vergleich 2015 - 2017 - 2019, 2020, p. 34 f. and table 15 in the annex thereto).

d) *Please provide information on the impact of the COVID-19 crisis on the right to just conditions of work and on general measures taken to mitigate adverse impact. As regards more specifically working time during the pandemic, please provide information on the enjoyment of the right to reasonable working time in the following sectors: health care and social work (nurses, doctors and other health workers, workers in residential care facilities and social workers, as well as support workers, such as laundry and cleaning staff); law enforcement, defence and other essential public services; education; transport (including long-haul, public transport and delivery services).*

**Germany*:***

Except for the temporary measures mentioned above (cf. sub a aa), the Working Time Act (Arbeitszeitgesetz, ArbZG) has not been amended. The exceptions briefly permitted by the COVID-19 working hours ordinance were on the whole used by only a small percentage of private sector companies (cf. Backhaus et al., ASU Arbeitsmed Sozialmed Umweltmed 2021; 56: 557–566). It can be seen that the regulation was used relatively more often in the trade sector than in the service sector, health sector, social sector or in other sectors of the economy. Also, companies with 50 to 249 employees more frequently reported making use of the ordinance's exceptions than smaller companies or companies with over 250 employees (cf. Backhaus et al. above).

*e) The Committee would welcome additional general information on measures put in place in response to the COVID-19 pandemic intended to facilitate the enjoyment of the right to reasonable working time (e.g. flexible working hours, teleworking, other measures for working parents when schools and nurseries are closed, etc.). Please include information on the legal instruments used to establish them and the duration of such measures.*

**Germany:**

No additional measures were introduced.

*f) If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

*(Continuing Article 2 – The right to just conditions of work*

*With a view to ensuring the effective exercise of the right to just conditions of work, the Parties undertake: […])*

2. to provide for public holidays with pay;

3. to provide for a minimum of two weeks' annual holiday with pay;

4. to provide for additional paid holidays or reduced working hours for workers engaged in dangerous or unhealthy occupations as prescribed

5. to ensure a weekly rest period which shall, as far as possible, coincide with the day recognised by tradition or custom in the country or region concerned as a day of rest;

*a) No information is requested on these provisions, except insofar as they concern special arrangements related to the pandemic or changes to work arrangements following the pandemic: public holidays (Article 2§2), annual holiday (2§3), reduced working time in inherently dangerous or unhealthy occupations, in particular health assessments, including mental health impact (2§4), weekly rest period (2§5).*

*b) However, if the previous conclusion concerning provisions in Article 2, paragraphs 2 through to 5, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

**Germany:**

**aa) Public Holidays with Pay**

Germany takes note of the conclusion the Conclusion XXI-3 (2018) regarding Art. 2§2, the stipulation "to provide for public holidays with pay". To explain in more detail how the principle to "provide for public holidays with pay" **is in fact upheld in German law** and how therefore German legislation is **in conformity with this regulation** we would like to elaborate as follows:

The principle of continued payment of wages on public holidays is **enshrined in law in Germany**. For working hours lost as a result of a public holiday**, employers must pay employees the wages they would have received if the work had not been lost** (cf. Section 2 (1) of the legislation on continued payment of remuneration (Entgeltfortzahlungsgesetz, EFZG)). As stated in the 35th report, employees required to work on public holidays also receive their normal remuneration including all components such as commissions, gratuities and bonuses. Collective agreements, company agreements and individual contractual agreements **often provide for entitlement to supplementary remuneration**. In late 2020, supplements provided for by collective agreements for work on Sundays and public holidays often ranged from 65 to 200 percent of the collectively agreed pay.

As additional compensation for work on Sundays or public holidays, employees are also entitled to an alternative day of rest in addition to regular remuneration and their usual supplementary remuneration on the basis of collective agreements or individual contracts (cf. Section 11 (3) Working Time Act (Arbeitszeitgesetz, ArbZG). Employees cannot waive the right to alternative rest days. This is a matter of mandatory legal regulation and a public-law obligation that cannot be overridden by the contracting parties. There are no disadvantages for employees in this. Any negative impact is fully compensated for, also with a view to the purpose of Article 2 (2) and Article 3 of the Charter.

Public holidays are **also constitutionally protected under Article 140 of Germany's Basic Law (Grundgesetz, GG)** in conjunction with Article 139 of the Weimar Constitution (Weimarer Reichsverfassung, WRV) as "days of rest and spiritual edification" (see, for example, the judgement of the Federal Constitutional Court of 1 December 2009 - 1 BvR 2857/07 et al. and of 9 June 2004 - 1 BvR 636/02). A fundamental and effective legal prohibition of work on public holidays (Section 9 ArbZG) follows from this constitutional guarantee, from which exemptions are only permitted in certain exceptional cases and only under specified conditions (Section 10 ArbZG). This equitable combination of a general prohibition of work on public holidays, restrictive rules for exemptions, timely alternative rest days and the continued payment of remuneration described above guarantees that if employee’s work on public holidays, they receive appropriate compensation.

Germany’s parliament, for the sake of the right to safe and healthy working conditions enshrined in Article 3 of the Charter and in order not to increase incentives to work on days that are in principle not meant for work, has decided against statutory supplement remuneration and for statutory compensation via days off. This takes both Article 2 (2) - even if broadly interpreted - and Article 3 adequately into account, since this combination of measures effectively gives consideration to the various rights set forth in the Charter: both fair and healthy working conditions and the actual observance of holiday rest periods are effectively guaranteed.

In the **federal public service collective bargaining agreement (TVöD),** there have been no changes since the 35th report. The federal TVöD stipulates that employees receive compensation for the actual work done on public holidays at a rate of 100% of the actual work as well as an additional supplement of 35% per hour worked, which is calculated on the basis of the collectively agreed remuneration. If employees are not compensated with time off, they are entitled to a salary supplement of 135% per hour worked, which is calculated on the basis of the collectively agreed remuneration. The federal TVöD does not provide for any holiday supplements without actual work being done on a public holiday.

**bb) Weekly Rest Periods**

The European Committee of Social Rights requested a more detailed explanation of the safeguards in German law that ensure compensatory days off for work on Sundays in line with Article 2 (5) of the 1961 Charter, which specifies an entitlement to a weekly rest period. Germany therefore presents more details to the Committee, replying in-deep to the questions raised by the Committe in order that the Committee might base a positive conclusion on conformitiy with the Charter upon this information.

**aaa) Grounds for the Possibility of Exceptions**

If workers are employed on a Sunday in exceptional cases, they are to be granted an alternative day off in the near future. Under the provisions of Section 12 (1) 2 ArbZG it is possible in certain circumstances for the parties to collective agreements to deviate from the statutory norm and to arrange another period for compensation that meets the operational requirements for necessary work on Sundays. This reflects the fact that the statutory periods for compensation set out in Section 11 (3) ArbZG cannot be observed for all employees in some areas (BT-Drs. 12/5888, p. 30).

