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EUROPEAN SOCIAL CHARTER

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

submitted by

THE GOVERNMENT OF GERMANY

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

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CYCLE 2024

Report on the Application of the Revised European Social Charter

2024

submitted by the Government of the Federal Republic of Germany

for the period from 1 January 2021 to 31 December 2024

In accordance with the provisions of Article C
of the European Social Charter (revised), the instrument of ratification
of which was deposited on 29 March 2021.

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

In accordance with Article 23 of the European Social Charter,
copies of this report shall be sent to
the Confederation of German Employers' Associations
(Bundesvereinigung der Deutschen Arbeitgeberverbände)
and
the National Executive Board of the
German Trade Union Confederation
(Bundesvorstand des Deutschen Gewerkschaftsbundes).

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Part I – Full Report

Initial full, complete and detailed report relating to the application of the (Revised) European Social Charter

Detailed report upon new ratification of the RESC and its provisions regarding Article 3 paragraph 1 and paragraph 4 (amended), Article 10 paragraph 4 (amended) and Articles 25, 28 and 29

This initial full, complete and detailed report is required upon ratification of the Revised Charter by a new State Party, following the entry into force of the Charter or upon acceptance of additional provisions of the Revised Charter by a State Party (see footnotes 2 and 3 in the Ministers' Deputies decision on operational proposals for the reform of the European Social Charter system in Coe document CM(2022)114-final of 27 September 2022).

Given that, after ratification of the Revised Charter by Germany in 2021, the aforementioned provisions have not yet been reported upon in detail, such report is produced and submitted with the present "*Full Report*", which constitutes the *first part* of the 42nd (2024) (R)ESC-Report by Germany. The *second part* of the report consists of the "*Question Report*", which contains Germany's responses to the specific questions asked by the ESCR (see below, pp. 59 et seq.).

The first part of the report therefore contains detailed information on all relevant aspects of the provisions in question. Subsequent reports might update the information provided in this report.

Article 3 paragraph 1 of the RESC

National Policy on Occupational Safety, Occupational Health and the Working Environment

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations:

1. to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. The primary aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health arising out of, linked with or occurring in the course of work, particularly by minimising the causes of hazards inherent in the working environment; […].

1. Content of Article 3 (1) of the RESC

Article 3 (1) of the RESC obliges the parties to formulate, implement and periodically review a coherent national policy on occupational safety, occupational health and the working environment. It emphasises that the aim of this policy shall be to improve occupational safety and health and to prevent accidents and injury to health, inter alia, by minimising risks.

2. German legal framework and rules with respect to Article 3 (1) of the RESC

a. <u>Comprehensive implementation of international occupational safety and health standards in German law</u>

Germany is currently in the process of ratifying the ILO Convention concerning Occupational Health and Safety No. 155 (1981). On 9 October 2024, the law ratifying Convention No. 155 was approved by the German Government (cabinet). Due to the early dissolution of the German Bundestag, the parliamentary procedure for adopting the draft law ratifying the Convention has been delayed. It will have to be reintroduced in the next legislative period after the new German Bundestag has been constituted. Until then, Convention No. 155 is the last and only fundamental labour convention Germany has not ratified yet.

Germany last ratified ILO Convention No. 184 on safety and health in agriculture in June 2024. The Convention is the first international instrument to standardise comprehensive minimum safety and health standards for workers in agriculture.

Germany also ratified ILO Convention No. 187 on the Promotional Framework for Safety and Health at Work (2006) in 2010 and ILO Convention No. 161 on Occupational Health Services (1985) in 1994. Germany submitted its last reports on both conventions in 2024.

Furthermore, Germany has implemented into national law Directive 89/391/EEC of the European Parliament and of the Council, amended by Directive 2007/30/EC (see also below, under Section 2. b. i., pp. 3 et seq.).

b. The dual system of occupational safety & health and safety & health at work

The aim of occupational safety and health (OSH) is to ensure safety and (physical and mental) health at work through measures to prevent work accidents, occupational diseases and work-related health hazards. These measures also extend to the design of work to be adapted to workers' needs. These also include, among other things, issues relating to working hours and the protection of particularly vulnerable groups (e.g. young people, pregnant women – regarding the latter group, see below under the following subsection i., pp. 3 et seq.).

In addition to state occupational safety and health legislation (see below under the following subsection i.), the German system is also based on the accident insurance institutions' prevention mandate (see below, under subsection ii., pp. 7 et seq.); together they form what is known as the dual system. The statutory accident insurance institutions are required to ensure, by all appropriate means, the prevention of occupational accidents, commuting accidents, occupational diseases and work-related health hazards, as well as the provision of effective first aid (Section 1 no. 1, Section 14 (1) sentence 1 of Book VII of the Social Code, *Sozialgesetzbuch Siebtes Buch – Gesetzliche Unfallversicherung – SGB VII*).

i. Public OSH system

In Germany, occupational safety and health (OSH) is first and foremost a state responsibility and is largely subject to European and international influences and developments (see also above, under section 2. a., pp. 2 et seq.). The state's main instruments for action in the field of safety and health at work are the enactment of binding regulations at federal level (laws and statutory instruments).

The Occupational Safety and Health Act *(Arbeitsschutzgesetz – ArbSchG)* of 21 August 1996 is the most important basis for occupational safety and health: it defines the fundamental rights and duties of employers and employees across all sectors and is the primary means of implementing the Framework Directive on Occupational Safety and Health (Directive 89/391/EEC). It also serves as the basis for the authorisation of the German Government to issue statutory instruments that provide more specific regulations for certain areas of occupational safety and health.

The Occupational Safety and Health Act is characterised by its comprehensive scope of application on the one hand and its flexible regulatory system on the other. It should be noted that the Occupational Safety and Health Act applies to all employees. Here, the

term “employee” is to be interpreted broadly and includes, among other things, atypical employment relationships, civil servants and (other) employee-like persons.

Under the Occupational Safety and Health Act, the employer is obliged, in particular, to identify and assess work-related health hazards (so-called risk assessment: *Gefährdungsbeurteilung*) in order to take appropriate protective measures on this basis and ensure a safe working environment. Employers must also check the effectiveness of the measures and adapt them to changing circumstances.

In 2021, the Occupational Safety and Health Inspection Act *(Arbeitsschutzkontrollgesetz – ArbSchKG)* also set out a quantitative minimum standard for state enforcement for the first time: from 2026, the Federal States *(Länder)* must inspect at least 5% of companies each year (known as the minimum inspection rate: *Mindestbesichtigungsquote*). In 2024, a general administrative regulation was introduced to supplement these inspections with a qualitative standard: inspections in which the occupational safety organisation and the company risk assessment were checked (so-called system control: *Systemkontrolle*) are considered inspections within the meaning of the minimum inspection rate.

In addition to the Occupational Safety and Health Act, the Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists of 12 December 1973 *(Arbeitssicherheitsgesetz – ASiG)* is particularly relevant. In addition to accident prevention, it pursues the goal of ensuring preventive occupational safety and health. The Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists implements the aforementioned EU framework directive on occupational safety and ILO Convention No. 161 on occupational health services and regulates the organisation of occupational safety and health. According to this law, the employer must appoint occupational physicians and occupational safety experts to support and advise the employer on occupational safety and health and on accident prevention. This is intended to achieve a threefold objective, namely:

- that the regulations serving to protect workers and prevent accidents are applied in accordance with the specific operating conditions,
- that the established occupational safety and health findings can be implemented to improve occupational safety and accident prevention, and
- that the measures serving to protect workers and prevent accidents achieve the highest possible level of effectiveness.

Special regulations for a group of people particularly in need of protection are also contained in the Maternity Protection Act *(Mutterschutzgesetz – MuSchG)*. It applies to all pregnant and breastfeeding women who are in an employment relationship. The woman’s employment must be in the Federal Republic of Germany or the employment must be subject to German law. A woman within the meaning of the Maternity Protection Act is any

person who is pregnant, has given birth or is breastfeeding, regardless of the gender stated in their birth certificate. Neither nationality nor marital status plays a role.

Regardless of their employment relationship, according so Section 1 (2) of the Maternity Protection Act, the Act also applies to:

- women in company-based vocational training and interns within the meaning of Section 26 of the Vocational Training Act *(Berufsbildungsgesetz – BBiG)*,
- women with disabilities who are employed in a workshop for persons with disabilities,
- women who work as development aid workers within the meaning of the Development Aid Workers Act *(Entwicklungshelfer-Gesetz – EhfG)*, but with the proviso that Sections 18 to 22 of the Maternity Protection Act do not apply to them,
- women who work as volunteers within the meaning of the Youth Volunteer Services Act *(Jugendfreiwilligendienstegesetz – JFDG)* or the Federal Volunteer Services Act *(Bundesfreiwilligendienstgesetz – BFDG)*,
- women who work as members of a religious order, deaconesses or members of a similar community in a permanent post or under a contract for services, including during their non-school training in that community,
- women who work from home and those deemed equivalent within the meaning of Section 1 (1)(2) of the Home Work Act *(Heimarbeitsgesetz – HAG)*, insofar as they work on the piece, but with the proviso that Sections 10 and 14 of the Maternity Protection Act do not apply to them and Section 9 (1) to (5) applies to them accordingly, and
- schoolchildren and students, insofar as the training institution stipulates the place, time and course of the training event, or who are completing a mandatory internship as part of their school or university education, but with the proviso that Sections 17 to 24 of the Maternity Protection Act do not apply to them.

The Maternity Protection Act protects the health of women and their children at their place of work, training or study during pregnancy, after childbirth and while breastfeeding. The Maternity Protection Act protects women in particular during the period immediately before and after childbirth. The protection periods generally begin six weeks before the birth and end, as a rule, eight weeks after the birth. In the case of premature births for medical reasons, multiple births and, upon request, the birth of a child with a disability, the protection periods end twelve weeks after the birth. During this time, it is generally assumed that the woman can no longer pursue her professional activity.

But even before a pregnancy is reported, the employer must also assess the hazards to which a pregnant or breastfeeding woman or her child is or may be exposed as part of the general occupational safety and health assessment of the working conditions. In addition, the employer must determine whether protective measures under maternity protection law are necessary. Interested parties can obtain information from the employer at any time

about activities relevant to maternity protection in the context of their employment. This makes it possible to learn about hazards as a precaution, which can be particularly significant in the first three months of a pregnancy.

In companies and administrations where more than three women are regularly employed, the employer must display or post a copy of the Maternity Protection Act in a suitable place for inspection.

Another important component of maternity protection is the regulations of the Maternity Protection Act on occupational safety and health (Sections 9 to 15). The employer must organise the pregnant or breastfeeding woman's work and her workplace in such a way that she and her child are adequately protected from health hazards. If the employer identifies unreasonable hazards for her or her child, he must first attempt to reorganise the working conditions at her workplace in such a way that these hazards are eliminated. If this cannot be achieved by reorganising her working conditions, or if such reorganisation cannot reasonably be expected due to the demonstrably disproportionate effort involved, the employer must transfer her to another suitable job, provided that the employer can provide such a job and that this job is reasonable for the employee.

Finally, at the company level, the works council has information, consultation and hearing rights under the German Works Constitution Act *(Betriebsverfassungsgesetz – BetrVG)* in connection with occupational safety and health, as well as enforceable co-determination rights. The works council has a general duty to monitor that the accident prevention regulations in favour of employees are implemented (Section 80 (1) no. 1 of the Works Constitution Act) and it has to promote occupational safety and health measures (Section 80 (1) no. 9 of the Works Constitution Act). Section 89 of the Works Constitution Act specifically standardises an obligation and a right to support the authorities responsible for occupational safety and health, the statutory accident insurance institutions and other relevant bodies. In addition, this regulation stipulates that the employer and the aforementioned bodies are obliged to involve the works council in particular in all inspections and matters related to occupational safety or health or accident prevention. The works council also participates in meetings with safety officers and must be consulted in the event of accident reports, investigations, inspections and meetings relating to occupational safety. Finally, the works council has co-determination rights insofar as the regulations on accident prevention and health protection provide a framework that can and must be filled in by the parties to the agreement.

Last but not least, in accordance with Section 20b of Book V of the Social Code *(Sozialgesetzbuch Fünftes Buch – Gesetzliche Krankenversicherung – SGB V)* regarding workplace health promotion, the statutory health insurance supports the establishment and consolidation of health-promoting structures with benefits regarding the promotion of

health in companies. In performing these tasks, the health insurance funds work together with the responsible accident insurance institution and with the authorities of the Länder responsible for occupational safety and health. Statutory health insurance is obliged to spend at least EUR 266 million in benefits regarding the promotion of health in companies per year.

The Federal Government issues an annual report on "Safety and Health at Work" in collaboration with the Federal Institute for Occupational Safety and Health (*Bundesanstalt für Arbeitsschutz und Arbeitsmedizin – BAuA*). Once it has been published, this report is made available on the internet (www.baua.de/suga).

ii. Self-governing OSH of the Statutory Accident Insurance

The statutory occupational accident insurance *(Gesetzliche Unfallversicherung – GUV)* institutions are the second player in the so-called "dual occupational safety and health system" alongside the state occupational safety and health authorities.

The occupational accident insurance institutions are part of the German social security system and are organised in the form of public law corporations with self-government. Occupational accident insurance institutions are the institutions for statutory accident insurance and prevention *(Berufsgenossenschaften)*, the accident insurance funds of the public sector and the agricultural institutions for statutory accident insurance and prevention. All companies, businesses and administrations are required to be members of the statutory occupational accident insurance system, so that all employees in Germany enjoy insurance protection for accidents at work and occupational diseases. As a rule, the statutory occupational accident insurance, and thus also insurance benefits provided in the case of accidents at work or occupational diseases, are financed from employers' contributions alone.

According to Book VII of the Social Code – Statutory Accident Insurance *(Sozialgesetzbuch Siebtes Buch – Gesetzliche Unfallversicherung – SGB VII)*, the statutory occupational accident insurance institutions are obliged to take all appropriate measures to prevent occupational accidents, occupational diseases and work-related health hazards, and to ensure effective first aid, thus to pursue prevention by all appropriate means (Section 1 no. 1 and Section 14 (1) sentence 1 of Book VII of the Social Code). This prevention mandate of the accident insurance providers, as enshrined in Book VII of the Social Code, is inextricably linked with the further mandate of rehabilitation and compensation after occupational accidents and diseases.

The prevention mandate facilitates a very broad spectrum of prevention measures. To achieve these goals, the occupational accident insurance institutions are authorised, for

example, to issue their own statutes in the form of accident prevention regulations *(Unfallverhütungsvorschriften – UVV)*, which the employers and employees covered by the occupational accident insurance institutions are bound to. Particular attention should be drawn here to Accident Prevention Regulation No. 1 of the German Statutory Accident Insurance *(DGUV Vorschrift 1)*. This Regulation No. 1 supplements state occupational safety and health law and connects the two legal systems with each other, so that in this way state occupational safety and health and occupational safety and health provided by the occupational accident insurance are closely linked and complement and reinforce each other. In legal terms, this is done by Section 2 (1) of Regulation No. 1 of the German Statutory Accident Insurance: accordingly, employers are obliged to observe both the accident prevention regulations and state occupational safety and health law in their prevention measures. State law thus also becomes part of Regulation No. 1 of the German Statutory Accident Insurance via this "detour". It is important to note that the state regulations according to Section 2 (1) sentence 3 of Regulation No. 1 of the German Statutory Accident Insurance not only apply to employees according to the Occupational Safety and Health Act (see above, under subsection i., pp. 3 et seq.), but also to the protection of all insured persons, even if they are not employees within the meaning of the Occupational Safety and Health Act.

The statutory occupational accident insurance also regularly conducts campaigns to support the achievement of prevention goals. During these campaigns, public relations work and prevention services are focused on certain key areas. Prevention campaigns are designed to help reduce the number of accidents, occupational illnesses and work-related illnesses in the medium and long term.

iii. OSH authorities of the Federal States and enforcement of OSH

In Germany, the Federal States *(Länder)* are responsible for occupational safety and health, alongside the accident insurance institutions. They have to monitor companies and advise them on how to improve occupational safety and health. The monitoring of compliance with the public-law provisions of occupational safety and health (see above, under subsection i., pp. 3 et seq.) is carried out by the responsible occupational safety and health authorities of the Länder (Section 21 (1) of the Occupational Safety and Health Act in conjunction with Article 83 and Article 84 (1) of the German Basic Law *[Grundgesetz – GG]*). According to Section 51 (1) of the Act on the Protection of Young People at Work *(Jugendarbeitsschutzgesetz – JArbSchG)*, this also applies to monitoring according to the Act on the Protection of Young People at Work.

The powers of the labour inspectors in enforcing the occupational safety and health laws are set out in detail in Section 22 of the Occupational Safety and Health Act: according to

paragraph 2, the persons commissioned with the monitoring are authorised to enter, inspect and examine business premises and operating rooms during operating and working hours, as well as to inspect the business documents of the person required to provide information. They are also authorised to check plants, work equipment and personal protective equipment, to examine work procedures and processes, to make measurements and, in particular, to identify and investigate work-related health hazards and to determine the causes of an occupational accident, an occupational illness or a damage. They are also entitled to request to be accompanied by the employer or a person authorised by the employer.

Employees who, on the basis of specific indications, are of the opinion that the measures taken and the means provided by the employer are insufficient to ensure safety and health at work may contact the competent authority if the employer does not remedy their complaints in this regard (Section 17 (2) of the Occupational Safety and Health Act).