**bbb) Protection Mechanism**

When implementing possible exceptions such as set out in Section 12 ArbZG, the parties to collective agreements must always observe the statutory provisions.

This includes, in particular, constitutionality. Sunday is constitutionally protected as a day of rest and spiritual edification under Article 140 of the Basic Law (Grundgesetz, GG) in conjunction with Article 139 of the Weimar Constitution (Weimarer Reichsverfassung, WRV). The Working Time Act (Arbeitszeitgesetz, ArbZG) also does justice to this protection mandate. Sections 1 (1) and 1 (2) ArbZG make it clear that protecting the safety and health of workers as well as the protection of Sundays are core principles. These core principles inform all norms of the ArbZG and endow them with protective effects for third parties. They must also be observed by all parties (cf. judgement of the Federal Administrative Court of 19 September 2000 - 1 C 17/99; Anzinger/Koberski, ArbZG, 2014, Section 12, recitals 7 and 15). Authorisation for exceptions under Section 12 ArbZG does not permit deviation from these provisions of section 1 ArbZG to the parties to collective agreements.

The parties to collective agreements must decide whether the desired arrangement still falls within their allowed scope of action in compliance with the goal of the ArbZG or whether they would be going beyond their scope and thus not allowed to establish a certain arrangement. When it comes to determining different periods of compensation for granting replacement days off, the scope of the collective bargaining partners falls only within a framework that is justifiable in terms of health and does not exceed the limits justifiable in those terms (see BT-Drs. 12/5888, pp. 20 and 30; BR-Drs. 507/93, p. 86). In Section 12, the legislation provides for the parties to collective agreements to specify the arrangements because they are more familiar with the issues. The legislation aims to protect work hours in a way that is informed by practical experience, appropriate for the matter at hand and effective (cf. BT-Drs. 12/5888, pp. 1, 20). Section 12 ArbZG is, given the constitutional requirements and the principles that must be observed under Section 1 ArbZG, a statutory question of applying a limited scope for collective bargaining in compliance with statutory goals. The scope of the collective bargaining partners is limited to the social function of the respective norms. The protective function (in terms of health), by contrast, with which the legislation implements its duty to protect fundamental rights, is outside of this scope (cf. Anzinger/Koberski, ArbZG, 2014, Section 12, recitals 3, 6). There is still an outer limit for a weekly rest period, compliance with which is ensured by the collective bargaining system and the parties to collective bargaining agreements and, ultimately, also by the courts, in order to protect health (Anzinger/Koberski, ArbZG, 2014, Section 12, recital 15). If a provision in a collective agreement in line with Section 12 (1) 2 ArbZG were to run counter to the protection of health and Sundays set out in Section 1 ArbZG, such a provision would then be invalid.

The consequence would therefore be that the statutory compensation period of Section 11 (3) 1 ArbZG would remain in effect (cf. Neumann/Biebl, 2013, Section 12, recital 6).

Note, too, that Section 12 (1) 2 var. 2 ArbZG also allows the parties to collective agreements to establish shorter compensation periods than those provided for in Section 11 (3) ArbZG. The provision implements the right under Article 2 (5) of the 1961 Charter, which must be respected when interpreting it and taking into account its actual effect. It is clear that Section 12 ArbZG does not delegate the protective function in the core area of the protection of Sundays (see above and cf. Kohte/Faber/Feldhoff, Gesamtes Arbeitsschutzrecht, ArbZG Section 12 recital 5). An interpretation of the rules for exceptions that maintains that they can lead to extensions of a compensation period for days off that are too long and a danger to health would not do justice to the system, the goal and the effects of this norm.

The situation questioned by the Committee would also constitute a "triple exception": first it would have to fall within the narrowly interpreted scope for exceptions of Section 9 ArbZG (i.e. be permissible as an exception to Sunday employment under Section 10 ArbZG), then also fall within the scope for exceptions of Section 11 (3) ArbZG (i.e. be regulated as an exception to the timely compensatory day off for Sunday work under Section 12 ArbZG) and then also cumulatively in practical application still disregard Section 1 (1) ArbZG. That would suggest that collective bargaining parties would conclude agreements that are harmful to workers' health although they act responsibly, have constitutional obligations and are also seen by the Committee in cases of possible exceptions to be guarantors for balanced solutions for the rights under Article 2 (5) of the Charter. An interpretation that would deny parties to collective agreements the right to establish appropriate compensatory arrangements for weekly rest periods or compensatory days off closer to the needs of the sector or the company would likely also contradict the 1961 Charter in terms of the legal system and goal. It would not be in line with the main meaning of Articles 5 and 6 of the 1961 Charter.

Irrespective of the specifics of a collective agreement, individual employers must in practice also always consider the health and safety of their workers. This is also their fundamental duty under occupational health and safety law according to Section 1 ArbZG and Section 3 (1) Occupational Safety and Health Act (Arbeitsschutzgesetz, ArbSchG). Employers are legally obligated to implement the necessary occupational health and safety measures given the circumstances that influence the safety and health of employees at work. They must review the effectiveness of the measures being used and, if necessary, adapt them to changing situations. They must try to improve the safety and health protection of employees. In addition, under Section 4 (1) ArbSchG, employers must see that work is organised so that risks to life and physical and mental health are avoided to the extent possible and the residual risks are minimized. There is thus a third level of protection that in practice prevents any concrete risks to health due to weekly rest periods not being granted for too long a period of time.

There is a further level of support, that of the individual employment relationship, for the protection of workers that is guaranteed by constitutional law and public law through employers’ duty of care under Section 618 of the German Civil Code (Bürgerliches Gesetzbuch, BGB) covering effective duties to provide protection, care and information. These obligations to protect include, for example, the prevention of overexertion of workers and therefore also the granting of sufficient rest periods. Under Section 618 of the German Civil Code employers are obligated to arrange work to be performed under their orders or direction in such a way that employees are protected against danger to life and health to the extent permitted by the nature of the work. This is made more specific by the norms of state occupational health and safety law. Compliance with these standards is thus the duty of employers under employment contracts in addition to their effect under public law (cf. judgment of the Federal Labour Court of 13 October 2009 - 9 AZR 139/08 and of 8 November 2008 - 9 AZR 737/07, settled case-law). Employees

thus have a right to see compliance with occupational health and safety under private law corresponding to public law (judgement of the Federal Labour Court of 24 March 1998 - 9 AZR 172/97).

**ccc) Statistical Data**

Both association-level collective agreements and company-level collective agreements are known to contain exemptions for work on Sundays and public holidays. With the currently available technical possibilities of the collective bargaining register of the Federal Ministry of Labour and Social Affairs, it is possible to find almost 370 collective bargaining documents with flexibility clauses in line with Section12 ArbZG. **That amounts to only about 0.5% of all collective agreements currently available to the register. These 0.5% however are spread across all flexibility options in Section 12 of the ArbZG.**

Of these collective agreements that could be considered in principle, a review revealed that there are no provisions in collective agreements that provide for an arrangement in the sense of Section 12 (1) 2 var. 2 ArbZG (extended compensation period for Sunday work).

**ESC Part I – 4. All workers have the right to a fair remuneration sufficient for a decent standard of living for themselves and their families.**

Fair remuneration is a key Charter right (Article 4§1 of the Charter). This provision guarantees the right to a remuneration such as to ensure a decent standard of living. It applies to all workers, regardless of the sector or employment regime.

The requirement that workers be remunerated fairly and sufficiently for a decent standard of living for themselves and their families applies equally to atypical jobs and to emerging arrangements such as the gig or platform economy, and the work relations stemming from zero hours contracts. It goes without saying that circumventing through any means fair remuneration requirements is unacceptable. Areas of concern also include —but are not limited to— agriculture and food-processing sectors, hospitality industry, domestic work and care work.

In some cases, prevailing wages or contractual arrangements lead to a significant number of so-called working poor, including persons working two or more jobs or full-time workers living in substandard conditions. It should be underlined that the concept of “decent standard of living” goes beyond merely material basic necessities such as food, clothing and housing, and includes resources necessary to participate in cultural, educational and social activities.

“Remuneration” relates to the compensation — either monetary or in kind — paid by an employer to a worker for time worked or work done. It covers, where applicable, special bonuses and gratuities. On the other hand, social transfers (e.g. social security allowances or benefits) are taken into account only when they have a direct link to the wage.

To be considered fair, net minimum wages should not fall below 60% of average wage in the labour market; 50% if explained and duly justified as to how it amounts to fair remuneration sufficient for a decent standard of living for the workers concerned and their families. The Committee will only be satisfied that lower wages are fair on the basis of compelling or convincing evidence provided to it.

States Parties must devote necessary efforts to reach and respect this minimum requirement and to regularly adjust minimum rates of pay, including during the COVID-19 crisis. The Committee also considers that the right to fair remuneration includes the right to an increased pay for workers most exposed to COVID-19-related risks. More generally, income losses

during lockdowns or additional costs incurred by teleworking and work from home practices due to COVID-19 should be adequately compensated.

**Article 4 – The right to a fair remuneration**

With a view to ensuring the effective exercise of the right to a fair remuneration, the Parties undertake:

1. to recognise the right of workers to a remuneration such as will give them and their families a decent standard of living;

The exercise of [this right] shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

a) *Please provide information on gross and net minimum wages and their evolution over the reference period, including about exceptions and detailed statistics about the number (or proportion) of workers concerned by minimum or below minimum wage. Please provide specific information about furlough schemes during the pandemic, including as regards rates of pay and duration. Provide statistics both on those covered by these arrangements and also on categories of workers who were not included.*

**Germany:**

**aa) Minimum Wage**

Following the introduction of the general statutory gross minimum wage of EUR 8.50 per hour, the minimum wage in the reporting period was raised to

- **EUR 8.84 gross on 1 January 2017,**
- **EUR 9.19 gross on 1 January 2019,**
- **EUR 9.35 gross on 1 January 2020**.

A further increase of the following amounts came into effect on the following dates

- **EUR 9.50 gross on 1 January 2021,**

Since **1 July 2021**, the gross minimum wage has been EUR 9.60. Further increases of the following amounts will come into effect on the following dates

- **EUR 9.82 gross on 1 January 2022,**
- **EUR 10.45 gross on 1 July 2022.**

According to the Federal Statistical Office, the applicable general minimum wage was paid in the following number of employment relationships.

- 1,371,000 in 2017,
- 926,000 in 2018 and
- 1,421,000 in 2019.

The following number of **employment relationships** received less than the general minimum wage.

- 823,000 in 2017,
- 483,000 in 2018 and
- 527,000 in 2019.

**bb) Kurzarbeitergeld (Reduced Working Hours Allowance Scheme/Short Time Work)**

Detailed information can be found online at: Questions and answers relating to short-time work (Kurzarbeit) and skills

The following **simplified** requirements for Kurzarbeitergeld, the reduced working hours allowance scheme, introduced in response to the COVID-19 pandemic will remain in place until 31 December 2021 (Status: December 2021):

- *For companies that entered the Kurzarbeitergeld scheme by 30 September 2021, it is sufficient for at least 10 percent of the employees to have been placed on reduced hours. Regularly, at least one third of the employees must be affected.*
- *Employees do not have to bring their working hours account to below zero before the Kurzarbeitergeld allowance can be paid if hours had been reduced by 30 September 2021.*
- ***Temporary agency workers** can also receive the Kurzarbeitergeld allowance if the temporary employment agency reduces working hours by 30 September 2021.*
- *For companies that had reduced working hours by 31 December 2020, the period of entitlement to the Kurzarbeitergeld allowance has been extended to up to 24 months. The period ends on 31 December 2021 at the latest.*
- *Until 30 September 2021, **social security contributions** will be reimbursed in full to employers while they are in the reduced working hours scheme. Half of the social security contributions will then be reimbursed by the Federal Employment Agency for companies that had reduced working hours by that point until December 2021.*
- *If workers on reduced hours have lost at least 50 percent of their earnings, the Kurzarbeitergeld allowance will be increased to 70 percent (77 percent for households with children) from their fourth month in the scheme onwards, calculated from March 2020.*
- *After the seventh month in the reduced working hours scheme, the allowance increases to 80 percent (87 percent for households with children) of the lost net earnings. These arrangements also apply until 31 December 2021 for all employees whose entitlement to the reduced working hours allowance had come into force by 31 March 2021.*

According to the newest available projection, in June 2021 about 1,6 mio persons with reduced hours were covered by the short-time work scheme (see Table below for earlier months and for the shares of men and women.

## Table: Persons covered by the short-time work scheme

January 2020 to October 2021, State of Data: January 2022

Figures highlighted in light grey are the current projections

| | Persons covered by the short-time work scheme | | |
|---|---|---|---|
| | Total | of which | |
| | | Male | Female |
| | 1 | 2 | 3 |
| **Current projections** | | | |
| Okt 2021 (HR1) | 709,974 | | |
| Sep 2021 (HR2) | 787,720 | | |
| Aug 2021 (HR3) | 798,640 | | |
| Jul 2021 (HR4) | 1,071,173 | | |
| **Final Data** | | | |
| Jun 21 | 1,547,552 | 845,250 | 702,302 |
| Mai 21 | 2,320,489 | 1,150,823 | 1,169,666 |
| Apr 21 | 2,560,303 | 1,285,432 | 1,274,871 |
| Mrz 21 | 2,818,317 | 1,448,132 | 1,370,185 |
| Feb 21 | 3,358,070 | 1,687,173 | 1,670,897 |
| Jan 21 | 3,293,888 | 1,672,996 | 1,620,892 |
| Dez 20 | 2,675,968 | 1,391,391 | 1,284,577 |
| Nov 20 | 2,386,194 | 1,375,646 | 1,010,548 |
| Okt 20 | 2,020,651 | 1,264,524 | 756,127 |
| Sep 20 | 2,229,430 | 1,395,249 | 834,181 |
| Aug 20 | 2,537,053 | 1,565,230 | 971,823 |
| Jul 20 | 3,305,887 | 2,035,360 | 1,270,527 |
| Jun 20 | 4,452,284 | 2,699,440 | 1,752,844 |
| Mai 20 | 5,714,841 | 3,349,246 | 2,365,595 |
| Apr 20 | 5,995,428 | 3,376,975 | 2,618,453 |
| Mrz 20 | 2,579,665 | 1,389,348 | 1,190,317 |
| Feb 20 | 133,924 | 108,367 | 25,557 |
| Jan 20 | 133,198 | 107,962 | 25,236 |