Violations of the OSH regulations can be punished as administrative offences and, if certain aggravating circumstances arise, e.g. if someone deliberately endangers the life or health of another person, they can also be punished as a criminal offence.

iv. Joint German Occupational Safety and Health Strategy

The Act to Modernise the Statutory Accident Insurance *(Unfallversicherungsmodernisierungsgesetz)* led to the mandate for a Joint German Occupational Safety and Health (OSH) Strategy *(Gemeinsame Deutsche Arbeitsschutzstrategie – GDA)* being included in the Occupational Safety and Health Act in 2008 and thus enshrined in law. It was found that a manageable, comprehensible and practical set of rules and regulations in the area of safety and health at work is an essential prerequisite for cooperation in the areas of consulting and monitoring companies. The basis for this is the “Guideline Paper for the Reorganisation of the Regulations and Rules in Occupational Safety and Health” *(Leitlinienpapier zur Neuordnung des Vorschriften- und Regelwerks im Arbeitsschutz)*. The guideline paper defines the relationship between state law and the autonomous law of the accident insurance institutions and explains how the two areas of law are coordinated. In the current third period of the Joint German OSH Strategy (2021–2025), the focus is primarily on a coordinated approach to site visits by the state OSH authorities and the accident insurance providers, as well as on data exchange regarding site visits that have taken place. The aim of the coordinated supervisory activities is to achieve improvements in the organisation of occupational safety and health in companies, to promote the implementation of appropriate risk assessments as a holistic process in companies, and to make efficient use of the human resources of both institutions. The exchange of information between the regional occupational safety and health authorities and the accident insurance institutions regarding site visits, which has been mandatory since 2023, also

contributes to this. The fourth period of the Joint German OSH Strategy is currently in the planning stage.

v. Consultation with workers' and employers' organisations

Consultation with workers' and employers' organisations has taken place with the establishment of all national laws regarding occupational health and healthy working conditions.

Moreover, workers' and employers' organisations are significantly involved in the development of the relevant national strategies and regulations.

Furthermore, the Occupational Safety and Health Inspection Act of 2021 established the Committee on Safety and Health at Work *(Ausschuss für Sicherheit und Gesundheit bei der Arbeit – ASGA)* and enshrined it in the Occupational Safety and Health Act. As an advisory body to the Federal Ministry of Labour and Social Affairs, experts from all areas of occupational safety and work, work together in the Committee on Safety and Health at Work to create sub-legislative regulations, for example on topics such as risk assessment, mental stress, efficient and up-to-date instructions, screen work that is carried out independently of time and place outside of workplaces, and the effects of climate change on safety and health at work. The Committee on Safety and Health at Work brings together suitable representatives from public and private employers, trade unions, state authorities, the statutory accident insurance and other suitable persons, particularly from the scientific community, thus ensuring broad consultation and participation of civil society in OSH.

In addition, the accident insurance institutions, the federal government and the Federal States *(Länder)* work closely with the social partners in the area of the Joint German OSH Strategy to shape prevention work in the German OSH system. Occupational safety and health targets are set jointly for a period of three to five years. All Joint German OSH Strategy institutions and other stakeholders, such as the social partners, carry out coordinated actions and measures to achieve these targets. They focus on priority policy areas and implement specifically formulated work programmes in defined fields of action.

The most important body of the Joint German OSH Strategy is the National Occupational Safety and Health Conference *(Nationale Arbeitsschutzkonferenz – NAK)*. The social partners act as advisory members in this body and thus play a fundamental role.

The National Occupational Safety and Health Conference is also supported by an occupational safety and health forum, which usually meets once a year. In addition to the three funding institutions (the Federal Government, the Federal States *[Länder]* and accident insurance institutions), expert representatives of the umbrella organisations of employers and employees also participate in the occupational safety and health forum. The role of the OSH Forum is to ensure the early and active participation of the expert professional

community in the development and updating of the Joint German OSH Strategy and to advise the National Occupational Safety and Health Conference accordingly.

3. Conformity of the German legal framework and practice with the Charter

The dual system of German occupational safety and health described above, supplemented by the continuously updated and implemented Joint German OSH Strategy, has established a system in Germany that legally and effectively guarantees and improves the safety and health of all employees through a preventive and systematic approach to occupational safety and health. In this respect, this system meets the requirements of Article 3 (1) of the RESC.

The pertinent German law, policy and practice includes strategies for making occupational risk prevention an integral aspect of the public authorities' activities at all levels. As Germany makes sure – as has been shown above – that a differentiated assessment of work-related (health) risks is carried out and has introduced of a wide range of preventive measures, which are all closely monitored by an effective public monitoring system of the labour inspectorates of supervisory authorities of the German Länder to maintain standards and ensure they are applied in the workplace practice, Germany complies with the rules set out by the Charter.

Germany's conformity with the Charter is further indicated by Germany having ratified and implemented the ILO Convention No. 187 on the Promotional Framework for Safety and Health at work (2006) and the Directive 89/391/EEC of the European Parliament and of the Council; amended by Directive 2007/30/EC.

Thus, the national legal situation and legal and administrative practice in Germany is in conformity with Article 3 (1) of the RESC.

Article 3 paragraph 4 of the RESC

Progressive Development of Occupational Health Services

With a view to ensuring the effective exercise of the right to safe and healthy working conditions, the Parties undertake, in consultation with employers' and workers' organisations: […]

4. to promote the progressive development of occupational health services for all workers with essentially preventive and advisory functions.

Appendix:

It is understood that for the purposes of this provision the functions, organisation and conditions of operation of these services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

1. Content of Article 3 (4) of the RESC

Article 3 (4) of the RESC obliges the States Parties to the RESC to promote the progressive development of occupational health services with essentially preventive and advisory functions. In the appendix of the Charter it is provided that for the purposes of this provision the function, organisation and conditions of operation of occupational health services shall be determined by national laws or regulations, collective agreements or other means appropriate to national conditions.

Article 3 (4) requires States Parties to promote, in consultation with employers' and workers' organisations, the progressive development of occupational health services *(Betriebsärztlicher Dienste*[1]*)* that are accessible to all workers, in all branches of economic activity and for all enterprises. Any strategy to promote the progressive development of occupational health services must include the full national territory, cover nationals of other States Parties, and not only some branches of activity, major enterprises or especially severe risks, but all types of workers.

2. German legal framework and rules with respect to Article 3 (4) of the RESC

a. Comprehensive implementation of international occupational safety and health standards in German law

Germany is currently in the process of ratifying ILO Convention on Occupational Health and Safety, Convention No. 155 (1981) (see above, under Article 3 paragraph 1, section 2. a., pp. 2).

[1] Also see in this context *Bundestag* document No. 19/20976, p. 51, 59.

Germany has ratified ILO Convention No. 184 (Safety and Health in Agriculture) in 2024, as well as ILO Convention No. 183 (Maternity Protection) in 2021, ILO Convention No. 187 on the Promotional Framework for Safety and Health at Work (2006) in 2010, and ILO Convention No. 161 on Occupational Health Services (1985) in 1994. Germany submitted its last report on ILO Convention No. 161 in 2024.

Furthermore, Germany has transposed Council Directive 89/391/EEC, amended by Directive 2007/30/EC, into national law (see above, under Article 3 paragraph 1, section 2. a., p. 3).

b. The national legal framework and rules

The most important legal bases for occupational health services and therefore for ensuring that the rights under Article 3 (4) of the RESC are guaranteed in Germany are the Occupational Safety Act (in particular Sections 2 to 4), the accident-prevention regulation *(Unfallverhütungsvorschrift – UVV)* "Occupational physicians and occupational safety specialists" (Regulation No. 2 of the German Statutory Accident Insurance, *UVV „Betriebsärzte und Fachkräfte für Arbeitssicherheit" – DGUV Vorschrift 2*), the Occupational Safety and Health Act *(Arbeitsschutzgesetz – ArbSchG)* and the Ordinance on Preventive Occupational Health Care *(Verordnung zur arbeitsmedizinischen Vorsorge – ArbMedVV)*.

i. Occupational Safety Act

The Act on Occupational Physicians, Safety Engineers and Other Occupational Safety Specialists of 12 December 1973 *(Arbeitssicherheitsgesetz – ASiG)* obliges employers to appoint occupational physicians and occupational safety specialists in their companies. Their role is to advise and support the respective employer in fulfilling their obligations with regard to occupational safety and health as well as accident prevention. In addition to accident prevention, the Occupational Safety Act is aimed at ensuring preventive occupational safety and health.

The Occupational Safety Act applies directly in the public sector, but requires a standard of occupational safety and health protection that is equivalent to that of the Occupational Safety Act (Section 16 of the Occupational Safety Act). For the direct federal administrative authorities, the General Administrative Regulation for the Provision of Occupational Health and Safety Services in Federal Authorities and Organisations *(Allgemeine Verwaltungsvorschrift für die betriebsärztliche und sicherheitstechnische Betreuung in den Behörden und Betrieben des Bundes – BsiB-AVwV)* guarantees occupational safety and health equivalent to the Occupational Safety Act. The Federal States *(Länder)* have corresponding regulations for the public sector, which also ensure an equivalent level of protection.

ii. DGUV's accident-prevention regulation "Occupational physicians and occupational safety specialists"

Issued by the of the German Statutory Accident Insurance *(Deutsche Gesetzliche Unfallversicherung – DGUV)*, the accident-prevention regulation "Occupational physicians and occupational safety specialists" (Regulation 2 of the German Statutory Accident Insurance, *DGUV-Unfallverhütungsvorschrift „Betriebsärzte und Fachkräfte für Arbeitssicherheit" – DGUV-Vorschrift 2*) lists details of measures that employers must take to meet their obligations under the Occupational Safety Act.

In accordance with Regulation 2 of the German Statutory Accident Insurance, business owners must appoint occupational physicians and occupational safety specialists in writing to carry out the tasks listed in Sections 3 and 6 of the Occupational Safety Act. Upon request, employers must also provide evidence to the accident insurance provider as to how they have fulfilled this obligation.

Alternatively, employers can also choose a different care model if they are actively involved in the business and there are up to 50 workers.

iii. Occupational Safety and Health Act

In Germany, every worker also has the right to undergo occupational medical examinations and to receive advice and information on a regular basis and free of charge (see Section 3 (2); Section 11 of the Occupational Safety and Health Act, *Arbeitsschutzgesetz – ArbSchG*). The objective of this preventive occupational health care is to recognise and prevent work-related illnesses, including occupational diseases, at an early stage, but also to maintain the employability of workers and to further develop health protection in the workplace.

iv. Ordinance on Preventive Occupational Health Care

The objective of the Ordinance on Preventive Occupational Health Care *(Arbeitsmedizinverordnung – ArbMedVV)* is to recognise and prevent work-related illnesses, including occupational diseases, at an early stage by means of preventive occupational health care measures. Preventive occupational health care is also intended to contribute to the maintenance of employability and the further development of health protection in the workplace.

According to the Ordinance on Preventive Occupational Health Care, the employer must guarantee appropriate preventive occupational health care on the basis of the risk assessment. In doing so, he must observe the provisions of the Ordinance on Preventive Occupational Health Care and take into account the regulations and findings arrived at by the Occupational Medicine Committee and published by the Federal Ministry of Labour and

Social Affairs. When complying with the regulations and findings, it must be assumed that the requirements placed on the employer by the Ordinance on Preventive Occupational Health Care have been fulfilled.

The employer must commission a physician with the provision of preventive occupational health care. Where an occupational physician has been appointed in accordance with the Occupational Safety Act, the employer shall give priority to him or her when commissioning the provision of preventive occupational health care. The physician must be given all the necessary information regarding workplace conditions, in particular the occasion for the preventive occupational health care and the outcome of the risk assessment, and he or she must be allowed access to inspect the workplace.

Preventive occupational health care shall be provided during working hours. Preventive occupational health care shall not be provided in conjunction with examinations which serve to prove fitness for work to meet professional requirements.

v. Act on the Protection of Working Mothers

The Act on the Protection of Working Mothers *(Mutterschutzgesetz – MuSchG)* contains specific provisions for a particularly vulnerable group of people (for details, see above, under Article 3 paragraph 1, section 2. b i., pp. 4 et seq.).

If those affected have any questions about health protection in the workplace, they can also contact the occupational physician for clarification. Where necessary due to the particular situation in an individual case, the occupational physician may suggest a change of workplace for the duration of the pregnancy.

3. Conformity of the German legal framework and practice with the Charter

The progressive development of occupational health services with essentially preventive and advisory functions required by Article 3 (4) of the RESC has been and is being implemented in Germany primarily through the Act on Occupational Physicians, Safety Engineers and other Occupational Safety Specialists of 12 December 1973 *(Arbeitssicherheitsgesetz – ASiG)* as well as Regulation 2 of the German Statutory Accident Insurance *(DGUV Vorschrift 2)* and the Ordinance on Preventive Occupational Health Care *(Arbeitsmedizinverordnung – ArbMedVV)*.

These rules ensure that there is an appropriate number of occupational physicians in the total workforce of all enterprises.

The organisation, implementation and practice of occupational health services in Germany have shown to have effective preventive and advisory functions and contribute to a thorough workplace-related risk assessment, worker health supervision, and assessment of the impact of working conditions on workers' health.

This means that the national legal situation as well as legal and administrative practice is in conformity with Article 3 (4) of the RESC.

Another indication that Germany is compliant with the Charter is that Germany has ratified ILO Convention No. 183 (Maternity Protection) in 2021, ILO Occupational Health Services Convention No. 161 (1985) in 1994, and has transposed Council Directive 89/391/EEC of 12 June 1989 into national law.

Article 10 paragraph 4 of the RESC

Special Measures for the Retraining and Reintegration of the Long-term Unemployed

With a view to ensuring the effective exercise of the right to vocational training, the Parties undertake:

[…]

4. to provide or promote, as necessary, special measures for the retraining and reintegration of the long-term unemployed;

[…].

1. Content of Article 10 (4) of the RESC

Article 10 (4) of the RESC requires the States Parties of the RESC to provide or promote special measures for the retraining and reintegration of the long-term unemployed. The objective stated in the introductory clause of Article 10, according to which this must be guaranteed with a view to ensuring the effective exercise of the right to vocational training, is significant in this regard. Paragraph 4 emphasises that these measures must always be special, i.e. specific, tailored to the group of people affected or particularly effective.

In addition, paragraph 4 contains a necessity *caveat* that can limit or restrict the measures to those that are strictly necessary or should be necessary; the necessity generally refers to the objective, i.e. the measures must be necessary to actually guarantee the effective exercise of the right to vocational training.

The idea behind this new paragraph 4, which has been added to Article 10, is that it is necessary to adopt “special” measures towards retraining and reintegrating the long-term unemployed as their possibilities of re-entering the labour market are particularly few.

Main indicators of compliance by States Parties with Article 10 (4) are:

- the types of training and retraining measures available (without obstacles) on the labour market,
- the number of persons in this type of training,
- the special attention given to young long-term unemployed and
- the impact of measures on reducing long-term unemployment.

Equal treatment with respect to access to training and retraining for the long-term unemployed and retraining for the long-term unemployed must be guaranteed to lawfully resident nationals of other States Parties. Students and trainees who entered the territory with the sole purpose of attending training are not covered by this provision.

2. The German legal framework and rules with respect to Article 10 (4) of the RESC

a. Compliance with standards set by international law

Germany is in compliance with ILO Recommendation No. 176 on Employment Promotion and Protection against Unemployment (1988). This Recommendation emphasises the importance of vocational training as a strategy for promoting full, productive as well as freely chosen employment.

According to Article 2 of the Recommendation, the promotion of full, productive and freely chosen employment by all appropriate means, including through social security, should be a priority objective of national policy. Such means should include, inter alia, employment services, vocational training and vocational guidance.

In addition, Article 4 of the Recommendation recommends offering financial support for those undertaking training, by providing allowances to cover necessary travel, equipment, and other expenses related to training.

Moreover, Article 11 of the Recommendation suggests progressively introducing community service in rural and urban areas, leading to an increase in personnel training available. Germany has not yet been requested to report on the implementation of Recommendation No. 176.

b. The German national legal framework and rules

i. Citizen's Benefit Act

The Citizen's Benefit Act (*Bürgergeld-Gesetz*, Twelfth Act amending Book II of the Social Code and other laws – Introduction of a Citizen's Benefit; *Zwölftes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch und anderer Gesetze – Einführung eines Bürgergeldes*) of 16 December 2022 came into force in two stages – on 1 January 2023 and on 1 July 2023. The Citizen's Benefit Act places greater emphasis than before on the promotion of vocational training and continuing education and training. The aim is to place employable people in need of assistance in sustainable employment and to better utilise their potential. For example, access to funding opportunities has been simplified to allow more people to benefit from them. To this end, the possibility of funding unabridged retraining in accordance with Section 180 (4) of Book III of the Social Code (Book III of the Social Code – Labour Promotion; *Sozialgesetzbuch Drittes Buch – Arbeitsförderung – SGB III*) and access to funded acquisition of basic skills (e.g. reading, maths, IT) in accordance with Section 81 (3a) of Book III of the Social Code have been made more flexible (see below, under subsection iv., pp. 24 et seq.). The further training allowance of EUR 150 per month for qualification-related further training in accordance with Section

87a (2) of Book III of the Social Code and the continuation of the further training premium for successfully completed exams in accordance with Section 87a (1) of Book III of the Social Code have created financial incentives for the participation in further training that leads to a vocational qualification. Publicly-subsidised employment for people at the margins of the labour market in accordance with Section 16i of Book II of the Social Code (Book II of the Social Code – Citizen's Benefit, Basic Income Support for Jobseekers; *Sozialgesetzbuch Zweites Buch – Bürgergeld, Grundsicherung für Arbeitsuchende – SGB II*) was extended for an indefinite period of time as of 1 January 2023 (see below, under following subsection ii.).

ii. Participation Opportunities Act

The Participation Opportunities Act (Tenth Act amending Book II of the Social Code – Creation of New Participation Opportunities for the Long-Term Unemployed on the General and Social Labour Market; *Zehntes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch – Schaffung neuer Teilhabechancen für Langzeitarbeitslose auf dem allgemeinen und sozialen Arbeitsmark, Teilhabechancengesetz – THCG*) came into force on 1 January 2019.

The objective of this Act is to give people who have been unemployed for a very long time fresh prospects on the labour market by improving their employability through intensive support, individual advice and effective promotion. The Act introduced two new support measures into Book II of the Social Code: the "integration of the long-term unemployed" (Section 16e of Book II of the Social Code) on the one hand, and "participation in the labour market" (Section 16i of Book II of the Social Code) on the other.

The first measure towards integration mentioned above, i.e. "integration of the long-term unemployed" in accordance with Section 16e of Book II of the Social Code is aimed at people who have been unemployed for at least two years despite receiving placement support. In the medium and long term, the funding is aimed at strengthening employability and enabling the long-term unemployed to take up unsubsidised work on the general labour market. Wage subsidies are paid to the employer if an employment contract is concluded for a minimum of two years. The subsidy amounts to 75% of the wage (to be taken into account in this context) in the first year of employment and 50% in the second year. This means that German law provides for wage subsidies for employers to employ long-term unemployed people in combination with holistic employment-related support (coaching).

The same is true for the second funding measure, Section 16i of Book II of the Social Code, which was repealed with the Citizen's Benefit Act on 1 January 2023 and contains comprehensive provisions on participation in the labour market: employers can receive wage subsidies for up to five years for the employment of assigned employable persons

entitled to benefits if they establish an employment relationship with this person that is subject to social insurance contributions. During the first two years of funding, subsidies amounting to 100% of wages are granted. People over the age of 25 who have not worked (or have only worked briefly) for at least six years and have received unemployment benefit II or citizen's benefit during this time can be assigned to an employer.

The combination of wage cost subsidies and employment-related support is a key feature of both subsidies under the Participation Opportunities Act. Section 16i (5) of Book II of the Social Code provides for the promotion of continuing vocational education and training:

> *Reasonable periods of necessary continuing education and training or work experience with another employer, for which the employer releases the employee from work while continuing to pay their wages, are eligible for funding. For continuing education and training in accordance with sentence 1, the employer can receive grants totalling up to EUR 3,000 per supported person towards the costs of continuing education and training.*

For the "integration of the long-term unemployed" in accordance with Section 16e of Book II of the Social Code, benefits in accordance with Book II or Book III of the Social Code may also be paid for any continuing education and qualifications in parallel to the subsidised employment.

iii. Other measures for the reintegration of the (long-term) unemployed

Measures for activation and vocational integration in accordance with Section 45 of Book III of the Social Code can support those seeking training, jobseekers threatened by unemployment and the unemployed. The measures can be carried out at an organisation *(Maßnahmen bei einem Träger – MAT)* or with an employer *(Maßnahmen bei einem Träger – MAG)*. Measures carried out by an employer may not exceed a maximum period of six weeks. The maximum duration is twelve weeks for the long-term unemployed or persons in unemployment whose professional integration is particularly difficult due to serious impediment to placement. In general, the content and duration of the measures (both *MAT* and *MAG*) are tailored to the needs of the persons in question. The measures may therefore range from support with the preparation of applications to career guidance. Other possible measures are those tailored towards specific groups of people such as single parents, people supplementing their income or migrants. Measures at an employer can be used to gain practical work experience directly in the primary labour market and to determine one's professional aptitude for the desired job. The funding includes the assumption of reasonable costs for participation, insofar as this is necessary to achieve professional

integration. The funding can also include the assumption of the limited costs of an organisation that offers a strictly performance-based paid job placement service into jobs that are subject to compulsory social insurance.

The Federal Employment Agency *(Bundesagentur für Arbeit – BA)* can use the placement budget in accordance with Section 44 of Book III of the Social Code to provide direct financial support for both job searches and for taking up employment. Funding is possible if a person is unemployed, threatened by unemployment or seeking training and costs need to be covered. The placement budget can be used to reimburse various costs associated with taking up employment, e.g. expenses for applications, travel costs to job interviews or costs for translating and certifying documents.

The following municipal integration services can be provided in accordance with Section 16a of Book II of the Social Code in order to provide holistic and comprehensive care and support for integration into work: care for underage children, debt counselling, psychosocial support and addiction counselling.

Recipients of citizen's benefit who take up either employment subject to social insurance contributions or full-time self-employment with a weekly working time of at least 15 hours can receive back-to-work allowance in accordance with Section 16b of Book II of the Social Code. The amount of the back-to-work allowance varies depending on the individual case, because the size of the claimant's household or the length of unemployment is taken into account in the calculation: the amount is limited to a maximum of 50% of the standard rate of the citizen's benefit and is paid for a maximum of 24 months. The back-to-work allowance is not counted as income towards the citizen's benefit. There is no legal entitlement to this benefit; the local job centres decide at their discretion whether to grant the back-to-work allowance.

According to Section 16c of Book II of the Social Code, recipients of citizen's benefit who take up or are already in full-time self-employment can receive benefits for the integration of the self-employed in the form of loans and grants for the procurement of physical assets. These physical assets must be necessary and appropriate for the self-employment. Grants are limited to an amount of EUR 5,000, but can also be paid out in monthly instalments. Loans may exceed the sum of EUR 5,000. However, the granting of these benefits is linked to the economic viability of the self-employment. Moreover, there is no legal entitlement to this funding.

Work opportunities in accordance with Section 16d of Book II of the Social Code constitute a means of support for (re-)gaining employability by carrying out simple jobs. Work opportunities are aimed at people who are at the margins of the labour market. A combination with other integration services – in particular with a measure for activation and vo-

cational integration in accordance with Section 16 (1) of Book II of the Social Code in conjunction with Section 45 of Book III of the Social Code or with holistic support in accordance with Section 16k of Book II of the Social Code – can be carried out in parallel with a work opportunity.

For certain beneficiaries (the long-term unemployed and beneficiaries under the age of 25 who face serious impediments to placement), educational measures can be funded by way of discretionary support in accordance with Section 16f of Book II of the Social Code that are not part of measures for activation and vocational integration in accordance with Section 16 of Book II of the Social Code in conjunction with Section 45 of Book III of the Social Code or as part of support for continuing vocational training (Section 16 of Book II of the Social Code in conjunction with Sections 81 et seq. of Book III of the Social Code).

Support for young people who are difficult to reach in accordance with Section 16h of Book II of the Social Code enables low-threshold, and often outreach counselling and support services for young people who are not (or no longer) within the reach of the social benefits systems. The aim is to support young people in a difficult life situation and to get them (back) on the path to education, employment promotion measures, training or work. The target group in this context also includes people who have not applied or do not wish to apply for citizen's benefit if the conditions for a claim to such benefit are sufficiently likely to be met or are expected to be met or if there is a basic entitlement to benefits. This integration benefit supplements the existing range of services offered by basic income support for jobseekers at the interface with youth welfare services.

Holistic support (coaching) in accordance with Section 16k of Book II of the Social Code was included in Second Book of the Social Code as a new standard instrument under the Citizen's Benefit Act on 1 July 2023. The aim is to provide people with exactly the support they need to develop and stabilise their employability. Holistic support within the meaning of Section 16k of Book II of the Social Code means that the respective life situation is taken into account as a whole and not only labour market-related issues, but also social and structural aspects are considered. The aim is to encourage participants to actively improve their own life situation. Participation is therefore voluntary throughout and is offered without reference to any legal consequences. Coaching can also take place during the course of the support programme on an outreach basis or, if a job is taken up, as part of the employment process. This also applies to young people looking for and starting an apprenticeship.

The Vocational Training Validation and Digitisation Act *(Berufsbildungsvalidierungs- und Berufsdigitalisierungsgesetz)*, which came into force on 1 August 2024, introduced a new assessment procedure in Sections 50b et seq. of the Vocational Training Act *(Berufsbildungsgesetz – BBiG)* and in Sections 41b et seq. of the Crafts Code *(Handwerksordnung –*

HwO). In this assessment procedure, the Chamber of Crafts *(Handwerkskammer)* or other competent body determines an applicant's individual professional competence upon application on the basis of a recognised vocational occupation (reference occupation) designated by the applicant. It also certifies individual professional competence if this is largely or fully comparable with the professional competence required to practise the reference occupation. This serves the purpose of making substantial vocational skills that have been acquired independently of a formal vocational training qualification more visible and more usable, thereby honouring professional biographies and creating inroads into the vocational training system for this group of people.

The assessment procedure is also suitable for realising existing potential with regard to the reintegration of the long-term unemployed: in cases where long-term unemployment is associated with the lack of a formal vocational training qualification and the presence of informally acquired vocational skills, completing an assessment procedure can improve a person's chances on the labour market. An official public certificate of comparable professional competence can serve as proof to potential employers that someone is qualified to carry out a specific professional activity. In addition, such a certificate may open up the possibility of obtaining a higher-level vocational qualification and thus even better prospects on the labour market.

iv. Other (financial) support in accordance with Book III / Book II of the Social Code for continuing education and qualifications

The Federal Employment Agency *(Bundesagentur für Arbeit – BA)* has a comprehensive range of funding instruments at its disposal for the promotion of continuing vocational education in accordance with Book III of the Social Code for the unemployed, for workers and for people in receipt of citizen's benefit. If the respective eligibility requirements are met, costs for continuing education and training such as course costs, travel costs, costs for accommodation and meals away from home and childcare costs can be covered and wage subsidies paid to employers.

According to Section 81 (2) of Book III of the Social Code, low-skilled workers have a basic legal entitlement to support for continuing vocational education with the aim of obtaining a qualification. Funding is also available for those wishing to complete a lower secondary school certificate or a comparable school certificate if the requirements set out in Section 81 (3) of Book III of the Social Code are met.

In addition, the acquisition of basic skills can be promoted by covering the costs of further training in order to compensate for deficits relevant to the labour market, particularly in the areas of mathematics, writing, reading and information and communication technologies (ICT).

For persons in unemployment who are entitled to unemployment benefit under Book III of the Social Code, this will continue to be paid during the continuing education and training programme in the form of unemployment benefit for continuing vocational education and training. Only half a month of unemployment benefit entitlement is deemed to have been used up for each month of continuing education and training. Beneficiaries entitled to citizen's benefit under Book II of the Social Code continue to receive citizen's benefit while they participate in education and training programmes.

Participants in qualification-related continuing education and training programmes that lead to a qualification in a skilled occupation for which a training period of at least two years is stipulated by federal law or by the law of the Länder will receive a continuing education and training bonus of EUR 1,000 if they pass the mid-course examination and a continuing education and training bonus of EUR 1,500 if they pass the final examination.

Recipients of unemployment benefit or citizen's benefit will receive an additional monthly allowance of EUR 150 (continuing education and training benefit: *Weiterbildungsgeld*) if they take part in qualification-related continuing education and training programmes that lead to a qualification in a skilled occupation for which a training period of at least two years is stipulated by federal law or by the law of the Federal States *(Länder)*.

v. Scientific evaluation of the effects of active labour promotion

In Germany, labour market and occupational research is an ongoing task enshrined in the law (Section 282 of Book III of the Social Code, Section 55 of Book II of the Social Code), which is carried out by the Institute for Employment Research *(Institut für Arbeitsmarkt- und Berufsforschung – IAB)*. The Institute for Employment Research is responsible for conducting continuous and long-term research on the development of the labour market, including the investigation of the effects of active employment promotion. Publications on the subject of "Labour market policy" and "Education before and during working life" can be found under the following links:

- https://iab.de/en/topics/labour-market-policy/publications-on-the-topic-labour-market-policy/
- https://iab.de/en/topics/education-and-the-labour-market/publications-on-the-topic-education-and-the-labour-market/.

3. Conformity of the German legal framework and practice with the Charter

Higher qualifications and continuing education and training in particular are two key building blocks for preventing unemployment – including long-term unemployment – and for countering the shortage of skilled labour. For this reason, German law and practice already take a preventive approach to this challenge; the first measures therefore begin with vocational training: the measure deployed by the Federal Government to counter a lack of

initial vocational training is known as the vocational training guarantee. This is meant to give all young people access to fully-qualified vocational training, not least to avoid (long-term) unemployment at a later stage. Early career guidance is also strengthened: employment agencies and job centres shall be put in a position to provide more support with career guidance and vocational training.

In addition, structural change and advancing digitalisation and decarbonisation are changing work processes, jobs and job profiles. In view of the largely increasing skill levels required of employees, continuous and preventive education and training is important. The Federal Employment Agency has a comprehensive range of funding instruments at its disposal to promote continuing vocational education and training, both for the unemployed and for workers.

This comprehensive and dense mix of legal, counselling, training and financial measures with multiplier effects constitutes an effective bundle of instruments to ensure and promote the retraining and reintegration of the (long-term) unemployed. This means that the situation in Germany is in conformity with the requirements of Article 10 (4) of the RESC.

Article 25 of the RESC

The right of workers to the protection of their claims in the event of the insolvency of their employer

With a view to ensuring the effective exercise of the right of workers to the protection of their claims in the event of the insolvency of their employer, the Parties undertake to provide that workers' claims arising from contracts of employment or employment relationships be guaranteed by a guarantee institution or by any other effective form of protection.

Appendix:

1. It is understood that the competent national authority may, by way of exemption and after consulting organisations of employers and workers, exclude certain categories of workers from the protection provided in this provision by reason of the special nature of their employment relationship.

2. It is understood that the definition of the term "insolvency" must be determined by national law and practice.

3. The workers' claims covered by this provision shall include at least:

- *a. the workers' claims for wages relating to a prescribed period, which shall not be less than three months under privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment;*
- *b. the workers' claims for holiday pay due as a result of work performed during the year in which the insolvency or the termination of employment occurred;*
- *c. the workers' claims for amounts due in respect of other types of paid absence relating to a prescribed period, which shall not be less than three months under a privilege system and eight weeks under a guarantee system, prior to the insolvency or the termination of the employment.*

4. National laws or regulations may limit the protection of workers' claims to a prescribed amount, which shall be of a socially acceptable level.

1. Content of Article 25 of the RESC

Article 25 of the RESC, which only became part of the European Social Charter through the revision, guarantees employees an individual right to protection in the event of employer insolvency and was accepted by Germany as binding without reservations.

Article 25 corresponds mutatis mutandis to ILO Convention No. 173 on the protection of workers' claims in the event of the insolvency of their employer of 1992 and is based on Directive 80/987/EEC on the protection of employees in the event of the insolvency of their employer, which has since been replaced by Directive 2008/94/EC.

In the event of the insolvency of their employer, workers' claims must be guaranteed by a guarantee institution or by any other effective form of protection. Article 25, therefore, provides not only for the possibility of a guarantee institution, but opens up any other form of protection. Even the possibility of a combination of the existence of privileges and of an organisation to guarantee the payment of salaries would not be excluded by Article 25. In fact, a guarantee institution alone ensures the protection of workers as it secures the payment of salaries owed provided that they are superior to the assets of the enterprise. The establishment of such an institution, which will take over the rights of the workers to whom it has paid an advance, is perfectly compatible with a system of privileges. Furthermore, Article 25 does not require the existence of a specific guarantee institution.

The personal scope of Article 25 includes all workers. However, in accordance with the first paragraph of the Appendix to the RESC, the contracting states are permitted to exclude certain groups/categories of employees from protection due to the special nature of their employment relationship.

The second paragraph of the appendix states that the term "insolvency" must be determined by national law and practice. This term shall include situations in which proceedings have been opened relating to an employer's assets with a view to the collective reimbursement of his creditors, but may also apply to other situations in which workers' claims cannot be paid by reason of the financial situation of the employer.

The third paragraph of the appendix sets out the minimum requirement according to which claims shall be protected, especially the prescribed period, which shall not be less than three months claims for wages under a privilege system and eight weeks under a guarantee system, prior to the insolvency or to the termination of employment; and which shall also include workers' claims for holiday pay and for other types of paid absence, like sick leave.

Finally, the fourth paragraph of the appendix provides that national laws or regulations may limit the protection of workers' claims to a prescribed amount, which must nevertheless be of a socially acceptable level.

It is noteworthy that Article 25 – albeit being rather short and consisting of only very few lines – emphasises twice the effectiveness of protection so that special attention must be paid to this aspect.

2. The German legal framework and rules with respect to Article 25 of the RESC

a. Implementation and compliance with international law and rules

Germany has not ratified ILO Convention No. 173 on the protection of workers' claims in the event of the insolvency of their employer. Nevertheless, the adequate protection of workers' claims in the interest of social justice enshrined in this ILO Convention is ensured in German law and practice through insolvency allowance *(Insolvenzgeld)* and the protection of occupational pensions by the Act to Improve Occupational Pensions *(Betriebsrentengesetz – BetrAVG)*. As a guarantee institution within the meaning of ILO Convention No. 173, the Federal Employment Agency grants employees an insolvency allowance in the event of their employer's insolvency (see below, subsection b. iv., pp. 30 et seq.).

Directive 80/987/EEC and the subsequent Directive 2008/94/EC were transposed into national law by the Act Accompanying the Budget of 1983 *(Haushaltsbegleitgesetz 1983)* and the Act on the Creation of Sections 165 to 172 of the Social Code Book III (Act on the Improvement of Labour Market Integration Opportunities of 20 December 2011, *Gesetz zur Verbesserung der Eingliederungschancen am Arbeitsmarkt vom 20. Dezember 2011*).

b. National legal framework and rules

i. Employee claims as insolvency claims pursuant to Sections 38, 174, 181 of the Insolvency Code

Justified and due claims that an employee has against the debtor at the time insolvency proceedings are opened are insolvency claims in accordance with Section 38 of the Insolvency Code *(Insolvenzordnung – InsO).* Employees' claims to remuneration from the period prior to the opening of insolvency proceedings therefore constitute insolvency claims: If the employment relationship is terminated before insolvency proceedings are opened, for example, because the employee was laid off as part of the closure of a business, and the insolvency application is then filed, the employees are insolvency creditors with regard to their outstanding wage claims or wage arrears at the time the proceedings are opened.

Unlike preferential creditors (see below, under the following subsection ii.), insolvency creditors do not have priority over other creditors, but neither do they have a subordinate status.

ii. Employee claims as preferential liabilities pursuant to Sections 53 and 55 of the Insolvency Code

However, claims for remuneration from the period after the opening of insolvency proceedings generally constitute preferential liabilities *(Masseverbindlichkeiten)* pursuant to Section 55 (1) no. 2 of the Insolvency Code. Such claims may arise as employee claims in

insolvency proceedings. Particularly, if the insolvency administrator continues the business, entrusts individual employees with winding-up tasks or if the employment relationships continue until the end of the notice period in accordance with Section 113 of the Insolvency Code.