b) *The Committee also requests information on measures taken to ensure fair remuneration (above the 60% threshold, or 50% with the proposed explanations or justification) sufficient for a decent standard of living, for workers in atypical jobs, those employed in the gig or platform economy, and workers with zero hours contracts. Please also provide information on fair remuneration requirements and enforcement activities (e.g. by labour inspectorates or other relevant bodies) as well as on their outcomes (legal action, sanctions imposed) as regards circumvention of minimum wage requirements (e.g. through schemes such as sub-contracting, service contracts, including cross-border service contracts, platform-managed work arrangements, resorting to false self-employment, with special reference to areas where workers are at risk of or vulnerable to exploitation, for example agricultural seasonal workers, hospitality industry, domestic work and care work, temporary work, etc.).*

**Germany**:

The system of **autonomous collective bargaining is constitutionally guaranteed in Article 9 (3) of the Basic Law (Grundgesetz, GG)** and in this system the social partners are responsible for setting wages in Germany at the collective level.

The state has no influence over what parameters the collective bargaining parties take into account or what weight is given them when making their decisions. This situation has not changed during the reporting period.

The **vast majority of employment relationships continue to fall under collective agreements**. In 2020, 53% of all employees in western Germany were employed in accordance with collective bargaining agreements (eastern Germany 43%). In addition, in western Germany, 19% of employees worked in companies with agreements that are based on collective bargaining agreements (eastern Germany: 20%)

Because the autonomy of collective bargaining is constitutionally protected and also because there is a general freedom to conclude contracts at the level of individual contracts, **the state only takes measures to ensure minimum standards for fair wages**. Introducing the general statutory minimum wage on 1 January 2015 was such a measure. This established an absolute minimum wage to ensure an adequate minimum level of protection for workers. The goal of the minimum wage is to establish a minimum of transactional fairness, not to ensure comprehensive protection of workers. That remains the responsibility of the social partners.

When the minimum wage was introduced, it was originally set to the gross amount of EUR 8.50. This was so that a single, full-time worker would have a net income above the exemption threshold. The exemption threshold was chosen as a guide, because it represents a lump-sum subsistence minimum tailored to the situation of employees ensuring a moderate amount is held back. Law-makers base the calculation on a 40-hour week in accordance with the Working Time Act (Arbeitszeitgesetz, ArbZG).

Every two years, an independent commission of the collective bargaining partners advised by academics and consisting of representatives of the employers' associations and the trade unions decides on adjusting the minimum wage. The importance of collective bargaining autonomy is reflected in the fact that the minimum wage is determined by the social partners that are more closely involved in the relevant issues.

To make its decision, the minimum wage commission considers all factors to determine the appropriate minimum wage

- to contribute to adequate minimum protection of workers,
- to enable fair competitive conditions that work, as well as

- to not be a risk to employment.

It also takes the development of collectively agreed wages as a guide. The Federal Government then decides whether this decision will be made binding by an ordinance. It can only implement the proposal of the minimum wage commission without changes and may not independently set a different amount.

Based on this procedure, the minimum wage has been increased several times since its introduction (for the development of the minimum wage see list under Article 4 (1) of the Charter question a).

The **general statutory minimum wage applies to employees and, with some exceptions, also to interns**. However, for minors who have not completed vocational training, for the long-term unemployed during the first six months of their employment and for interns there is an exception from the application of the minimum wage, if they are completing internships that are mandatory, that provide orientation, that are done alongside courses of study or work, or that lead to entry qualifications or preparation for vocational training.

The factor that determines whether the minimum wage is applied is therefore the existence of an **employment relationship as defined by German law**. In this sense, an employee is someone obliged to perform work in the service of someone else while receiving instructions and taking orders in a relationship of personal dependency on the basis of a contract under private law. The German definition of employee makes no distinction between traditional and atypical forms of employment. **The minimum wage therefore applies comprehensively to part-time workers, marginally employed workers, workers with limited-time contracts and temporary workers.**

The same applies to employees in the gig economy and working via online platforms. If the conditions of an employment relationship are met, then the minimum wage also applies.

Zero-hour contracts for on-demand work in line with Section 12 of the Act on Part-Time and Fixed-Term Emplyoment (Teilzeit- und Befristungsgesetz, TzBfG) are not permitted (cf. the comments on Article 2 (1) of the Charter).

Alongside the statutory minimum wage, there are regionally and nationally applicable sector-specific minimum wages specified in the respective sectors' collective agreements. These are extended to all employers not bound by collective agreements at the request of the parties to the collective agreements. All employers not bound by collective agreements must also comply with them. These are higher than the general statutory minimum wage, sometimes significantly so.

Compliance with the statutory minimum wage and nationally applicable sector-specific minimum wages under the Act on Mandatory Working Conditions for Workers Posted Across Borders and for Workers Regularly Employed in Germany (Arbeitnehmer-Entsendegesetz, AEntG) and the Act on Temporary Agency Work (Arbeitnehmerüberlassungsgesetz, AÜG) is **monitored by the authorities of the customs administration**, which also issues sanctions. They have been given the necessary authorisation. The Federal Customs Administration unit responsible for enforcing the law on illegal employment and benefit fraud, the Financial Control of Undeclared Work (Finanzkontrolle Schwarzarbeit, FKS) is responsible for this. It has been granted 1,600 new positions in the context of the minimum wage legislation, all of which have now already been filled. The FKS has also been extremely well supported in terms of personnel in recent years. Under the legislation against illegal employment and social benefits fraud (Gesetz gegen illegale Beschäftigung und Sozialleistungsmissbrauch) the FKS was granted around 3,500 additional positions.

In 2020, the FKS carried out numerous focussed inspections and special event days, for example in the meat industry and delivery services, auditing a total of 44,702 employers.

Intentionally or negligently failing to comply with the legal obligations related to the minimum wage constitutes an **administrative offence** and can be fined by up to EUR 500,000. Intentional violations involving not paying the statutory minimum wage may also constitute the **criminal offence** of withholding employees' social security contributions. That is punishable by imprisonment of up to 5 years or a fine.