Under the Insolvency Code (Section 108 of the Insolvency Code), the employment relationship continues to exist at the expense of the insolvency estate. Claims arising from these employment relationships – such as wage, salary or remuneration claims arising after the opening of insolvency proceedings – are therefore preferential liabilities and must be paid directly from the insolvency estate in accordance with Section 53 in conjunction with Section 55 (1) no. 2 of the Insolvency Code and are not subject to the distribution procedure applicable to the claims of the insolvency creditors.

Special payments related solely to loyalty to the company which are due after the opening of insolvency proceedings are also preferential liabilities (see judgement of the Federal Labour Court *[Bundesarbeitsgericht – BAG]* of 23 March 2017 – 6 AZR 264/16).

Pursuant to Section 55 (2) of the Insolvency Code, liabilities established by a provisional insolvency administrator with authority to dispose of the debtor's assets are also treated as preferential liabilities after the proceedings have been opened: In the case of liabilities arising from an employment contract, however, this only applies if the provisional administrator has utilised the employee's work for the assets under his or her management. However, if the preliminary administrator releases the employee from work, the employee's wage claims are merely insolvency claims.

iii. Claim to damages of an employee dismissed during insolvency proceedings

If the insolvency administrator dismisses an employee in accordance with the simplified and shortened notice period of three months with effect at the end of the month according to Section 113 (1) of the Insolvency Code, an employee (continuing to work for the debtor company until the end of the notice period) can compensate a potential disadvantage in the form of unpaid remuneration resulting from the shortened notice period applicable during insolvency proceedings compared to the original notice period agreed in the employment contract by demanding damages in accordance with Section 113 (1) sentence 3 of the Insolvency Code on account of the premature termination of the employment relationship. This claim to damages can be asserted for the period from the actual termination of the employment relationship on grounds of the insolvency notice until the (notional) expiry of the original notice period that would have been applicable without insolvency proceedings if the notice had been given at the same time as the insolvency notice under Section 113 of the Insolvency Code. The employee is ultimately to be treated as he or she would have been if the employment relationship had been subject to the normal contractual pro-

visions without the insolvency proceedings. This claim to damages can be filed as an insolvency claim, but it does not arise if employees terminate the employment relationship themselves or conclude an agreement to terminate their contract.

iv. Insolvency allowance

In Germany, the right of employees to protection of their claims in the event of their employer's insolvency is guaranteed primarily by the payment of the insolvency allowance *(Insolvenzgeld)*.

The rules on insolvency allowances implement Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer (OJ 2008 L 283, p. 36) of 22 October 2008. This directive obliges the member states to create guarantee institutions to protect employees in the event of their employer's insolvency. It contains provisions that provide a minimum level of protection in order to guarantee the payment of outstanding employee claims.

In the event of an insolvency, the Federal Employment Agency pays the salary in place of the employer for the three months of the employment relationship prior to the insolvency event. Under Section 165 (1) of Book III of the Social Code – Labour Promotion *(Sozialgesetzbuch Drittes Buch – Arbeitsförderung – SGB III)*, employees are entitled to an insolvency allowance if they:

- were employed in Germany and
- in the event of an insolvency
- still have claims to remuneration against their employer
- for the three months of employment preceding the insolvency.

Employees who were employed in Germany are entitled to an insolvency allowance. Minijobbers, interns, students, pupils and pensioners can also claim an insolvency allowance. Apprentices and employees who were seconded abroad temporarily are also covered.

Claims against employers for whose assets insolvency proceedings are inadmissible do not constitute a direct entitlement to an insolvency allowance. However, this only applies to the Federation, the Federal States *(Länder)* and the legal entities under public law that are subject to the supervision of a Land under the law of the Land and for which insolvency proceedings are inadmissible (Section 12 of the Insolvency Code). In the latter case, Section 12 (2) of the Insolvency Code guarantees employees an entitlement to an insolvency allowance analogous to the provisions contained in Sections 165 et seq. of the SGB III. In the former case, there is no need for protection, since a local authority cannot become insolvent. For this reason, employees cannot give up their claims in the event of their employer's insolvency in the first place. The state is expected to repay its liabilities using administrative measures such as increasing taxes and levies, if necessary. There is

also no actual risk of insolvency in the case of legal entities under public law such as churches and public broadcasters. For churches, protection is provided by Article 140 of the Basic Law *(Grundgesetz – GG)*, i.e. the German Federal Constitution, in conjunction with Article 137 of the Constitution of the former Weimar Republic. Article 5 of the Basic Law protects public broadcasters.

The opening of insolvency proceedings against the employer's assets is considered an insolvency event (Section 165 (1) sentence 2 no. 1 of the SGB III). In this case, this event is the decision of the insolvency court to open the proceedings. In addition, there are other kinds of insolvency events: the rejection of the application for the opening of insolvency proceedings due to a lack of estate, or the complete termination of business activities in Germany, if an application for the opening of insolvency proceedings was not filed and it is obvious that insolvency proceedings are out of the question due to a lack of estate. These events also trigger an entitlement to an insolvency allowance (Section 165 (1) sentence 2 nos. 2 and 3 of the SGB III). These three insolvency events and the associated provisions in the Insolvency Code (in particular Section 17 (2) of the Insolvency Code) signal the employer's inability to make his payments, which includes in particular the inability to fulfil his obligation to pay wages and social security contributions. This is also in line with Articles 3 and 4 of Directive 2008/94/EC. Foreign insolvency events can also give rise to an entitlement to an insolvency allowance (Section 165 (1) sentence 3 of the SGB III).

Insolvency allowances are only paid for wages that are still outstanding for the last three months of the employment relationship before the insolvency event. If the employment relationship ended before the insolvency event, the insolvency allowance period covers the last three months of the employment relationship. In the event leave of absence is granted, it is not the last working day that is decisive for determining the insolvency allowance period, but also the (later) end of the employment relationship.

Entitlements to remuneration include all entitlements to remuneration for the employment relationship (Section 165 (1) sentence 1 of the SGB III). In addition to the wage and salary entitlements earned during the insolvency allowance period (including continued payment of wages in the event of illness and remuneration for leave of absence taken), these are all other payments to which the employee is entitled, e.g: pay for overtime, supplements for work on Sundays, public holidays and at night, hazard, travelling and dirty-work supplements, allowances for business travel, commuting allowances for journeys from home to work, travel allowances or capital-forming benefits. It also includes special payments such as Christmas bonuses, additional holiday pay, anniversary bonuses, marriage and birth allowances and employer top-ups for maternity and sick pay.

The limitation of the insolvency allowance period to three months generally means that special payments for which there is a pro rata entitlement under the employment contract

if the employee leaves the company during the year (e.g. Christmas bonus, 13th or additional monthly salary or additional holiday pay that is only due on certain dates of the year) are only taken into account on a pro rata basis with a maximum of 3/12 of the total benefit.

The insolvency allowance amounts to the net pay that employees receive when the gross pay is reduced by statutory deductions (Section 167 (1) of the SGB III). The maximum gross pay taken into account for this purpose is the monthly contribution assessment ceiling for unemployment insurance. The term gross pay includes all remuneration components: those subject to tax and social security contributions and those exempt from tax and social security contributions. The contribution assessment ceiling is a figure that is determined annually by the Federal Ministry of Labour and Social Affairs: it is the amount of pay subject to social security contributions up to which contributions for the various branches of social insurance are calculated and deducted. In 2024, the monthly contribution assessment ceiling was EUR 5,175. This maximum amount excludes top salaries from coverage and is in line with Directive 2008/94/EC. Article 4 (3) of the Directive allows member states to set ceilings on the payments compatible with the social objective of the Directive. In order to determine an employee's net pay, wage tax, the solidarity surcharge and, if applicable, church tax are deducted, taking into account allowances in accordance with the taxation factors in each individual case.

In the cases defined by Section 167 (2) of the SGB III, a notional tax is deducted for reasons of equal treatment. In line with no. 1 of Section 167 (2) of the SGB III, this applies to employees who are subject to income tax in Germany without taxes being levied through deduction from the gross remuneration (e.g. partners in a general partnership *[Offene Handelsgesellschaft – OHG]* who were exceptionally also employed as employees of the OHG and whose remuneration is taxed as income from a commercial undertaking). No. 2 of Section 167 (2) of the SGB III covers cross-border commuters who have their residence abroad and who are exempt from tax liability in Germany under a double taxation agreement and do not have to pay tax on their insolvency allowance abroad.

In addition to the insolvency allowance paid to the employee, the Federal Employment Agency also pays the outstanding compulsory contributions to statutory health, pension and long-term care insurance as well as the contributions to employment promotion (Section 175 of the SGB III) for the insolvency allowance period at the request of the responsible collection agency (health insurance fund).

v. <u>Insolvency allowance levy, Ordinance on the Costs of Insolvency Allowance and Ordinance on the Rate of the Insolvency Allowance</u>

Under Section 358 of the SGB III, the insolvency allowance as described above is financed by a purely employer-financed monthly levy. The Federation, the Federal States *(Länder)*, the municipalities as well as the legal entities, foundations and institutions under

public law whose assets cannot become subject to insolvency proceedings do not have to pay this levy. The same goes for legal entities under public law for which the federation, a Federal State (*Land*) or a municipality ensures solvency by law as the guarantors cannot become subject to insolvency proceedings.

Private households are also not included in the levy as regards employment that falls under Section 8a of Book IV of the Social Code *(Sozialgesetzbuch Viertes Buch – Gemeinsame Vorschriften für die Sozialversicherung – SGB IV)*, i.e. marginal employment in a private household. These are activities that are usually performed by members of the private household.

The insolvency allowance levy is a percentage of the salary used for calculating contributions to the statutory pension insurance system *(Umlagesatz)*. In accordance with Section 359 (1) sentence 2 of the SGB III, it must be paid to the collection bodies together with the total social security contributions. The levy is used to cover the expenses for the insolvency allowance, including the total social security contribution paid by the Federal Employment Agency, the administrative costs and the flat-rate costs for collecting the levy and for auditing employers (Section 358 (3) of the SGB III). The lump sum to cover the costs of collecting the levy and auditing employers was determined by the Federal Ministry of Labour and Social Affairs in accordance with Section 361 no. 2 of the SGB III in the Ordinance on the Costs of the Insolvency Allowance *(Insolvenzgeld-Kosten-Verordnung – InsoKostV)* after consultation of the bodies concerned.

The statutory rate of the levy is regulated in Section 360 of the SGB III. It amounts to 0.15 percent. In agreement with the Federal Ministry of Finance and the Federal Ministry of Economic Affairs and Climate Action, the Federal Ministry of Labour and Social Affairs may set a different levy rate for a calendar year by ordinance (Ordinance on the Rate of the Insolvency Allowance, *Insolvenzgeldumlagesatzverordnung – InsoGeldFestV*). This ordinance requires the approval of the Federal Council *(Bundesrat),* the representation of the German Federal States at the federal level.

The levy rate is set in a counter-cyclical way: The idea is to build up reserves for a crisis in good economic years. At the same time, employers are not to be burdened with a contribution rate that exceeds the medium-term need for insolvency allowance expenses. The levy rate is therefore determined according to the amount of the reserve built up from the insolvency levy, taking into account the economic situation (Section 361 no. 1 of the SGB III). If the current amount of the reserve formed from surpluses exceeds the average expenses for the insolvency allowance of the last five calendar years, the contribution rate is to be reduced. A higher levy rate is to be charged if the deficit exceeds the average annual expenses of the previous five calendar years. The Federal Ministry of Labour and Social Affairs has already made use of this authorisation several times, most recently for the

year 2024: Under the 2024 Ordinance on the Rate of the Insolvency Allowance *(Insolvenzgeldumlagesatzverordnung 2024 – InsoGeldFestV 2024),* the contribution rate was 0.06 percent.

vi. Insolvency protection for social insurance contributions

Even in the event of insolvency, the employees concerned remain covered by statutory health, long-term care, pension and unemployment insurance in line with the legal requirements applicable prior to the insolvency, as long as their employment relationship formally continues. As a result, the benefit entitlements arising from this social insurance coverage continue to exist.

Accordingly, the social insurance institutions have a claim against the insolvent employer for payment of the total social insurance contributions in accordance with Section 22 (1) sentence 1 of Book IV of the Social Code *(Sozialgesetzbuch Viertes Buch – Gemeinsame Vorschriften für die Sozialversicherung – SGB IV)* irrespective of whether the employee concerned was released from work or whether the remuneration was still paid. The employee is under no subsidiary obligation to pay these contributions. If the total social insurance contributions on wages have not yet been paid for the last three months prior to the insolvency event, the employment agency will instead pay the contributions on request in accordance with Section 175 (1) of the SGB III (see above, under subsection iv., p. 31). This does not include late payment penalties that would have to be paid as a result of breaches of duty by the employer or interest on any deferred contributions.

vii. Insolvency protection of working time credits

Working time credits (Sections 7b et seq. of the SGB IV) are a form of working time account designed for a longer period of leave from work. The employee's remuneration or working time is saved in the form of working time credit and paid out during a period of leave during which the employee continues to benefit from social security coverage.

In order to ensure that accumulated working time credit is not lost in the event of the employer's insolvency, the employer is obliged to protect the working time credit against insolvency, if the employer can in theory become subject to insolvency proceedings and if the working time credit exceeds a certain amount (Section 7e (1) of the SGB IV).

As regards insolvency protection, the law distinguishes between unsuitable and suitable measures: Suitable options include trusteeship models, pledges under the law of obligations or external guarantees and deposit insurance with adequate protection against termination (Section 7e (2) of the SGB IV). Mere reserves on the balance sheet and internal group obligations in the form of guarantees, joint and several liability or letters of support are unsuitable. The protection they offer is not considered to be sufficient (Section 7e (3) of the SGB IV). The pension insurance institutions carry out regular audits to check

whether the insolvency protection of the working time credits is sufficient (Section 7e (6) of the SGB IV).

viii. Employers' notification obligations

Employers who employ a person in Germany must also register this person with the social insurance institutions at the time of the first payslip at the latest. The notification procedure in accordance with Section 28a of the SGB IV covers all notification matters regardless of the type of employment and regardless of whether there is an obligation to pay contributions to one or more social insurance institutions.

Section 99 of SGB IV supplements this rule for the area of accident insurance as far as the obligation to contribute to statutory accident insurance is concerned. For special employment relationships, e.g. for employees who are insured by a professional pension scheme *(Berufständisches Versorgungswerk)* within the meaning of Section 6 (1) sentence 1 no. 1 of the SGB VI, the notification obligations under SGB IV also apply. Exceptions only apply to employees who are not subject to compulsory insurance in any of the social insurance branches.

3. Conformity of the German legal framework and practice with the Charter

Thanks to the insolvency law system and the insolvency allowance rules, Germany fulfils the requirements set out in Article 25 of the RESC as employees' claims arising from employment contracts or employment relationships are protected by a guarantee institution under German law and in practice.

The conditions agreed in the Appendix to the Revised Charter are also taken into account: All employees are covered by the protection mechanisms. The only exception are employees of employers who cannot become insolvent such as the Federation or a Federal State *(Land).* However, there is no need for protection in these cases as explained above.

Associations were involved in the legislative process that led to these regulations so that the requirement to consult employers' and employees' organisations set out in Article 25 (1) of the Appendix to the Revised Charter was fulfilled.

Employer insolvency is defined in national law by the three regulated insolvency events and the associated provisions in the Insolvency Code (Article 25 (2) of the Appendix to the Revised Charter). As defined and applied in German law and practice, this term includes situations in which proceedings have been opened relating to an employer’s assets with a view to the collective reimbursement of his creditors, but also apply to situations in which workers’ claims cannot be paid by reason of the financial situation of the employer, for example, in the case of insufficiency of the employer’s assets.

The insolvency allowance is a substitute for the outstanding wages of the last three months of the employment relationship prior to the insolvency event. In the event of termination of the employment relationship prior to the insolvency event, it is a substitute for the outstanding wages due for the last three months of the employment relationship. The insolvency allowance covers all remuneration, i.e. in addition to earnings from employment all other payments to which the employee is entitled. This means that remuneration for leave taken and continued wages in the event of illness are also replaced for these three months. This complies with the agreed scope of the guarantee with regard to employee claims and the time period (Article 25 (3) of the Appendix to the Revised Charter). Here, Article 6 lit. c and Article 12 lit. c of the ILO Convention No. 173 put forth the same minimum requirement as the third paragraph of the appendix, and Germany does meet these requirements.

The limitation of the insolvency allowance to the monthly contribution assessment ceiling for unemployment insurance is socially acceptable in accordance with Article 25 (4) of the Appendix to the Revised Charter. This ceiling merely excludes top salaries from coverage.

Therefore, with the protection and guarantees afforded by the German system of insolvency protection of workers' claims, this protection is both adequate and effective for all relevant situations, i.e. where the assets of an enterprise are insufficient to cover salaries and other relevant claims owed to workers, and where the assets could cover such claims. Actually and factually, in the event of an insolvency, workers get their claims effectively protected, guaranteed and satisfied.

This means that the situation in Germany is in conformity with the requirements of Article 25 of the Revised Charter.

Article 28 of the RESC

The right of workers' representatives to protection in the undertaking and facilities to be accorded to them

With a view to ensuring the effective exercise of the right of workers' representatives to carry out their functions, the Parties undertake to ensure that in the undertaking:

a. *they enjoy effective protection against acts prejudicial to them, including dismissal, based on their status or activities as workers' representatives within the undertaking;*

b. *they are afforded such facilities as may be appropriate in order to enable them to carry out their functions promptly and efficiently, account being taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned.*

Appendix:

For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

1. Content of Article 28 of the RESC

The provision in Article 28 was newly inserted into the RESC and is based on ILO Convention No. 135 from 1971 (Workers' Representatives Convention); Germany ratified the Convention back in 1973. The provision in Article 28 of the RESC is not one of the core articles within the meaning of Article A (1) lit. b of the RESC.

Article 28 obliges the States Parties to ensure that workers' representatives in the company, undertaking or authority are protected against acts prejudicial to them, including in particular against dismissal. This provision of the revised Charter aims to protect workers' representatives in the undertaking, a group which is not covered by Article 5 unless the representative is also a trade union representative.

In its second alternative, Article 28 lit. b, which corresponds to Article 2 of the aforementioned ILO Convention, requires that this group of persons be afforded such facilities as may be appropriate in order to enable them to carry out their duties. The only limitation in the context of the revised Charter with the rights conferred to worker's representatives under letter b is that account shall be taken of the industrial relations system of the country and the needs, size and capabilities of the undertaking concerned, which coincides with Article 9 of Section IV of ILO Recommendation No. 143, which states that while facilities should be afforded to workers' representatives, the characteristics of the industrial-relations system of the country and the needs, size and capabilities of the undertaking concerned have to be taken into account. Accordingly, examples of facilities to be granted to

workers' representatives may be found in ILO Recommendation No. 143 (Workers' Representatives) of 1971.

According to the Appendix of Article 28, the term "workers' representatives" means persons who are recognised as such under national legislation or practice. States Parties may therefore recognise different kinds of workers' representatives other than trade union representatives.

However, Article 28 is not intended to impose an obligation to introduce any specific types of workers' representatives, but to ensure that adequate forms of representation are available to all employees, both within and outside the scope of collective bargaining with the employer. Representation may be exercised, for example, through workers' commissioners, a workers' council or workers' representatives on the undertaking's supervisory board.

2. German legal framework and rules with respect to Article 28 of the RESC

a. Implementation and compliance with international law and rules

Germany ratified ILO Convention No. 135 on Workers' Representatives (1971) in September 1973. Germany submitted its last report on Convention No. 135 in 2021.

b. The national legal framework and rules regarding the right to effective protection according to Article 28 letter a of the RESC

i. Special protection against dismissal for members of representative bodies in works constitutional matters

Members of the workers' representative bodies specified in the Works Constitution Act enjoy special protection against dismissal, both from dismissals with due notice and from dismissals without notice (extraordinary dismissals).

The protection against dismissals with due notice is governed by Section 15 of the Protection against Dismissal Act *(Kündigungsschutzgesetz – KSchG)*. According to this protective norm, members of the works council, a youth and trainee representative body, a ship's committee or a fleet works council cannot be dismissed with due notice. After the end of the term of office, a dismissal with due notice is excluded for a legally defined period.

Similar rules apply to the members of the electoral board and candidates for election to the works council.

Finally, persons who invite employees to a works council meeting, an electoral board meeting or a ship's committee meeting or request the appointment of an electoral board are also protected against dismissal for a legally defined period. Employees who carry out

preparatory acts for the establishment of a works council or a ship's committee and have submitted an officially certified declaration stating their intention to do so (pre-initiators: *Vorfeldinitiatoren)*) are protected against dismissal for personal or conduct-related reasons for a legally defined period.

Section 15 of the Protection against Dismissal Act reads:

> *(1) The dismissal of a member of a works council, a youth and trainee representative body, for a ship's committee or a fleet works council is unlawful unless circumstances exist which entitle the employer to dismiss for good cause without giving notice, and the required consent pursuant to Section 103 of the Works Constitution Act has been obtained or a court ruling has been obtained in lieu of such consent. Members of a works council, a youth and trainee representative body, or a fleet works council, may not be dismissed within one year, and members of a representative body of a ship's committee may not be dismissed within six months of expiration of such member's term of office, calculated from the date on which such member's term of office expires, unless circumstances exist, which entitle the employer to dismiss for good cause without notice; the foregoing shall not apply if membership has been terminated by virtue of a court ruling.*
>
> *(2) The dismissal of a member of a personnel representative body, a youth and trainee representative body or a youth representative body is unlawful unless circumstances exist which entitle the employer to dismiss for good cause without notice and the required consent, pursuant to laws governing personnel representation, has been obtained or a court ruling has been obtained in lieu of such consent. After expiration of the term of office of the persons mentioned in sentence 1, they may not be dismissed within one year, counting from the date of expiration of the term of office, unless circumstances exist which entitle the employer to dismiss for good cause without notice; the foregoing shall not apply if membership has been terminated by virtue of a court ruling.*
>
> *(3) The dismissal of a member of an electoral board is unlawful from the time of their appointment, and the dismissal of a candidate for election is unlawful from the time of their nomination until the election results have been announced, unless circumstances exist which entitle the employer to dismiss the member or candidate for good cause without notice, and the required consent pursuant to Section 103 of the Works Constitution Act or the laws governing personnel representation has been obtained or a court ruling has been obtained in lieu of such consent. No dismissal may be made within six months of the announcement of the election results unless circumstances exist which entitle the employer to dismiss the member or candidate for good cause without notice; the foregoing shall*

not apply to members of the electoral board if it has been replaced, pursuant to a court ruling, by another electoral board.

(3a) An employee who, pursuant to Section 17 (3); Section 17a no.3 sentence 2; Section 115 (2) no. 8 sentence 1 of the Works Constitution Act convenes a works meeting, election meeting or crew meeting or who, pursuant to Section 16 (2) sentence 1; Section 17 (4); Section 17a no. 4; Section 63 (3); Section 115 (2) no. 8 sentence 2; or Section 116 (2) no. 7 sentence 5 of the Works Constitution Act, petitions for the appointment of an electoral board may not be dismissed from the time of the invitation or the petition until the election results have been announced, unless circumstances exist which entitle the employer to dismiss the employee for good cause without notice; the protection against dismissal applies for the first six employees listed in the meeting invitation or the first three listed in the petition. If there is no election of a works council, a youth and trainee delegation, a ship's committee, or a fleet works council, the protection against dismissal set forth in sentence 1 shall apply for three months beginning at the time of the invitation or petition.

(3b) The dismissal of an employee who carries out preparatory acts for the establishment of a works council or a ship's committee and has made an officially certified declaration stating that he or she intends to establish a works council or a ship's committee is inadmissible if it is for reasons relating to the person or conduct of the employee, unless there are facts which entitle the employer to dismiss the employee for good cause without observing a period of notice. The protection against dismissal applies from the time the declaration pursuant to sentence 1 is made until the time of the convention of a works meeting, election meeting, or crew meeting pursuant to Section 17 (3); Section 17a no. 3 sentence 2; Section 115 (2) no. 8 sentence 1 of the Works Constitution Act, but for no longer than three months.

(4) If the establishment is closed down, the dismissal of the persons mentioned in paragraphs 1 to 3a above is permissible no earlier than the date of closure, unless their earlier dismissal is necessary for compelling operational reasons.

(5) Where one of the persons mentioned in paragraphs 1 to 3a above is employed in a section of the establishment which is being closed down, he or she shall be transferred to another section of the establishment. Where this is not possible for operational reasons, the provision set forth in paragraph 4 regarding dismissal upon closure of the establishment applies accordingly.

In addition to protection against dismissals with due notice, employee representatives also enjoy protection against extraordinary dismissals: extraordinary dismissal of members of

the workers' representative bodies specified in the Works Constitution Act (*Betriebsverfassungsgesetz – BetrVG*) is only possible if the works council has previously consented to the dismissal or a court has consented in lieu of the works council (Section 103 of the Works Constitution Act).

Section 103 of the Works Constitution Act reads:

> *(1) The exceptional dismissal of a member of the works council, the youth and trainee delegation, the ship's committee and the fleet works council, the electoral board or of candidates for election requires the consent of the works council.*
>
> *(2) If the works council refuses its consent, the employer may apply to the labour court for a decision in lieu of consent if the exceptional dismissal is justified, all circumstances being taken into account. The employee concerned is a party to the proceedings in the labour court.*
>
> *(2a) Paragraph 2 applies accordingly if the establishment does not have a works council.*
>
> *(3) A transfer of the persons referred to in paragraph (1), which would result in the loss of an office or of eligibility, requires the approval of the works council; the foregoing does not apply if the employee concerned agrees to the transfer. Paragraph (2) applies accordingly subject to the proviso that the employer may apply to the labour court for a decision in lieu of consent if the transfer is warranted by important operational reasons, even with due regard to the position of the employee concerned under the Works Constitution Act.*

Similar protection against dismissal also exists for employees in the public sector, in federal administrations and in federal corporate bodies, institutions and foundations under public law as well as in federal courts and federal operating agencies within the meaning of Section 4 (1) no. 1 of the Federal Staff Representation Act *(Bundespersonalvertretungsgesetz – BPersVG)*: the extraordinary dismissal of members of the staff council who are in an employment relationship requires the approval of the staff council in accordance with Section 55 of the Federal Staff Representation Act.

If the staff council refuses to give its consent or does not respond within three working days of receipt of the application, the administrative court may grant consent in lieu of the staff council at the request of the head of the department if the extraordinary dismissal is justified in view of all the circumstances. The person concerned is a party to the proceedings in the administrative court.

Section 55 of the Federal Staff Representation Act also stipulates that members of the staff council may only be transferred, assigned or seconded against their will if this is unavoidable for important business reasons, taking into account their membership of the staff

council. A transfer also includes a job reassignment in the same department that involves a change of place of employment. The transfer, assignment or secondment of members of the staff council also requires the consent of the staff council. Section 55 of the Federal Staff Representation Act is intended to safeguard the unimpaired exercise of the work as a staff representative.

For executive employees, i.e. persons with management functions who have been given business powers and roles in the company, the Executives' Committee Act *(Sprecherausschussgesetz – SprAuG)* applies. The dismissal of members of the executives' committee due to their activity as a member of the executives' committee violates the statutory prohibition of obstruction and prejudicial treatment (see Section 2 (3) of the Executives' Committee Act and renders the dismissal invalid in accordance with Section 134 of the Civil Code (*Bürgerliches Gesetzbuch – BGB*). Section 31 (2) sentences 1 and 2 of the Executives' Committee Act contain a requirement to consult the executives' committee comparable to Section 102 of the Works Constitution Act prior to the dismissal of a member of the executive staff. A dismissal carried out without such consultation is invalid.

And the employee representative or the representative for severely disabled employees pursuant to Section 177 (Book IX of the Social Code – Rehabilitation and Participation of People with Disabilities, *Sozialgesetzbuch Neuntes Buch – Rehabilitation und Teilhabe von Menschen mit Behinderungen – SGB IX*) contains a similar protection against dismissal under the law for severely disabled employees.

The relevant norm is Section 179 (3) of Book IX of the Social Code and reads:

> *The employee representatives have the same personal legal status vis-à-vis the employer, in particular the same protection against dismissal, transfer and secondment, as a member of the works, staff, public prosecutors' or judges' council. During the period of representation and consultation in accordance with Section 178 (1) sentences 4 and 5, the deputy member has the same personal legal status as the employee representative, and otherwise the same legal status as the substitute members of the representative bodies referred to in sentence 1.*

ii. Other protection against discrimination and prohibitions of prejudicial treatment of employee representatives

The Works Constitution Act and other laws contain numerous regulations that counteract any disadvantage suffered due to the assumption and performance of official roles.

In the context of vocational development, the assumption of office in the bodies specified in the law must not lead to any disadvantages (Sections 37, 78 of the Works Constitution Act). This also applies to remuneration. For example, office holders must at least match the salary progression of comparable employees. Under certain conditions, the salary and

activity guarantee continues to apply even after the end of the office. In addition, the office holders must not be interfered with or obstructed in the exercise of their activities, and must not suffer prejudicial treatment or be favoured because of their activities. This is enshrined in particular in Sections 37, 78 of the Works Constitution Act; not only does Section 78 of the Works Constitution Act apply to youth and trainee delegations, a fleet works council and largely also to ship's committee (by expressly listing them), but so does Section 37 of the Works Constitution Act (via statutory references).

Nor may the establishment of the aforementioned bodies be obstructed; see Section 20 of the Works Constitution Act, to which reference is also made in relation to elections of youth and trainee delegations, for elections of ships' committees and elections of fleet works councils, and which therefore also applies in these cases. The establishment of the bodies is also protected by the fact that the initiators of the election, known as pre-initiators, enjoy special protection against dismissal (see above, under subsection i., pp. 38 et seq.). Violations of the prohibitions on favourable treatment, prejudicial treatment or obstruction are punishable under Section 119 of the Works Constitution Act.

The relevant norms of the Works Constitution Act read as follows:

Section 20 – Protection against obstruction and costs of the election

> *(1) No person may obstruct the election of a works council. In particular, no employee may be restricted in his or her right to vote or to stand for election.*
>
> *[…]*

Section 37 – Honorary nature of post; loss of working time

> *(1) The post of member of the works council is unpaid.*
>
> *(2) The members of the works council are to be released from their work duties without loss of pay to the extent necessary for the proper performance of their functions, having regard to the size and nature of the establishment.*
>
> *(3) By way of compensation for works council activities which for operational reasons must be performed outside working hours, a member of a works council is entitled to corresponding time off without loss of pay. Operational reasons are also present if the works council activities cannot be carried out during the personal working hours because of different working hours of the works council members. Such time off is to be granted within a month; if this cannot be done for operational reasons, the time spent on such activities is to be remunerated on the same basis as extra work.*

(4) During his or her term of office and for one year thereafter the remuneration of a member of the works council may not be fixed at a lower rate than the remuneration paid to employees in a comparable position who have followed the career that is usual in the establishment. The same applies to general benefits granted by the employer. In order to define who is an employee in a comparable position in accordance with sentence 1, the time when the employee took over the office as a member of the works council must be taken into account unless there is an objective reason for a new definition at a later point in time. Employer and works council may lay down in a works agreement a procedure to define employees in a comparable position. The specification of comparability in such a works agreement may only be checked against gross mistakes; the same applies to the definition of employees in a comparable position insofar as employer and works council have agreed on it by mutual consent and this has been documented in writing.

(5) During his or her term of office and for one year thereafter a member of the works council may be employed only on activities that rank on the same level as those of the employees referred to in the preceding paragraph, except where this is precluded by imperative operational requirements.

(6) Paragraphs (2) and (3) apply accordingly to the participation of training and educational courses, in so far as the knowledge imparted is necessary for the activities of the works council. Operational reasons as defined in paragraph (3) are also present if the training is provided to the works council member outside his or her working hours due to special features of the establishment's working hours regulations; in this case, the claim for compensation is limited to the working hours of one full-time employee per day of training, taking into account the releases stipulated in paragraph (2) hereof. In scheduling the time for attending training and educational courses the works council has to take account of the operational requirements of the establishment. It has to notify the employer in good time of the participation in training and educational courses and of the time at which they are held. If the employer feels that the operational requirements of the establishment have not sufficiently been taken into account, he may submit the case to the conciliation committee. The award of the conciliation committee takes the place of an agreement between the employer and the works council.

(7) Without prejudice to paragraph (6), each member of the works council is entitled during his or her regular term of office to a paid release for a total of three weeks to enable him or her to participate in training and educational courses that have been approved for this purpose by the competent central labour authority of

the Land concerned after consultation with the central organisation of trade unions and employers' associations. The entitlement conferred by the preceding sentence is increased to four weeks for employees who are serving for the first time as a member of the works council and have not yet previously served as a youth and trainee representative. Paragraph (6) sentence 2 to 6 applies.

Section 78 – Protective provisions

Members of the works council, the central works council, the group works council, the youth and trainee delegation, the central youth and trainee delegation, the group youth and trainee delegation, the finance committee, the ship's committee, the fleet works council, the representative bodies of the employees referred to in Section 3 (1), the conciliation committee, an arbitration board set up by collective agreement (Section 76 (8)) and a grievance committee (Section 86), or personnel providing information (Section 80 (2) sentence 4) may not be interfered with or obstructed in the discharge of their duties. They may not be disfavoured or favoured by reason of their office; this principle also applies to their vocational development. There is no preferential treatment or discrimination with regard to the remuneration paid if the member of a representative body of the employees referred to in sentence 1 personally fulfils the necessary requirements and criteria applicable in the establishment for the granting of the remuneration and the determination was not made in an error of discretion.

Section 119 – Offences against bodies established under this Act and their members

(1) The following offences are punishable by a term of imprisonment not exceeding one year or a fine:

1. interfering with an election to the works council, the youth and trainee delegation, the ship's committee, the fleet works council or the representative bodies of the employees referred to in Section 3 (1) no. 1 to 3 or 5, or influencing such elections by inflicting or threatening reprisals or granting or promising incentives,

2. obstructing or interfering with the activities of the works council, the central works council, the group works council, the youth and trainee delegation, the central youth and trainee delegation, the group youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in Section 3 (1), the conciliation committee, the arbitration body referred to in Section 76 (8), the grievance committee referred to in Section 86 or the finance committee, or

3. prejudicing or favouring a member or substitute member of the works council, the central works council, the group works council, the youth and trainee delegation, the central youth and trainee delegation, the group youth and trainee delegation, the ship's committee, the fleet works council, the representative bodies of the employees referred to in Section 3 (1), the conciliation committee, the arbitration body referred to in Section 76 (8), the grievance committee referred to in Section 86 or the finance committee or personnel providing information referred to in Section 80 (2) sentence 4 by reason of his or her office.

(2) Proceedings concerning the offence are instituted only on application by the works council, the central works council, the group works council, the ship's committee, the fleet works council, the representative bodies of the employees referred to in Section 3 (1), the electoral board, the employer or a trade union represented in the establishment.

The Executives' Committee Act *(Sprecherausschussgesetz – SprAuG)* also contains corresponding provisions that counteract prejudicial treatment on account of the assumption and performance of official duties. Public officials must not be interfered with or obstructed in the performance of their duties, nor disadvantaged or favoured because of their work, which also includes their vocational development. This is enshrined in Section 2 (3) of the Executives' Committee Act. In addition, the election to the executives' committee or its activities may not be obstructed or influenced by inflicting or threatening disadvantages or by granting or promising advantages (Section 8 (2) of the Executives' Committee Act).

Nor may a member or substitute member of the executives' committee suffer prejudicial treatment or be favoured for the sake of their activities. Violations of the prohibition of prejudicial treatment, favourable treatment or obstruction are punishable by law (Section 34 of the Executives' Committee Act).

The relevant norms of the Executives' Committee Act read as follows:

Section 2 – Collaboration

[…]

(3) The members of the Executives' Committee may not be interfered with or obstructed in the performance of their duties. They may not be treated prejudicially or more favourably by reason of their office; this principle also applies to their vocational development.