Not only employers, but also commissioners of the service or work, are also liable for the fulfilment of the right to the minimum wage. This so-called **subcontractor liability** extends to the obligations of commissioned contractors, subcontractors and temporary work agencies commissioned by contractors or subcontractors.

c) *Please also provide information on the nature of the measures taken to ensure that this right is effectively upheld as regards the categories of workers referred to in the previous paragraph (b) or in other areas of activity where workers are at risk of or vulnerable to exploitation, making in particular reference to regulatory action and to promotion of unionisation, collective bargaining or other means appropriate to national conditions.*

**Germany:**

The protection of posted workers was improved, especially with regard to remuneration, with the legislation on the implementation of **directive (EU) 2018/957 amending Directive 96/71/EC on the posting of workers**. When employing workers in Germany, employers based abroad must in future observe all provisions concerning remuneration in legal and administrative regulations or in nationwide, universally applicable collective agreements, and no longer just minimum wage rates. The authorities of the customs administration now also monitor the internationally binding conditions of remuneration beyond minimum rates of pay if they are regulated in universally applicable nationwide collective agreements.

That binding wage floors can be established through ordinances extending collective agreements, also for the nursing sector, was made clear with the **legislation to improve wages of those providing care (Pflegelöhneverbesserungsgesetz).** It entered into force on 29 November 2019. In addition to the approach of collective bargaining agreements, the Pflegelöhneverbesserungsgesetz makes it possible to set sector-wide minimum wages for those who care for the elderly on the basis of recommendations from the committee on care (Pflegekommission). The committee on care is a body with an equal number of representatives from church-affiliated and secular employers and employees. It develops recommendations for minimum working conditions in the care sector. These recommendations can then be implemented, and thus made binding, through legal ordinances.

To improve working conditions in the **meat industry**, a number of legal measures were enacted in legislation on occupational health and safety inspections (Arbeitsschutzkontrollgesetz) adopted in December 2020 (exceptions apply for butchery businesses). Of particular note are the restrictions on the use of external staff. Employing contract workers in the core business (slaughtering, cutting and processing of meat) has been prohibited since 1 January 2021. Until 31 March 2024, the use of temporary agency workers is still allowed in meat processing in a narrowly limited scope. Essentially, companies in the meat industry may only use their own employees for work in the core business. These regulations aim to concentrate responsibility with

the owners of the companies and to make effective inspections by the competent authorities possible. It should no longer be possible to disregard applicable labour and occupational health and safety standards in the meat industry by claiming that one is not responsible or that others are responsible. It is mainly customs administration authorities that are responsible for monitoring the regulations on the use of external staff and punishing violations.

d) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

**Germany:**

As concerns the Conclusions XXI-3 (2018) of the Committee of Experts stating that the statutory minimum wage is not sufficient to ensure an adequate standard of living for all workers, the following should be noted:

**The Federal Republic of Germany believes that the right to a fair wage as laid down in Article 4 (1) of the Charter is guaranteed by the system for setting wages in place in Germany.**

The wage-setting system in Germany is based on autonomy of collective bargaining guaranteed by the Basic Law and its basic legal formulation through the Tarifvertragsgesetz, legislation on collective bargaining of 25 August 1969. These two things guarantee that the social partners, which are responsible for establishing conditions of employment at the collective level, have the framework necessary for establishing a wage level that takes adequate account of all wage-relevant parameters.

Germany's current system of setting wages, is complemented by the statutory minimum wage and supplementary benefits in line with Book II of the Social Code - basic income support for job seekers - as published on 13 May 2011 and Book XII of the Social Code - social assistance - of 27 December 2003. Especially for setting individual contractual wages, the general statutory minimum wage under the Act Regulating a General Minimum Wage (Mindestlohngesetz, MiLoG) establishes an absolute lower limit. That lower limit may not be undercut. It ensures that a single, full-time employee earns a net wage above the exemption threshold. Germany's social system also provides for additional benefits for family members with unmet needs in line with Book II of the Social Code - basic income support for job seekers- and Book XII of the Social Code - social assistance. Therefore, the system of minimum wage and supplementary social benefits described above ensures a decent standard of living at all times.

For a more detailed assessment of the situation, the Committee of Experts requested updated figures on the development of the net minimum wage and the net median wage in its conclusions:

Because a person's tax burden is determined individually under German tax law, net minimum and net median wages cannot be represented in a way that is statistically useful. Therefore, the following data **refers to gross values**.
Concerning the **development of the gross minimum wage**, please see the figures under Article 4 (1) of the Charter question a).

The gross median wage can also be ascertained using the Federal Statistical Office's structure of earnings survey. For all employees (full-time employees, part-time employees and the marginally employed, but excluding apprentices) in economic sectors A-S (classification of economic sectors by the Federal Statistical Office) this amounted to EUR 16.58 per hour worked in 2018. The gross monthly median wage was EUR 2,500.00. The minimum wage for 2018 was EUR 8.84, by contrast, which amounts to around 53.32 percent of the median hourly wage.

**Federal employees** will be unaffected by the new gross statutory minimum wage of EUR 9.60 per hour, which will apply nationwide starting 1 July 2021, because the collectively agreed hourly wages (under the TVÖD), being calculated in line with Section 24 (3) 3 TVöD, are above the gross minimum hourly wage of EUR 9.60 at present. Since 1 April 2021, **the lowest possible hourly wage for federal employees is EUR 11.68 in line with the latest collective agreement between the Federation and the trade unions.**

2. to recognise the right of workers to an increased rate of remuneration for overtime work, subject to exceptions in particular cases;

a) *Please provide up to date information on the rules applied to on-call service, zero-hour contracts, including on whether inactive periods of on-call duty are considered as time worked or as a period of rest and how these periods are remunerated.*

**Germany:**

The rules for **on-demand work** („Arbeit auf Abruf") have been adapted in workers' favour during the reporting period (see details under Article 2 (1) (c) above). Section 12 of the Act on Part-Time and Fixed-Term Employment (Teilzeit- und Befristungsgesetz, TzBfG) restricts the free arrangement of flexible working hours to protect workers and ensure that conditions of employment are acceptable in terms of their social aspects in several respects. Therefore **zero-hour contracts are not possible as contracts for on-demand work** under German labour law**.**

For the rest, **reference is made to the comments on Article 2(1).**

b) *Please explain the impact of the COVID-19 crisis on the right to a fair remuneration as regards overtime and provide information on measures taken to protect and fulfil this right. Please include specific information on the enjoyment of the right to a fair remuneration/compensation for overtime for medical staff during the pandemic and explain how the matter of overtime and working hours was addressed in respect of teleworking (regulation, monitoring, remuneration, increased compensation).*

**Germany:**

During the COVID 19 pandemic, there have been no changes to the arrangements described in the 35th Report with regard to Article 4 (2) of the Charter.

Owing to the particular **demands, challenges and risks for nursing staff in care for the elderly and long-term care during the COVID-19 pandemic**, an additional **financial premium** was funded for 2020. The Second Act on the Protection of the Population in the Event of an Epidemic Situation of National Significance (Zweites Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite) obliged approved care institutions and other employers in the care sector

**to pay their employees an additional financial premium due to the pandemic in 2020**. Based on the provision, staff working at or for approved long-term care institutions within the applicable assessment period in 2020 had a legal entitlement tiered according to various criteria to a one-off special payment (corona premium) exempt from tax and social security contributions **of up to EUR 1,000**. Full-time employees in direct nursing and care received the highest premium. The Länder and, in addition, the employers in the care sector had the opportunity to top up the corona premium up to the total amount **exempt from tax and social security contributions of EUR 1,500**. Altogether, some **EUR 887 million** were spent on funding the corona premium for staff in care for the elderly and long-term care.

Regardless of the development of the COVID-19 pandemic, from September 1, 2022, in order to retain their approval, long-term care institutions must **either be bound by collective agreement or, if not, remunerate their nursing and care staff at least at the level of an applicable collective agreement for the care sector in their region**. This is intended to strengthen the foundation for care institutions for improved remuneration of their nursing staff on a long-term basis.

For the hospital sector, a **total of EUR 550 million was made available** in two "premium rounds" for premium payments **to hospitals** treating a particularly large number of patients infected with SARS-CoV-2 in relation to their supply of beds:

One hundred million euro was provided for the **first premium** in accordance with Section 26 a of the Act on the Financing of Hospitals (Krankenhausfinanzierungsgesetz), which entered into force on 29 October 2020, of which EUR 93 million came from the liquidity reserve of the Health Fund and EUR 7 million from the private health insurance companies. Four hundred and thirty-three hospitals treating a particularly large number of COVID-19 patients in relation to their supply of beds from January until the end of May 2020 benefited from this. For the **second premium** in accordance with Section 26 d of the Act on the Financing of Hospitals, which entered into force on 31 March 2021, a total of EUR 450 million was made available for premium payments from federal funds and given to 983 hospitals that treated a particularly large number of COVID-19 cases in 2020 as a whole.

For both premiums, the beneficiary hospitals themselves decided together with the employee representatives on selection of the premium recipients and the amount of the premiums as only they were able to assess the individual burdens. While the premiums were addressed primarily at nursing staff providing bedside care, other hospital employees subjected to a particularly heavy burden, such as cleaning staff, could also receive premiums.

c) *The Committee would welcome information on any other measures put in place intended to have effects after the pandemic which affect overtime regulation and its remuneration/compensation. Provide information on their intended duration and the time frame for them to be lifted.*

d) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

3. to recognise the right of men and women workers to equal pay for work of equal value;

a) *Please provide information on the impact of COVID-19 and the pandemic on the right of men and women workers to equal pay for work of equal value, with particular reference and data related to the extent and modalities of application of furlough schemes to women workers.*

**Germany:**

There have fundamentally been no changes to the legal framework concerning the principle of equal pay for women and men due to the pandemic. However, in actual fact, more women than men have been affected by short-time work during the pandemic.

For the number of female workers covered by the short-time work scheme see the table under 4.1.a).

For a general overview on the application of the principle of equal pay for equal work and the progress that has been achieved in applying this principle, please see the **Appendix** to this report.

b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

**Germany:**

**aa) With regard to the maximum compensation we would like to reply as follows:**

According to Conclusions XXI-3 (2018), the Committee considers that in the case of an unlawful retaliatory dismissal, **the maximum compensation of 12 months' wages as established by law is not sufficient to make good the damage** suffered by the victim and to act as a deterrent to the offender. The Committee of Experts therefore finds the situation in Germany not to be in conformity with the Charter.
As stated in detail in both the previous (35th) and the 31st report, the Federal Government takes the view that concerning the principle of safeguarding existing employment relationships (Bestandsschutzprinzip), **German legislation fully complies with Article 4 (3) of the Charter.** Germany elaborates on the legislative background to compensation as follows:

If an employer terminates an employment relationship because an employee is lawfully exercising a legal right, including the right to non-discrimination with regard to pay, this is deemed to constitute a disciplinary or retaliatory dismissal, which is prohibited and invalid pursuant to Section 612a in conjunction with Section 134 of the German Civil Code (Bürgerliches Gesetzbuch, BGB). In those cases, it is the employer's obligation **to continue the employment relationship** and retroactively pay **any unpaid salary** or wages which provides **full compensation** for the damage sustained by the employee **as a result of such invalid dismissal.**

The possibility of filing a request for the termination of employment by way of court ruling in return for severance pay (Section 9 of the Act on the Protection against Dismissal (Kündigungsschutzgesetz, KSchG)) despite the court's finding that the dismissal is invalid is **an additional option granted to employees.**

**In these cases**, severance pay fixed by the court has the character of compensation and reparation **for the socially unjustified loss of employment**. The severance pay serves

as an equivalent to replace the continuation of employment. The amount of severance pay is fixed by the court following due consideration of the circumstances of the individual case. A limit on the amount of severance pay is important for reasons of **legal certainty and legal equality**. Leaving the amount of severance pay entirely to the court's discretion would permit inequalities which would be difficult to justify. **The courts already have a wide margin of discretion.**

Moreover, it should be noted that Sections 9 and 10 of the KSchG **only apply to severance pay fixed by court** ruling. The **provisions do not apply to individual contractual agreements**. The limits set out in Section 10 of the KSchG may **be exceeded in judicial or extrajudicial settlements or in termination agreements.** As it is **up to the employee** to file an application with the court for the termination of employment, he or she also decides whether in return for the termination of employment severance pay is to be negotiated individually or fixed by court ruling - it is therefore up to the employee to decide whether or not he/she falls under the regulation that includes the limit on the amount of severance pay.

**bb) With regard to legislation that prohibits discrimination and the methods of comparison we would like to reply as follows:**

It is prohibited by European (Art. 157 TFEU) and German antidiscrimination law to discriminate against a person on the grounds of their sex (General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz, AGG) and Transparency in Wage Structures Act (Entgelttransparenzgesetz, EntgTranspG)). The prohibition of discrimination includes pay discrimination between women and men with regard to all elements of remuneration and conditions of remuneration (see Section 3 of the Transparency in Wage Structures Act). Discriminatory provisions are prohibited in statutory law as well as in individual and collective agreements. A discriminatory clause can be declared invalid by the courts and generally an upwards adjustment in favour of the discriminated group takes place.

The Transparency in Wage Structures Act, which came into force in 2017, calls upon – inter alia – the parties to the collective wage agreement and the employee or workers representatives, within the framework of their responsibilities and opportunities for action, to collaborate in achieving the goal of equal pay among women and men (see Section 6).

Regarding the methods of comparision there are no rulings of courts which can be reported on.The Transparency in Wage Structures Act entails an individual entitlement to disclosure. Employees in establishments with more than 200 employees can obtain information about the criteria and practices regarding their own wages as well as the wages for equal work and work of equal value done by colleagues of the other gender. The entitlement exists for persons employed in establishments with a workforce that usually counts more than 200 employees under the same employer (see Section 12).