[…]

Section 8 – Contesting an election, protecting elections and costs of the election

(1) […]

(2) No person may obstruct the election of an executives' committee. In particular, no member of the executive staff may be restricted in his or her right to vote or to stand for election. No person may influence the election of the executives' committee by inflicting or threatening to inflict disadvantages or by granting or promising advantages.

(3) The employer shall shall bear the costs of the election. The employer is not entitled to reduce the pay if the employee misses working hours due to exercising the right to vote, serving on the election committee or acting as a mediator (Section 18a of the Works Constitution Act).

Section 34 – Offences against representative bodies of executive staff and their members

(1) The following offences are punishable by a term of imprisonment not exceeding one year or a fine:

1. influencing the election of the executives' committee or the company executives' committee by inflicting or threatening to inflict disadvantages or by granting or promising advantages,

2. obstructing or disrupting the activities of the executives' committee, the general executives' committee, the company executives' committee or the group executives' committee or

3. treating a member or a substitute member of the executives' committee, the general executives' committee, the company executives' committee or the group executives' committee prejudicially or more favourably for the sake of their activities.

(2) The offence will only be prosecuted at the request of the executives' committee, the general executives' committee, the company executives' committee or the group executives' committee, the electoral board or the employer.

There are specific prohibitions of prejudicial treatment for members of company supervisory boards. Section 26 of the Co-determination Act (*Mitbestimmungsgesetz – MitbestG*) applies in companies subject to co-determination with equal representation on the supervisory board. Section 9 of the One-Third Participation Act (*Drittelbeteiligungsgesetz – DrittelbG*) applies in companies that are subject to the rule on one-third employee representation on the supervisory board.

Section 26 of the Co-determination Act reads:

> *Supervisory board members representing employees may not be interfered with or obstructed in the performance of their duties. They may not suffer prejudicial treatment because of their activity on the supervisory board of a company that employs them or whose employees they are deemed to be in accordance with Section 4 or Section 5. The same applies with regard to their vocational development.*

Section 9 of the One-Third Participation Act reads:

> *Supervisory board members representing employees may not be interfered with or obstructed in the performance of their duties. They must not suffer prejudicial treatment or be treated more favourably because of their activities on the supervisory board. The same applies with regard to their vocational development.*

These prohibitions of prejudicial treatment apply throughout Germany to all employee representatives on the supervisory board (including trade union representatives pursuant to the Co-determination Act), regardless of their nationality.

Special regulations apply in the public sector: employees within the meaning of Section 4 (1) no. 1 of the Federal Staff Representation Act *(Bundespersonalvertretungsgesetz – BPersVG)* who are members of staff representation bodies may invoke the general protective provision of Section 10 of the Federal Staff Representation Act. It contains a prohibition of obstruction, prejudicial treatment and favourable treatment. The regulation is intended to ensure that persons who hold an office under staff representation law or make use of the rights arising from it are not hindered in doing so and neither suffer prejudicial treatment nor favourable treatment because of their activities.

The general principle is fleshed out in particular in Sections 51, 52 and 56 of the Federal Staff Representation Act. Section 51 of the Federal Staff Representation Act contains the prohibition of a reduction in pay for the time during which members duly carry out their staff council duties. Section 52 of the Federal Staff Representation Act safeguards the due performance of staff council business – outside of meetings – that occurs on a regular basis and on a larger scale. It thus serves to ensure the functionality of staff councils and guarantees the independence of its members and the effective exercise of their office. Section 56 of the Federal Staff Representation Act fleshes out the prohibition of prejudicial treatment contained in Section 10 of the Federal Staff Representation Act and is intended to protect trainees from prejudicial measures taken by the employer that could affect them in the exercise of their function as a member of a body representing employees or a youth and trainee delegation.

c. The national legal framework and rules regarding the right to facilities according to Article 28 lit. b of the RESC

In order to fulfil their duties, works council members – and other employee representatives, such as members of the youth and trainee delegation, the ship's committee or the fleet works council – must be released from their work obligations without loss of pay. By way of compensation for works council activities which for operational reasons must be performed outside working hours, a member of a works council is entitled to corresponding time off without loss of pay (Section 37 (2) and (3) of the Works Constitution Act).

Depending on the number of employees/crew members they represent, members of the works council and members of the fleet works council may also be fully released from their work obligations.

In addition, works council members, members of the youth and trainee delegation and members of the fleet works council are entitled to the training they need for their activities and to appropriate equipment. The latter also applies to the ship's committee.

If necessary, the designated bodies may consult experts.

The relevant statutory provisions are as follows:

Section 37 of the Works Constitution Act (see above under section b. ii., pp. 43 et seq.).

Section 38 – Releases

> *(1) The minimum number of works council members to be released from their work duties depends on the number of employees normally employed in the establishment, as set out below:*
>
> | | | | |
> |---|---|---|---|
> | *200 to* | *500* | *employees* | *1 member of the works council* |
> | *501 to* | *900* | *employees* | *2 members of the works council,* |
> | *901 to* | *1,500* | *employees* | *3 members of the works council,* |
> | *1,501 to* | *2,000* | *employees* | *4 members of the works council,* |
> | *2,001 to* | *3,000* | *employees* | *5 members of the works council,* |
> | *3,001 to* | *4,000* | *employees* | *6 members of the works council,* |
> | *4,001 to* | *5,000* | *employees* | *7 members of the works council,* |
> | *5,001 to* | *6,000* | *employees* | *8 members of the works council,* |
> | *6,001 to* | *7,000* | *employees* | *9 members of the works council,* |
> | *7,001 to* | *8,000* | *employees* | *10 members of the works council,* |
> | *8,001 to* | *9,000* | *employees* | *11 members of the works council,* |
> | *9,001 to* | *10,000* | *employees* | *12 members of the works council,* |
>
> *In establishments with more than 10,000 employees one further member of the works council is to be released for each additional fraction of 2,000 employees.*

Releases may also be granted in the form of partial releases. Taken together, such partial releases may not exceed the amount of releases specified in sentence 1 and 2. Other arrangements concerning releases can be made by collective or works agreement.

(2) The works council members to be released are elected by secret ballot and in accordance with the principles of proportional representation by the works council from its midst after consultation with the employer. If only one list of candidates is proposed, the ballot is carried out in accordance with the principles of the majority vote; if only one works council member is to be released, he or she is elected by simple majority. The works council has to give the employer the names of the members to be released. If the employer feels that the release is not justifiable under the circumstances, he may appeal to the conciliation committee within two weeks of being notified. The award of the conciliation committee takes the place of an agreement between the employer and the works council. If the conciliation committee confirms the concern of the employer, it also has to take into account the protection of minorities within the meaning of sentence 1 when deciding upon another works council member to be released. If the employer does not appeal to the conciliation committee, his approval is deemed to have been given and the releases take effect on the expiry of the two weeks referred to above. Section 27 (1) sentence 5 applies accordingly to the removal of members from office.

(3) In respect of members of the works council who have been released from their work duties for three full consecutive terms of office, the period during which their remuneration continues pursuant to Section 37 (4) and their employment pursuant to Section 37 (5) is extended to two years after the expiry of their term of office.

(4) Members of the works council who have been released from their work duties may not be debarred from vocational training programmes inside or outside the establishment. Within one year of the date on which the release comes to an end, members of the works council are to be allowed, as far as the facilities offered by the establishment permit, to take any career training normally provided for the employees of the establishment that they missed because of their release. In respect of members of the works council who were released from their work duties for three full consecutive terms of office, the period referred to in the preceding sentence is extended to two years.

Section 40 – Expenses of the works council and material facilities

(1) Any expenses arising out of the activities of the works council are defrayed by the employer.

(2) The employer has to provide to the necessary extent the premises, material facilities, means of information and communication and office staff required for the meetings, consultations and day-to-day operation of the works council.

Section 80 (3) of the Works Constitution Act

(1) […]

(2) […]

(3) In discharging its duties the works council may, after making a more detailed agreement with the employer, call on the advice of experts in as far as the proper discharge of its duties so requires. Insofar as the works council has to assess the introduction or application of artificial intelligence in order to carry out its tasks, it is deemed necessary to call on the advice of an expert in this regard. The same applies if the employer and the works council agree on a permanent expert on matters referred to in sentence 2.

(4) […]

3. Conformity of the German legal framework and practice with the Charter

The aforementioned protective provisions cover all types of employee representatives recognised under German law. With the comprehensive inclusion of bodies representing employees and employee representatives on company supervisory boards in the effective protection against unfair dismissal and prejudicial treatment, as well as with the respective inclusion of representatives for specific employee groups, German law goes well beyond the requirements of the Charter.

a. Protection granted to workers' representatives

The obligation under Article 28 lit a to ensure that workers' representatives in the undertaking are effectively protected against any prejudicial treatment, including dismissal, based on their role or activities as workers' representatives in the undertaking is met in Germany through comprehensive protective provisions.

These ensure that workers' representatives do not suffer prejudicial treatment in their vocational development, including their remuneration (Sections 37, 78 of the Works Constitution Act). Pursuant to Section 78 of the Works Constitution Act, the workers' representatives referred to in the Works Constitution Act may not be interfered with or obstructed in the exercise of their duties, nor may they suffer prejudicial treatment or be treated more

favourably because of their activities. A violation of this protection clause amounts to a criminal offence and is punishable by imprisonment for up to one year or a fine, thus providing an effective and deterrent sanction (Section 119 (1) of the Works Constitution Act). The independence of office holders is also guaranteed by granting special protection against dismissal (Section 15 of the Protection against Dismissal Act, Section 103 of the Works Constitution Act). Those norms provide that the dismissal with due notice of a workers' representative during his or her term of office or within a legally defined period after his or her term of office is generally not permitted (Section 15 (1) of the Protection against Dismissal Act). An extraordinary dismissal for good cause during the term of office is only permissible if the works council has given its consent or the labour court has consented in lieu of the works council (Section 15 (1) of the Protection against Dismissal Act in conjunction with Section 103 (1) and (2) of the Works Constitution Act).

Therefore the protection provided in German law and practice covers both the prohibition of dismissal on the ground of being a workers' representative and also protection against any other detrimental treatment that is based on the work as a workers' representative. As the protection afforded is also extended for a good period after the effective end of their office, such protection is effective and practical.

b. Facilities granted to workers' representatives

The obligation under Article 28 lit. b to accord facilities to workers' representatives within the undertaking in order to enable them to carry out their functions promptly and efficiently is guaranteed in German law on works constitutions by Sections 37, 38, 40 and 80 of the Works Constitution Act.

In particular, members of the works council must be released from their work duties without loss of pay to the extent necessary for the proper performance of their functions, having regard to the size and nature of the establishment. Pursuant to Section 37 (6) sentence 1 of the Works Constitution Act, works council members must also be released from their professional activities without loss of pay to attend training courses that impart knowledge necessary for the work of the works council.

Pursuant to Section 40 (1) of the Works Constitution Act, the costs for the activities of the works council, including any necessary training, shall be borne by the employer. If necessary, the works council can also call on experts to support it in its work. Similar provisions apply to the other representative bodies named in the Works Constitution Act (youth and trainee delegations; ship's committees, fleet works councils).

As the protected workers are afforded such a wide array of facilities, Germany's pertinent law and practice are in full conformity with the Charter.

Article 29 of the RESC

The right to information and consultation in collective redundancy procedures

With a view to ensuring the effective exercise of the right of workers to be informed and consulted in situations of collective redundancies, the Parties undertake to ensure that employers shall inform and consult workers' representatives, in good time prior to such collective redundancies, on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences, for example by recourse to accompanying social measures aimed, in particular, at aid for the redeployment or retraining of the workers concerned.

Appendix:
For the purpose of the application of this article, the term "workers' representatives" means persons who are recognised as such under national legislation or practice.

1. Content of Article 29 of the RESC

This article requires the States Parties to ensure that employers inform and consult workers' representatives prior to collective redundancies.

Article 29 of the RESC is essentially based on Directive 98/59/EC relating to collective redundancies and its predecessors, Directives 92/56/EEC and 75/129/EEC, but also on ILO Convention No. 158 of 2 June 1982 concerning termination of employment by the employer. Even though Germany has not ratified this Convention, which has been in force since 23 November 1985, Germany's dismissal provisions largely correspond with the requirements of this ILO Convention.

The Parties undertake to ensure that employers inform and consult workers' representatives in good time prior to collective redundancies. The information and consultation shall concern the possibilities of avoiding collective redundancies, limiting their number or mitigating their consequences. Recourse to social measures providing aid for redeploying or retraining the workers concerned are mentioned as non-conclusive examples of ways of mitigating the consequences of collective redundancies. That recourse to social measures is not solely the responsibility of the employer.

A definition of the term "workers' representatives" is given in the appendix to the Article as meaning persons recognised as such under national legislation or practice.

Under Article 29 of the RESC the collective redundancies referred to are redundancies affecting several workers within a period of time set by law and decided for reasons which correspond to a reduction or change in the firm's activity.

2. German legal framework and rules with respect to Article 29 of the RESC

a. Dismissal notification and consultation procedure pursuant to Sections 17 et seq. of the Protection against Dismissal Act

With the provisions of Sections 17 et seq. of the Protection against Dismissal Act *(Kündigungsschutzgesetz – KSchG)*, the German legislature has in particular transposed Directive 98/59/EC, which contains provisions, primarily in Part II, on informing and consulting employee representatives in the event of collective redundancies.

The notification and consultation procedure set out in Section 17 of the Protection against Dismissal Act must be carried out before the employer

1. dismisses more than five employees in establishments with more than 20 and fewer than 60 employees,
2. dismisses 10% of the employees regularly employed or more than 25 employees in establishments with at least 60 and fewer than 500 employees, or
3. at least 30 employees in establishments with regularly at least 500 employees within 30 calendar days.

If the ratios set out in Section 17 (1) sentence 1 of the Protection against Dismissal Act are reached in the case of redundancies ("collective redundancies": *Massenentlassungen*), the employer must comply with the obligations set out in Section 17 (1) to (3) of the Protection against Dismissal Act.

These obligations are, in detail:

i. Information and consultation obligations vis-à-vis workers' representatives

If the employer intends to carry out collective redundancies, the employer and the works council must, in particular, discuss ways of preventing or limiting the redundancies and mitigating their consequences, pursuant to Section 17 (2) sentence 2 of the Protection against Dismissal Act. To this end, the employer must provide the works council with relevant information in writing in good time and, in accordance with Section 17 (2) sentence 1 no. 1 to 6 of the Protection against Dismissal Act, in particular, the reasons for the planned dismissals, the number and occupational groups of the employees to be dismissed, the number and occupational groups of the employees regularly employed, the period of time in which the dismissal are to take place, the intended criteria for selecting the employees to be dismissed and the criteria for calculating any severance payments.

The information and consultation obligations also apply if the decision to dismiss was taken by an undertaking controlling the employer (Section 17 (3a) sentence 1 of the Protection against Dismissal Act).

ii. Obligation to notify the employment agency

Section 17 (3) sentence 1 of the Protection against Dismissal Act stipulates that the employer must also send a copy of the notification to the employment agency at the same time as notifying the works council. Pursuant to Section 17 (1) sentence 1 of the Protection against Dismissal Act, the employer must also give advance notice of collective redundancies to the employment agency and in doing so must comply with the requirements laid down in Section 17 (3) sentences 2 to 5 of the Protection against Dismissal Act. In order to give the employment agency time to prepare for the collective redundancies and to take labour market policy measures, Section 18 of the Protection against Dismissal Act provides for temporary bans on dismissal after the notification has been received, in line with Directive 98/59/EC.

In Germany, the legal consequences of the employer violating the obligations set out in Section 17 of the Protection against Dismissal Act are shaped by the case law of the Federal Labour Court *(Bundesarbeitsgericht – BAG)*: for example, according to the current case law of the Federal Labour Court, violations of the employer's duty to consult the works council pursuant to Section 17 (2) of the Protection against Dismissal Act result in the dismissal being invalid pursuant to Section 134 of the Civil Code *(Bürgerliches Gesetzbuch – BGB)* (see, inter alia, Federal Labour Court [*Bundesarbeitsgericht – BAG]*, judgment of 21 March 2013 – 2 AZR 60/12). In this case, the employment relationship continues until a new dismissal takes effect. Prior to this dismissal, a new consultation and notification procedure must be carried out if the thresholds of Section b17 (1) of the Protection against Dismissal Act are exceeded. As a rule, wages must continue to be paid until the employment relationship ends.

b. Additional obligations regarding consultation, provision of advice and hearing of workers' representatives in the event of redundancies

In addition to the consultation obligations under Section 17 (2) of the Protection against Dismissal Act, German law provides for additional obligations regarding consultation, provision of advice and hearing of workers' representatives in the event of redundancies.

In addition to the consultation obligations pursuant to Section 17 of the Protection against Dismissal Act, the works council may also have rights to information and consultation in the event of collective redundancies pursuant to Sections 111 et seq. of the Works Constitution Act *(Betriebsverfassungsgesetz – BetrVG)*. In many cases, collective redundancies will also constitute an alteration to the establishment. Examples of alterations to the establishment include the restriction and closure of the entire establishment or of significant parts thereof; the dismissal of a certain number of employees can also in itself constitute an alteration to the establishment (see Section 112a of the Works Constitution Act).

The works council must be involved in the event of such an alteration. The employer must notify the works council in good time and in detail about the planned alterations and discuss them with it (Sections 111, 112 of the Works Constitution Act; accommodation of conflicting interests). In addition, the employer is obliged to agree provisions with the works council to compensate for or mitigate the resulting disadvantages for the employees affected (known as a social compensation plan, Sections 112, 112a of the Works Constitution Act). If the employer does not attempt to accommodate the conflicting interests of the parties or if it deviates from such accommodation without good reason, the employees affected can demand compensation for the disadvantage suffered (Section 113 of the Works Constitution Act).

In addition to the information and consultation obligations in the event of alterations to the establishment, the works council also has the right to be heard in the event of dismissals. This is because – separately from the consultations pursuant to Section 17 of the Protection against Dismissal Act or the deliberations pursuant to Sections 111 et seq. of the Works Constitution Act – the employer must consult with the works council pursuant to Section 102 (1) of the Works Constitution Act before every individual dismissal and inform the works council about the reasons for the dismissal. A proper consultation of the works council is a prerequisite for a valid dismissal.

Similar regulations exist for employees in the public sector within the meaning of Section 4 (1) no. 1 of the Federal Staff Representation Act *(Bundespersonalvertretungsgesetz – BPersVG)*. The staff council has a right of co-determination in the issuance of guidelines on making selections for redundancies (Section 80 (1) no. 12 of the Federal Staff Representation Act). As a measure subject to co-determination, the issuance of such guidelines can only be implemented after the staff council has given its consent or once the missing consent has been given at a higher level by way of conciliation procedure or ultimately before the conciliation committee.

In addition, the staff council has a right of co-determination in the case of dismissals with due notice in accordance with Section 85 of the Federal Staff Representation Act: this is a right of consultation, which consists of a detailed discussion of the measure between the department and the staff council.

In the case of dismissals without notice and dismissals for cause, the staff council has a right to be heard in accordance with Section 86 of the Federal Staff Representation Act, i.e. it has the right to issue a statement.

Before locally employed staff is dismissed, the representative of locally employed staff must be heard in accordance with Section 120 (3) sentence 6 of the Federal Staff Representation Act. Furthermore, Section 128 of the Federal Staff Representation Act stipulates

that the staff council also has the right to be involved in dismissals at the level of the Länder.

In summary: The departments have a comprehensive obligation to provide information to the staff councils. Taking a systematic look particularly at the provisions on the right to information, the monthly meeting (Section 65 of the Federal Staff Representation Act) and cooperation in a spirit of trust (Section 2 (1) of the Federal Staff Representation Act), they ensure that the staff councils are fully informed and heard.

3. Conformity of the German legal framework and practice with the Charter

The obligation under Article 29 of the Revised Charter to ensure that worker representatives are informed and consulted by employers in good time prior to collective redundancies on ways and means of avoiding collective redundancies or limiting their occurrence and mitigating their consequences has been fully implemented in German law and practice.

With the provisions of Sections 17 et seq. of the Protection against Dismissal Act, the German legislature has also transposed the European Directive 98/59/EC ("Collective Redundancies Directive"), which is already an indication that German law is in conformity with the Social Charter.

Section 17 (1) of the Act on Protection against Dismissal essentially matches the thresholds prescribed by the ECSR interpretation when it comes to triggering the notification and consultation obligations in the event of collective redundancies and is in line with Directive 98/59/EC. Some trigger thresholds prescribed by German law are more favourable from the employee's perspective. The definition of collective redundancies in German law is therefore appropriate and effective and in line with the objective of Article 29.

As stipulated in Article 29 of the RESC, the consultation procedures in German law also must take place in good time prior to collective redundancies. The employer's obligations pursuant to Section 17 of the Protection against Dismissal Act and, where applicable, under Sections 111 et seq. of the Works Constitution Act ensure that the works council is provided with all the relevant information (including the reasons for the planned redundancies, the criteria for selecting the employees to be made redundant, and the period of the redundancies) in good time before any planned collective redundancies to allow it to address them. German law thus ensures that employers are obliged to provide employees with information about planned collective redundancies sufficiently far in advance of the process, so as to enable employees and their representatives to become familiar with the key aspects of the planned redundancies. The relevant domestic law further guarantees the right of workers' representatives to be provided with all relevant information – including inter alia the reasons for the proposed redundancies, the criteria for determining which

employees are to be made redundant – throughout the entire duration of the consultation process, see in particular Section 17 (2) of the Protection against Dismissal Act.

It also ensures that a consultation procedure takes place in which the employer and the works council discuss ways of avoiding redundancies or limiting their number and mitigating their impact. Furthermore, the employer's obligations vis-à-vis the employment agency, as set out in Sections 17 et seq. of the Protection against Dismissal Act, ensure that, in the event of collective redundancies, the public employment service can initiate labour market policy measures at an early stage, for example to prevent unemployment. The objectives pursued by Article 29 of the RESC, on the one hand, that workers are made aware of reasons and scale of planned redundancies and, on the other, that the position of workers is taken into account when their employer is planning collective redundancies, are therefore fully embedded in German law and practice regarding collective redundancies. As part of the process, employers also have to cooperate with a competent public administrative agency, the Bundesagentur für Arbeit, which is mainly responsible for promoting employment and taking measures to counteract unemployment.

In addition, there are effective sanctions in place in Germany for employers who fail to fulfil their consultation obligations vis-à-vis the works council in the event of collective redundancies: in particular, according to the current case law of the Federal Labour Court *(Bundesarbeitsgericht – BAG)*, violations of the consultation obligations under Section 17 (2) of the Protection against Dismissal Act result in the dismissal being invalid.

Furthermore, the proper hearing of the works council pursuant to Section 102 of the Works Constitution Act is a prerequisite for a valid dismissal. If the works council is not involved or is not properly involved, the dismissal is generally invalid.

The invalidity of a dismissal can be asserted by filing an action for protection from dismissal in accordance with Section 4 of the Protection against Dismissal Act. This applies to all grounds for invalidity and thus also to the invalidity of the dismissal due to errors in the consultation procedure under Section 17 (2) of the Protection against Dismissal Act (see BAG judgment of 21 March 2013 – 2 AZR 60/12).

Taking all these aspects into account, German law also appears to be in conformity with the Charter in this regard.

Part II – Question Report

Question Report
relating to the application of the
European Social Charter (Revised)

regarding Group 1:

Article 1 - Article 2 - Article 3 - Article 4 - Article 5 - Article 6 - Article 8 - Article 9 - Article 10 - Article 18 - Article 19 - Article 20 - Article 21 - Article 22 - Article 24 - Article - 25 - Article 28 - Article 29

Article 2 paragraph 1 of the RESC

Reasonable daily and weekly working hours

1. Explanatory remark

A question on working time has been included as previous conclusions suggested that there are certain occupations in States Parties where weekly working hours can exceed 60 hours. States Parties responses would allow the Committee to have a more comprehensive overview of the situation.

The question pertaining to seafarers has been included as the previous conclusions suggested that the ECSR would re-examine its case law in relation to this category of employees.

Moreover, there has been an outstanding issue regarding on-call periods, with many States Parties not in conformity with the Charter on this point.

2. Question/request a) regarding Article 2 (1) of the RESC [Reasonable daily and weekly working hours]

Please provide information on occupations, if any, where weekly working hours can exceed 60 hours or more, by law, collective agreements or other means, including:

- **information on the exact number of weekly hours that persons in these occupations can work;**
- **information on any safeguards which exist in order to protect the health and safety of the worker, where workers work more than 60 hours.**

3. Answer to question/request a) regarding Article 2 (1) of the RESC [Reasonable daily and weekly working hours]

The Working Time Act *(Arbeitszeitgesetz – ArbZG)* is based on the principle of an eight-hour day and a six-day week, i.e. a weekly working time of 48 hours (see Section 3 sentence 1, Section 9 of the Working Time Act).

While it is possible to extend the hours of work to a maximum of 10 hours per working day (i.e. to a weekly working time of up to – but not more than – 60 hours), in order to protect employees, this must be offset by a compensatory period rsp. time off in lieu within six months in a way that ensures that the working hours per working day do not exceed eight hours on average. Indirectly, this results in a statutory maximum weekly working time of an average of 48 hours (6 x 8 hours) per week for a six-day week (see Section 3 sentence 2 of the Working Time Act).

a. Deviations under a collective agreement

A collective agreement may, for example, authorise an extension of the hours of work for stand-by work (e.g. security guard services) or stand-by duty (e.g. hospitals) to more than ten hours per working day or to define a different compensatory rsp. time off in lieu period (see Section 7 (1) nos. 1 and 4 of the Working Time Act). Given this collective agreement exemption clause for the extension of hours of work, the parties to a collective agreement have the necessary leeway to take sufficient account of the special features and practical needs of individual economic sectors and occupational groups.

In this context, there is such a high degree of mutual social control between the parties to the collective agreement with a view to ensuring the principle of equality of arms *(Waffengleichheit)* both during the negotiation process and during the application of the clause, that the parties to the collective agreement, in terms of outcome and based on previous experience, will only make use of the option of deviating collective agreements whilst taking sufficient account of the employees' interests, in this case specifically health protection.

In addition, a further legal safeguard is the mandatory requirement for any time off in lieu to be limited to a maximum of 48 hours per week on average over a period of twelve calendar months in order to protect the health of employees.

b. Deviations by the supervisory authorities of the Länder

In areas in which collective agreements are not usually concluded, exceptions can be granted by the supervisory authority (see Section 7 (5) of the Working Time Act). This is indeed in line with protective measures provided that these exceptions are operationally necessary and the health of employees is not endangered. In addition, a maximum of 48 hours per week on average over a period of six calendar months (or 24 weeks) is mandatory to protect the health of employees.

c. Exceptions in emergencies and exceptional cases

In emergencies and exceptional cases, it is possible to temporarily deviate from the basic standards of the law – directly on the basis of the law (see Section 14 of the Working Time Act) and without prior approval by the supervisory authority. However, in order to protect employees, a working week of 48 hours on average over a period of six calendar months must not be exceeded.

4. Question/request b) regarding Article 2 (1) of the RESC [Reasonable daily and weekly working hours]

Please provide information on the weekly working hours of seafarers.

5. Answer to question/request b) regarding Article 2 (1) of the RESC [Reasonable daily & weekly working hours]

The working hours of crew members must not exceed eight hours per day as a rule in accordance with Section 43 (1) sentence 1; Section 43 (3) sentence 1 of the Maritime Labour Act (*Seearbeitsgesetz – SeeArbG*).

However, there are special working time regulations (up to 12 hours in some cases) for two-watch ships, salvage vessels and tugs (see Section 46 of the Maritime Labour Act). In very exceptional cases, the captain can also order different hours or work with subsequent time off in lieu in accordance with Section 47 of the Maritime Labour Act.

In addition, for every 7-day period, there is a maximum working time limit of 72 hours according to Section 48 (1) no. 1 lit. b of the Maritime Labour Act (exceptions do however exist for ships with frequent port sequences, see Section 48 (2) of the Maritime Labour Act).

Pursuant to Section 49 of the Maritime Labour Act, the maximum hours of work may be deviated from to a limited extent by collective agreement or on the basis of collective agreement in a works agreement or a seafarers' agreement. In this context, there is a high degree of mutual social control between the parties to the collective agreement, with a view to ensuring equality of arms both during the negotiation process and during the application of the clause, that the parties to the collective agreement, in terms of outcome and based on previous experience, will only make use of the option of deviating collective agreements whilst taking sufficient account of the employees' interests, in this case specifically health protection.

In addition, all crew members must be medically examined at regular intervals for fitness for service at sea in accordance with Sections 11 et seq. of the Maritime Labour Act. According to German law, persons are deemed to be medically fit for service at sea if, in view of their state of health, they are suitable for work on board ships and sufficiently resilient and meet the special requirements of their branch of service to maintain the safety of the ship.

6. Question/request c) regarding Article 2 (1) of the RESC [Reasonable daily and weekly working hours]

Please provide information on how inactive on-call periods are treated in terms of work or rest time.

7. Answer to question/request c) regarding Article 2 (1) of the RESC [Reasonable daily and weekly working hours]

On-call duty rsp. stand-by duty is considered to be full working time, in line with the requirements of the Court of Justice of the European Union. This applies even if the employees are able to sleep during their shift.

(Inactive) on-call duty as on-call stand-by/stand-by system only constitutes working time if the restrictions imposed on employees objectively significantly impair their ability to organise their free time and pursue their own interests during these periods. If this is not the case, only the hours actually worked count as hours of work, while the rest are considered rest time.

The law stipulates a general minimum daily rest period of 11 hours (there are exceptions for hospitals and care homes, for example), and a mandatory 30-minute break must be granted after no more than six hours of work.

Article 3 of the RESC

Safe and healthy working conditions

1. Explanatory remark

The proposed questions which focus on health and safety raise issues identified in the most recent conclusions, notably on Article 3 (right to health and safety at the workplace), or focus on new issues such as risks to health and safety caused by climate change (e.g. having to work in extreme heat or cold). Other proposed questions on Article 3 focus on new issues that were covered by the Committee's Statement of interpretation on Article 3 (2) of the Charter in Conclusions 2021, notably the right to digital disconnect.

Furthermore, the questions on Article 3 cover self-employed and vulnerable categories of workers, such as domestic workers, as there were previously many non-conformities on the ground that self-employed and domestic workers were not adequately protected by occupational health and safety regulations. An emphasis has been placed on supervision, as supervision is crucial if the effective implementation of the right to safe and healthy working conditions is to be guaranteed, especially for vulnerable categories of workers (such as domestic workers, digital platform workers, posted workers and workers employed through subcontracting). Workers are more often exposed to environmental-related risks such as climate change and pollution.

2. Question/request regarding Article 3 (1) of the RESC [Health and safety and the working environment]

Please provide information on the content and implementation of national policies on psychosocial or new and emerging risks, including:

- **in the gig or platform economy;**
- **as regards telework;**
- **in jobs requiring intense attention or high performance;**
- **in jobs related to stress or traumatic situations at work;**
- **in jobs affected by climate change risks.**

3. Answer to question/request regarding Article 3 (1) of the RESC [Health and safety and the working environment]

The German occupational safety and health system which has been fully explained in the general statements on Article 3 (1) of the RESC, contains comprehensive provisions on the protection of workers in all activities and economic sectors (see above, Part I, under Article 3 paragraph 1, pp. 2 et seq.)

National policies specific to certain sectors are the following:

a. The gig and platform economy

The use of automated monitoring and decision-making systems through digital labour platforms poses specific risks to the health and safety of platform workers. These systems, for example, enable increased monitoring of platform workers and the creation of comprehensive performance profiles. This can intensify the work pressure on platform workers and lead to excessive demands, competition and a loss of autonomy. Furthermore, platform work that is tied to a particular location is particularly hazardous when carried out in public spaces and is associated with an increased risk of accidents, for example for food delivery or mobility services that operate on the road.

The Occupational Safety and Health Act (*Arbeitsschutzgesetz – ArbSchG*) applies comprehensively, i.e. to dependent employees in all fields of activity and sectors (see above, Part I, under Article 3 paragraph 1, pp. 3 et seq.). It therefore also covers dependent gig and platform workers.

Article 12 of the EU Directive on improving working conditions in platform work (Directive (EU) 2024/2831) of 23 October 2024 addresses the specific risks to platform workers arising from the use of algorithmic management systems by digital labour platforms. In the ongoing national implementation process of the EU Platform Directive, the existing preparatory work from the key issues paper of the Federal Ministry of Labour and Social Affairs for fair work in the platform economy (2020) on statutory occupational safety and health and accident insurance protection in the platform economy will be evaluated and, if necessary, implemented.

b. Telework

In Germany, the Appendix 6 of the Workplace Ordinance *(Arbeitsstättenverordnung – ArbStättV)* describes minimum requirements for the design and operation of workstations which are also applicable for telework. The Appendix also describes minimum requirements for software. There is also a corresponding practical guidance on the implementation of these legal requirements in form of technical rules for workplaces, here for the with display screen equipment (Technical Rules “Screen work” – ASR A6, *Technische Regeln für Arbeitsstätten – Bildschirmarbeit – ASR A6*, cf. https://www.baua.de/DE/Angebote/Regelwerk/ASR/pdf/ASR-A6, in German only). This standard was developed by experts from among the social partners, competent authorities, the public accident insurances and scientists.

In order to analyse potential needs for an update of the existing requirements due to new developments such as mobile work, coworking spaces or desk-sharing, in 2023 the Federal Ministry of Labour and Social Affairs organised several workshops with relevant

stakeholders and experts. The results of these workshops were published as “Recommendations for Decent Hybrid Work” (*https://www.bmas.de/SharedDocs/Downloads/DE/Arbeitsrecht/empfehlungen-hybride-bildschirmarbeit*, in German only).

c. Jobs requiring intense attention or high performance

Working with highly contagious bioagents needs special attention to protect workers and the population against the risk of laboratory accidents. The technical rules for biological agents *(Technische Regeln für Biologische Arbeitsstoffe – TRBA)* provide detailed information for laboratories *(TRBA 100)*, for biotechnology *(TRBA 110)*, for hospitals *(TRBA 250)* and for managing biological threats such as bio-terrorist attacks *(TRBA 130)*.

The technical rules for hazardous substances *(Technische Regeln für Gefahrstoffe – TRGS)* describe concepts and measures to protect workers against risks by exposure to hazardous (e.g. toxic, carcinogenic, reprotoxic or explosive) substances. Examples are *TRGS 400* (“Risk assessment for activities involving hazardous substances”), *TRGS 430* (“Isocyanates – Exposure and monitoring”) or *TRGS 910* (“Risk-related concept of measures for activities involving carcinogenic hazardous substances”).

As of 1 July 2024, the new technical rules for workplaces *(Technische Regeln für Arbeitsstätten [Arbeitsstättenregeln – ASR])* ASR A6 “Screen work” set out the measures for designing VDU workstations for work that requires a high level of attention at computer screens in workplaces and specifies the protective goals for screen work that are laid down in the Workplace Ordinance. The technical rules for workplaces ASR A6 provide specifications for the design of screen workstations and the use of display screen equipment, which also covers smartphones, tablets and notebooks. They also explain aspects such as viewing distance, character display, sharpness and size, as well as work breaks, because all of this helps to relieve eye strain. The size, shape and weight of portable display screen equipment must be “appropriate” for the work task.

d. Jobs related to stress or traumatic situations at work

The Joint German Occupational Safety and Health (OSH) Strategy (*Gemeinsame Deutsche Arbeitsschutzstrategie – GDA*) mental health programme has revised and updated considerations of psychosocial factors – and issued recommendations for implementation in business practice (GDA Portal - Mental Stress (gda-portal.de)). The recommendations contain specific content, goals and procedures when taking psychosocial factors into consideration in risk assessments.

e. Jobs affected by climate-change risks related to biological agents

In Germany, the Ordinance on Biological Agents (Ordinance on Safety and Health Protection at Workplaces Involving Biological Agents, *Biostoffverordnung – BioStoffV*) describes minimum requirements when and how to assess the risk originating from biological agents.