4. to recognise the right of all workers to a reasonable period of notice for termination of employment;

a) *Please provide information on the right of all workers to a reasonable period of notice for termination of employment (legal framework and practice), including any specific arrangements made in response to the COVID-19 crisis and the pandemic.*

b) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

5. to permit deductions from wages only under conditions and to the extent prescribed by national laws or regulations or fixed by collective agreements or arbitration awards.

The exercise of these rights shall be achieved by freely concluded collective agreements, by statutory wage-fixing machinery, or by other means appropriate to national conditions.

*No information requested, except where there was a conclusion of non-conformity or a deferral in the previous conclusion for your country. For conclusions of non-conformity, please explain whether and how the problem has been remedied and for deferrals, please reply to the questions raised.*

**Germany:**

Various forms of primary legislation aim to ensure that employees are able to dispose of at least the part of remuneration considered to constitute the minimum subsistence level and that is necessary to meet their statutory maintenance obligations.

With regard to the the Conclusions XXI-3 (2018) Germany gives the following detailed information: According to Sections 850 to 850 i of the Code of Civil Procedure (Zivilprozessordnung, ZPO), earned income is only attachable to a limited extent. Certain sums pursuant to Section 850 c of the Code of Civil Procedure are immune from wage attachment (attachment-exempt thresholds). The attachment-exempt thresholds depend on the employee's net income and maintenance obligations. For example, the basic attachment-exempt amount has amounted to EUR 1,252.64 per month since 1 July 2021 and increases for each person for whom the employee is legally obliged to provide maintenance. Furthermore, certain parts of earned income are unattachable (see Section 850 a of the Code of Civil Procedure). These include, for example, risk and hardship allowances, allowances for work away from home, parts of the Christmas bonus and overtime remuneration. This exemption from attachment of wages applies towards both employers and third parties (especially credit institutions). Lower unattachable amounts apply to attachment due to statutory maintenance obligations (Section 850 d of the Code of Civil Procedure). Sections 850 et seq. of the Code of Civil Procedure are not negotiable either in advance or retrospectively. **Debtors are unable to forego their protection because they can neither assign nor pledge unattachable receivables, that is, make them the basis of liability for their debts by way of a legal transaction.**

This exemption from attachment of wages is supplemented by a statutory non-assignment clause and prohibition of offsetting. According to Section 400 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), a receivable **cannot be assigned as long as it is not subject to attachment.** Furthermore, offsetting against wage entitlements is ruled out as long as the latter are not subject to attachment

(Section 394 of the German Civil Code). The employer must always pay out the unattachable portion of earned income to the employee, **even if it is entitled to counterclaims that it could offset against the wage claim.**

**ESC Part I**

**5. All workers and employers have the right to freedom of association in national or international organisations for the protection of their economic and social interests.**

**6. All workers and employers have the right to bargain collectively.**

**Additional Protocol Part 1**

**2. Workers have the right to be informed and to be consulted within the undertaking.**

**3. Workers have the right to take part in the determination and improvement of the working conditions and working environment in the undertaking.**

The right to organise, the right to collective bargaining and social dialogue guaranteed notably by Articles 5 and 6 of the Charter have taken on new dimensions and new importance in the COVID-19 crisis. Trade unions and employers' organisations should be consulted at all levels on employment-related measures to fight and contain COVID-19 here and now and to recover from the economically disruptive effects of the pandemic in the longer term. Agreements to this effect, whether tripartite or bipartite, should be concluded where appropriate.

The importance of dialogue and participation (good democratic governance) in the post-COVID-19 reconstruction process cannot be overestimated. Given that trade unions and workers organisations are sine qua non participants in this process, it is incumbent on States Parties to promote, enable and facilitate such dialogue and participation.

This is called for at all levels, including the industry/sectoral level and the company level. New health and safety requirements, new forms of work organisation (teleworking, work-sharing, etc.) and workforce reallocation, all impose obligations with regard to consultation and information of workers' representatives in terms of Articles 2 and 3 of the Additional Protocol.

Under Article 6§4 of the Charter the right of workers in essential services to take collective action may be subjected to limited restrictions in order to ensure the continued operation of such services, for example during a public health emergency. However, any such restrictions must satisfy the conditions laid down by Article G of the Charter

In this respect, the ECSR notes that Article 6§4 of the Charter entails a right of workers to take collective action (e.g. work stoppage) for occupational health and safety reasons. This means, for example, that strikes in response to a lack of adequate personal protective equipment or lack of adequate distancing, disinfection and cleaning protocols at the workplace would fall within the scope of the Charter's guarantee.

**Article 5 – The right to organise**

With a view to ensuring or promoting the freedom of workers and employers to form local, national or international organisations for the protection of their economic and social interests and to join those organisations, the Parties undertake that national law shall not be such as to impair, nor shall it be so applied as to impair, this freedom. The extent to which the guarantees provided for in this article shall apply to the police shall be determined by national laws or regulations. The principle governing the application to the members of the armed forces of these guarantees and the extent to which they shall apply to persons in this category shall equally be determined by national laws or regulations.

a) *Please provide data on trade union membership prevalence across the country and across sectors of activity, as well as information on public or private sector activities in which workers are excluded from forming organisations for the protection of their economic and social interests or from joining such organisations. Also provide information on recent legal developments in these respects and measures taken to promote unionisation and membership (with specific reference to areas of activity with low level of unionisation, such as knowledge workers, agricultural and seasonal workers, domestic workers, catering industry and workers employed through service outsourcing, including cross border service contracts).*

**Germany***:*

The right to organise is fundamentally guaranteed in Germany in all areas of the public and private sector. There are therefore no areas in which employees may not found or join associations for the protection of their economic and social interests.

The Federal Government has no official data about the unionisation of employees. However, the overriding majority of employment relationships continue to be shaped by collective agreements. In 2020, 53% of all employees in Western Germany were employed by companies bound by collective agreements (43% in Eastern Germany). Furthermore, 19% of employees in Western Germany worked for companies guided by a collective agreement (20% in Eastern Germany).

The Federal Government keeps a close eye on the development of collective bargaining coverage and since the beginning of the legislative term in 2017 has been addressing the problem of the decline in collective bargaining coverage, among other things in the social partners dialogue initiated by the Federal Chancellor. The Federal Ministry of Labour and Social Affairs has applied itself to this issue among other things at the so-called DAX 30 discussions with the group works councils and human resources board members of the 30 largest German listed companies. As part of the forward-thinking dialogue “New Work – New Security” (“Neue Arbeit. Neue Sicherheit”), it has intensively dealt with the question of how collective bargaining coverage can be strengthened again and discussed various measures in the outcome report for strengthening unionisation, such as a digital right of access for trade unions.

b) *Also provide information on measures taken or considered to proactively promote or ensure social dialogue, with participation of trade unions and workers organisations, in order to take stock of the COVID-19 crisis and pandemic and their fallout, and with a view to preserving or, as the case may be, restoring the rights protected under the Charter after the crisis is over.*

**Germany***:*

The social partners in many places have also made a **valuable contribution** in the current COVID-19 crisis to enabling the economy and labour market so far to weather the crisis relatively well when compared internationally. Employers in many places have generously topped up the short-time work allowance provided by the state by means of collective agreement, thereby mitigating the financial losses of millions of employees affected by short-time work. Where companies have felt the full force of the consequences of the COVID-19 pandemic and sustained economic hardship, the trade unions have also displayed a sense of responsibility and agreed to wage reductions or other restructuring measures in order to help rescue the companies. **One example of this is the recent pay settlement in the metal and electrical industry:** Under consideration of the fraught economic situation of many companies, employees forwent a traditional wage increase and accepted a one-off annual bonus. In return, employers agreed to introduce the option of a four-day week for the employees.

c) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

**Article 6 – The right to bargain collectively**

With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake:

1. to promote joint consultation between workers and employers;

*No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

2. to promote, where necessary and appropriate, machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements;

*Please provide information on specific measures taken during the pandemic to ensure the respect of the right to bargain collectively. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.*

**Germany:**

Owing to the fact that social partnership negotiations between employers and employers' organisations on the one hand and employee organisations on the other do not necessarily have to be conducted in person, the pandemic and its associated restrictions have fundamentally not led to any structural restrictions concerning the right to collective bargaining, so that no measures were necessary to guarantee this.

3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes;

*No information requested. If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

and recognise:

4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

a) *Please provide information on specific measures taken during the pandemic to ensure the right to strike (Article 6§4). As regards minimum or essential services, please provide information on any measures introduced in connection with the COVID-19 crisis or during the pandemic to restrict the right of workers and employers to take industrial action.*

**Germany:**

The pandemic and its associated restrictions have not led to any structural restrictions regarding the right to strike. Therefore there were no individual measures necessary to guarantee this right.

b) *If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

**Germany:**

The following is to be noted with regard to the Conclusions XXI-3 (2018) of the Committee of Experts:

The opinion of the Committee of Experts that the situation in Germany that

- prohibits industrial action not targeting the conclusion of a collective agreement and
- requires certain prerequisites to be met for a trade union to be founded by a group of employees that is entitled to call a strike

represents an excessive restriction of the right to strike **is not shared.** The legislative background has not changed. **Reference is made in full to the previous reports**, in particular the requirement of the assertive ability of the workers' association which is necessary to ensure that the opposite side in collective bargaining agreements cannot reject offers of negotiations. The requirements placed on the collective-bargaining ability of a workers' coalition ensure the autonomy of collective bargaining and are constitutionally unobjectionable in terms of this regulatory objective.

With regard to the considerations of the Committee of Experts concerning the withholding of the right to strike for civil servants, the following update can be given with regard to the ruling of the Federal Constitutional Court, which was still outstanding during the last reporting cycle:

The **Federal Constitutional Court** has meanwhile established in its ruling of 12 June 2018 (file ref. no. 2 BvR 1738/12) that the ban on strike action for civil servants, regardless of the type of activity exercised, **is an independent and traditional principle of the career civil service system within the meaning of Article 33 (5) of Basic Law (Grundgesetz, GG) that justifies a restriction of the right to organise.** The legislature must have regard to the ban on strike action for civil servants. It is closely linked with the civil service principle of alimentation, the duty of loyalty, the principle of lifetime employment and the principle that the legal relationship under civil service law, including remuneration, must be regulated by the legislature. A legal provision that expressly lays down the ban on strike action for civil servants is not required constitutionally.
The Federal Constitutional Court furthermore points out in this ruling that the provisions of Basic Law must be interpreted in a manner that is open to international law. At the

level of constitutional law, the text of the **European Convention on Human Rights and the case-law of the European Court of Human Rights serve as guidelines for the interpretation of the content and scope of fundamental rights and rule of law principles of Basic Law**. According to the Federal Constitutional Court, the limits to an interpretation that is open to international law follow from Basic Law. The possibilities of interpretation in a manner open to the Convention end where such an interpretation no longer appears tenable according to the recognised methods of interpretation of statutes and of the Constitution. Furthermore, where Basic Law is interpreted in a manner open to the Convention, the case-law of the European Court of Human Rights must be integrated as carefully as possible into the existing, dogmatically differentiated national legal system. Against this background, the Federal Constitutional Court makes clear in its ruling **that the ban on strike action for civil servants in Germany is in accordance with the principle of the Constitution's openness to international law; in particular, it is compatible with the guarantees of the European Convention on Human Rights**. Also with respect to the case-law of the European Court of Human Rights, it cannot be established that German law conflicts with Article 11 of the European Convention on Human Rights. Regardless of this, and in view of the particularities of the German system of career civil service, the Federal Constitutional Court finds **that the requirements to restrict the right to strike stipulated in Article 11 (2) of the European Convention on Human Rights would also be met, as regardless of the question of whether the ban on strike action constitutes an interference with Article 11 of the European Convention on Human Rights, it would in any case be justified under Article 11 (2) sentence 1 and Article 11 (2) sentence 2.**

**Article 2 of the Additional Protocol – The right to information and consultation**

With a view to ensuring the effective exercise of the right of workers to be informed and consulted within the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice:

a. to be informed regularly or at the appropriate time and in a comprehensible way about the economic and financial situation of the undertaking employing them, on the understanding that the disclosure of certain information which could be prejudicial to the undertaking may be refused or subject to confidentiality; and

b. to be consulted in good time on proposed decisions which could substantially affect the interests of workers, particularly on those decisions which could have an important impact on the employment situation in the undertaking.

*a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to information and consultation. Please make specific reference to the situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.*

*b) If the previous conclusion concerning the provision was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*

**Article 3 of the Additional Protocol – The right to take part in the determination and improvement of the working conditions and working environment**

With a view to ensuring the effective exercise of the right of workers to take part in the determination and improvement of the working conditions and working environment in the undertaking, the Parties undertake to adopt or encourage measures enabling workers or their representatives, in accordance with national legislation and practice, to contribute:

a. to the determination and the improvement of the working conditions, work organisation and working environment;

b. to the protection of health and safety within the undertaking;

c. to the organisation of social and socio-cultural services and facilities within the undertaking;

d. to the supervision of the observance of regulations on these matters.

*a) Please provide information on specific measures taken during the pandemic to ensure the respect of the right to take part in the determination and improvement of the working conditions and working environment. Please make specific reference to the*

*situation and arrangements in the sectors of activity hit worst by the crisis whether as a result of the impossibility to continue their activity or the need for a broad shift to distance or telework, or as a result of their frontline nature, such as health care, law enforcement, transport, food sector, essential retail and other essential services.*

*b) If the previous conclusion concerning the provision, was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the questions raised.*