Potentially, due to climate change, vector-carrying insects might become a more prominent problem for exposed workers (farmers, forestry, and construction). The technical rules for biological agents (*Technische Regeln für Biologische Arbeitsstoffe* – TRBA) No. 230 ("Protective measures for activities involving biological agents in agriculture and forestry and comparable activities", *Schutzmaßnahmen bei Tätigkeiten mit biologischen Arbeitsstoffen in der Land- und Forstwirtschaft und bei vergleichbaren Tätigkeiten – TRBA 230*) already cover the topic.

In order to identify the risks for workforce in terms of climate change and find adequate future-oriented solutions to protect individual health as well as national productivity, Germany started the policy workshop process called "*climate changes work*".

As a consequence, Germany gathers information in order to better understand current and future challenges in order to find applicable solutions. Furthermore, Germany identifies and closes legal gaps, provides recommendations and creates awareness by involving representatives of all relevant stakeholders in these workshops, such as social partners (trade unions and employer associations), social insurances, researchers in the field of climate change and communication experts. Results are expected in 2025.

The four major topics to be discussed are heat stress and UV exposition, extreme weather conditions, sensitivity and compliance, and hazardous substances.

4. Question/request a) regarding Article 3 (2) of the RESC [Safety and health regulations]

Please provide information on:

- **the measures taken to ensure that employers put in place arrangements to limit or discourage work outside normal working hours (including the right to disconnect)**
- **how the right not to be penalised or discriminated against for refusing to undertake work outside normal working hours is ensured.**

5. Answer to question/request a) regarding Article 3 (2) of the RESC [Safety and health regulations]

According to Section 3 (2) no. 1 of the Occupational Safety and Health Act (*Arbeitsschutzgesetz – ArbSchG*), the employer is obliged to ensure the appropriate organisation of work processes and to provide the means necessary in order to protect the safety and health of employees. According to the case law of the Federal Labour Court *(Bundesarbeitsgericht – BAG)*, this statutory regulation also includes a fundamental obligation on the part of the employer to set up a system for recording the daily working hours worked by employees. This system must record both the start and the end of working hours and therefore also take into account any overtime. Therefore, entire duration of the (daily) working time is taken into account and it is ensured that the regulations on maximum working hours and rest periods - which are intended to protect the health of employees - are complied with. Taking into account all working hours rsp. the whole working time is an important part of labour protection law and therefore also constitutes a general measure to limit overtime or working hours that fall outside normal working hours.

In principle, employees are not legally obliged to be contactable outside of their agreed working hours in order to start work if necessary.

The Working Time Act *(Arbeitszeitgesetz – ArbZG)* stipulates daily and weekly maximum working hours (see above, under Article 2 paragraph 1, section 3., p. 60), so that working hours beyond these are not permitted.

a. Framework for implementation and enforcement of rest time

In accordance with the provisions of the EU Working Time Directive, the Working Time Act *(Arbeitszeitgesetz – ArbZG)* also stipulates that an uninterrupted rest period of at least 11 hours must be observed after the end of the daily working hours. The occupational safety and health authorities of the Federal States *(Länder)* regularly monitor employers' compliance with the public-law working hours framework. The existing obligation to record working hours makes it easier to prove excessive working hours and violations of rest periods

b. Sanctions for violations of working time protection requirements

The law provides for negative incentives, for example, in that negligently and, even more so, intentionally committed violations of regulations limiting working hours and rest periods are effectively penalised as administrative offences or even as criminal offences (punishable) and are punished, for example, with fines of up to EUR 30,000 or imprisonment (see Sections 22 and 23 of the Working Time Act, *Arbeitszeitgesetz – ArbZG*).

c. Rules and regulations for night work

The Working Hours Act *(Arbeitszeitgesetz – ArbZG)* stipulates that – provided there are no collective compensation agreements – the employer must grant night workers an appropriate number of paid days off or an appropriate supplement to the gross wage to which they are entitled for the hours worked during the night. (see Section 6 (5) of the Working Hours Act). In Germany, remuneration is not regulated by law, except for the provisions of the Minimum Wage Act *(Mindestlohngesetz – MiLoG)*. It is agreed in the collective agreement or in the employment contract. This also applies to the possible payment of bonuses for overtime, work on Sundays and public holidays, and night work. Special bonuses must only be paid if they have been agreed or are customary in the company or industry – or are regulated by law, as in this case.

Night work is defined as any work that covers more than two hours of the night time (Section 2 (4) of the Working Time Act). For the purposes of this Act, night time means the period from 11pm to 6am and in bakeries and pastry shops the period from 10pm to 5am (Section 2 (3) of the Working Time Act). Night workers within the meaning of the law are employees who, due to the organisation of their working hours, normally have to work night shifts in alternating shifts or work night shifts on at least 48 days in a calendar year (Section 2 (5) of the Working Time Act).

With this regulation, the legislator has “increased the cost” of working outside of the usual (daytime) working hours – from the employer’s perspective – and created an effective protective mechanism for employees and a strong “disincentive” for employers through the compensatory mechanism.

The Federal Labour Court *(Bundesarbeitsgericht – BAG)* has addressed the amount of an appropriate surcharge in several rulings: the Federal Labour Court regularly considers a surcharge of 25% or the granting of a corresponding number of days off to be appropriate to compensate employees for the extra burden. In the case of permanent night work, a surcharge of 30% on the gross wage appears appropriate; in the case of less strain, a surcharge of 10 to 15% may also be appropriate.

d. Prohibition of victimisation and of employer penalties

Section 612a of the Civil Code *(Bürgerliches Gesetzbuch – BGB)* states that an employer may not discriminate against an employee in any agreement or measure because the employee exercises his or her rights in a lawful and permissible manner.

6. Question/request b) regarding Article 3 (2) of the RESC [Safety and health regulations]

Please provide information on:

- **the measures taken to ensure that self-employed workers, teleworkers and domestic workers are protected by occupational health and safety regulations;**
- **whether temporary workers, interim workers and workers on fixed-term contracts enjoy the same standard of protection under health and safety regulations as workers on contracts with indefinite duration.**

7. Answer to question/request b) regarding Article 3 (2) of the RESC [Safety and health regulations]

a. Teleworkers

The Occupational Safety and Health Act (*Arbeitsschutzgesetz – ArbSchG*) applies comprehensively, i.e. to employees in all sectors and industries (see above, Part I, under Article 3 paragraph 1, pp. 3 et seq.). It therefore also covers dependent teleworkers who work (permanently or alternately) at a home workplace.

b. Domestic workers

Domestic workers (domestic staff in private households) are excluded from the direct scope of application of the public occupational safety and health law (Occupational Safety and Health Act, *Arbeitsschutzgesetz – ArbSchG*) – as is the case in the Framework Directive 89/391/EEC.

However, the right of domestic workers to safe and healthy working conditions is equally effectively guaranteed in another way: as employed persons, domestic workers are covered by the statutory accident insurance in accordance with Section 2 (1) no. 1 of Book VII of the Social Code *(Sozialgesetzbuch Siebtes Buch – Gesetzliche Unfallversicherung – SGB VII)* and are protected by this means.

According to Section 14 (1) sentence 1 of Book VII of the Social Code, the accident insurance institutions must use all appropriate means to prevent occupational accidents, occupational diseases and work-related health hazards and to ensure effective first aid; in accordance with Section 14 (1) sentence 2 of Book VII of the Social Code, the accident insurance institutions should also investigate the causes of work-related hazards to life and health.

In the event of occupational accidents or diseases, domestic staff are covered by the provisions of Sections 26 et seq. of Book VII of the Social Code. These provisions oblige the

statutory occupational accident insurance to restore “domestic servants’” health and capabilities by all suitable means and to compensate them or their survivors by cash benefits.

In addition, domestic workers are protected by the law governing service and employment contracts and working hours, among other things.

In this context, it should also be noted that Germany has ratified ILO Convention No. 189 on Decent Work for Domestic Workers and fulfils all the requirements of the Convention.

c. Self-employed persons

In accordance with applicable EU law, there is no general direct application of public occupational safety and health law to self-employed persons in Germany; this also applies, for example, to self-employed teleworkers or platform workers.

However, self-employed persons, in particular self-employed persons without employees, are by no means unprotected in Germany: under the law, there is an option for the self-employed to be compulsorily insured in statutory accident insurance by applying the statutes of the accident insurance funds, and hence to place them under the protection of the accident prevention regulations (Section 3 of Book VII of the Social Code, *Sozialgesetzbuch Siebtes Buch – Gesetzliche Unfallversicherung – SGB VII*). Some groups of entrepreneurs are covered by the compulsory accident insurance by law, i.e. without having to apply for it. These include, among others, persons who work independently in health services or welfare work, for example midwives, physiotherapists and speech therapists. Home-based tradespeople and self-employed persons in agriculture are also insured by operation of law.

In this way, the protective regulations of Book VII of the Social Code and, via the Accident Prevention Regulation *(Unfallverhütungsvorschrift – UVV)* No. 1 of the German Statutory Accident Insurance *(DGUV Vorschrift 1)*, the public occupational safety and health regulations (see above, Part I, under Article 3 paragraph 1, pp. 3 et seq.) apply to the extent that they apply to self-employed persons.

In addition, the Federal Government points out that, according to the legal understanding on which this is based, German civil servants cannot be categorised as employees, since their employment relationship is not governed by contract, but solely by public law. In the public service of the Federal Republic of Germany, there are two status groups at federal and state level: employees on the one hand and civil servants on the other. Consequently, civil servants formally are not covered by the present report and therefore not by Article 3, regardless of the protection regulations applicable to them (e.g. the provisions of the Working Hours Ordinance *[Arbeitszeitverordnung – AZV]*, Sections 78 et seq. of the Federal Civil Service Act *[Bundesbeamtengesetz – BBG]*, the Occupational Safety and Health

Act *[Arbeitsschutzgesetz – ArbSchG],* etc.). The Federal Government also legally emphasised this in a declaration in the notification letter when ratifying the ESC and the RESC.

d. <u>Temporary agency workers, interim workers and workers on fixed-term contracts</u>

The German regulations for ensuring healthy and safe working conditions (statutory law and German Statutory Accident Insurance regulations/regulations of the accident insurance institutions) apply to all employment relationships, and thus regardless of whether they are fixed-term or permanent employment relationships or seasonal work; they therefore also apply to temporary agency work relationships, with some exceptions due to the specific nature of the arrangement.

8. Question/request regarding Article 3 (3) of RESC [Enforcement of safety and health regulations]

Please provide information on measures taken to ensure the supervision of implementation of health and safety regulations concerning vulnerable categories of workers such as:

- **domestic workers;**
- **digital platform workers;**
- **teleworkers;**
- **posted workers;**
- **workers employed through subcontracting;**
- **the self employed;**
- **workers exposed to environmental-related risks such as climate change and pollution.**

9. Answer to question/request regarding Article 3 (3) of the RESC [Enforcement of safety and health health regulations]

a. <u>General measures taken to ensure the supervision of implementation of health and safety regulations regarding all categories of workers (incl. vulnerable categories of workes)</u>

i. <u>Public inspections</u>

In Germany, advising companies on occupational safety and health regulations and monitoring compliance with them is a public task. The Länder perform this task as their “own affair” (see Articles 30, 83 of the Basic Law *[Grundgesetz – GG]*, i.e. the German Federal Constitution, and Section 21 of the Occupational Safety and Health Act *[Arbeitsschutzgesetz – ArbSchG]*).

The Federal States (*Länder*) define the individual responsible supervisory authorities for this purpose by Land law, and also regulate the staffing of the supervisory authorities and organise the administrative procedure (Article 84 (1) of the Basic Law).

To fulfil this task, every Land has its own supervisory authorities (labour inspectorates, government authorities responsible for occupational safety and health: *Gewerbeaufsichtsämter, Staatliche Ämter für Arbeitsschutz*). Labour inspectors have the right to enter and inspect companies at any time without prior announcement. They can issue the necessary instructions for the protection of employees and third parties and also impose fines for non-compliance with government regulations.

The public authorities monitor compliance with occupational safety and health regulations for all areas of activity, depending on their organisational jurisdiction. If the workplace is in a private home (e.g. in the case of telework), the monitoring powers are generally not as extensive as they are for inspections in a business environment, in order to respect privacy and the fundamental right to inviolability of the home (Article 13 of the Basic Law).

The structure of the OSH administration differs considerably between the individual Länder, partly according to the assignment of the tasks of the labour inspectorate, and partly according to the responsibilities for technical and administrative supervision, which in some cases are separate in different supreme Land authorities. The Länder coordinate their administrative actions with each other in the Standing Conference of the Ministers of Labour and Social Affairs of the Länder *(Länderausschuss für Arbeitsschutz und Sicherheitstechnik – LASI)*.

Furthermore, there is the possibility (Section 24 (4) of the Occupational Safety and Health Act) for a supreme Land authority to agree with the accident insurance institutions *(Unfallversicherungsträger – UVT)* that the latter will be fully responsible for (also) monitoring compliance with state regulations in certain areas of activity.

ii. Monitoring by the accident insurance institutions

The legislature has given the statutory accident insurance the mandate to monitor and advise companies and educational institutions (Section 17 of Book VII of the Social Code, *Sozialgesetzbuch Siebtes Buch – Gesetzliche Unfallversicherung – SGB VII*). Monitoring is a core statutory task of the accident insurance institutions *(Unfallversicherungsträger – UVT)* and opens the door to companies. This is where the dualism of the German occupational safety and health system can be seen in organisational terms (see above, Part I, under Article 3 paragraph 1, section 2. b. i., p. 2).

The accident insurance institutions employ specially trained and independently audited inspectors for monitoring and advice (Section 18 of Book VII of the Social Code). Thanks to their sovereign powers (Section 19 of Book VII of the Social Code), the inspectors can

visit companies unannounced and check compliance with state occupational safety and health regulations and the accident insurance institutions' accident prevention regulations.

Since the areas of responsibility are largely the same, the accident insurance institutions, coordinated and represented by their umbrella organisation, the German Statutory Accident Insurance *(Deutsche Gesetzliche Unfallversicherung e.V. – DGUV)*, work closely with the other occupational safety and health stakeholders at federal and state level as part of the Joint German Occupational Safety Strategy (*Gemeinsame Deutsche Arbeitsschutzstrategie – GDA;* see above, Part I, under Article 3 paragraph 1, section 2. a. iv., pp. 9. et seq.) established by the Accident Insurance Modernisation Act (*Unfallversicherungsmodernisierungsgesetz – UVMG*).

b. Special measures taken to ensure the supervision of implementation of health and safety regulations regarding vulnerable categories

In addition to the general regulations just mentioned, there are also some supplementary or special regulations for some areas or groups of people.

i. Domestic workers

For details on domestic workers, see full reporting regarding Article 3 (1) of the RESC in this report (see above, Part I, under Article 3 paragraph 1, section 2. b., pp. 3 et seq.) and see also the answer to the request of the ECSR regarding Article 3 (2) [Safety and health regulations] (see above, under Article 3, section 7. b., p. 70 et seq.).

ii. Digital platform workers

One of the characteristics of the platform economy is the use of automated monitoring and decision-making systems to organise work. Therefore, the cooperation between data protection authorities and other relevant supervisory authorities (see Article 24 of the EU Directive on improving working conditions in platform work (Directive (EU) 2024/2831) of 23 October 2024) is particularly relevant. The need for regulation in this regard will be examined in the ongoing implementation process.

iii. Teleworkers

For details on teleworkes, see full reporting regarding Article 3 (1) of the RESC (see above, Part I, under Article 3 paragraph 1, Section 2., pp. 3 et seq.), and the answers to the requests of the ECSR regarding Article 3 (1) [Health and safety and the working environment] and Article 3 (2) [Safety and health regulations] (see above, under Article 3, section 3. b., pp. 65 et seq., and section 7. a., p. 70).

iv. Posted workers

In particular, the Monitoring Unit for Undeclared Work *(Finanzkontrolle Schwarzarbeit – FKS)* contributes to monitoring the implementation of safety and health regulations for posted workers with regard to accommodation provided directly or indirectly, for a fee or free of charge, by employers for employees who are deployed away from their regular workplace. If, during its activities as part of its holistic inspection approach, it becomes aware of indications of potential violations of requirements for these accommodations (Section 5 sentence 1 no. 4 of the Posted Workers Act *(Arbeitnehmerentsendegesetz – AEntG)*, it shall pass these on to the competent Land authorities listed under no. 1, letter a for the monitoring of occupational safety and health regulations, for the independent exercise of monitoring powers.

v. Subcontracted workers

Employers who wish to make their employees (temporary agency workers) available to third parties for the purpose of providing labour by means of the temporary employment of agency workers generally need to have a permit from the Federal Employment Agency. The Federal Employment Agency regularly monitors, among other things, whether the permit holders are complying with the provisions of occupational safety and health law.

vi. Self-employed workers

For information on self-employed workers, see full reporting regarding Article 3 (1) of the RESC (see above, Part I, under Article 3 paragraph 1, Section 2, pp. 3 et seq.), and the answer to the request of the ECSR regarding Article 3 (2) [Safety and health regulations] (see above, under Article 3, section 7. c., p. 71).

vii. Workers exposed to environment-related risks such as climate change and pollution.

For information o workers exposed to environment-related risks, see full reporting regarding Article 3 (1) of the RESC (see above, Part I, under Article 3 paragraph 1, section 2, pp. 3 et seq.), and the answer to the request of the ECSR regarding Article 3 (1) [Health and safety and the working environment] (see above under Article 3, section 3. e., p. 67).

Article 4 of the RESC

Fair remuneration

1. Explanatory remark

The ECSR considers that the inclusion of questions on gender equality are necessary in order to ensure the ECSR's approach to this issue as outlined in the *UWE* decisions on equal pay is applied across States Parties especially as regards measures taken to ensure pay transparency, to reduce the gender pay gap and to increase the representation of women in decision-making positions.

2. Question/request a) regarding Article 4 (3) of the RESC [Right of men and women to equal pay for work of equal value]

Please indicate whether the notion of equal work and work of equal value is defined in domestic law or case law.

3. Answer to question/request a) regarding Article 4 (3) of the RESC [Right of men and women to equal pay for work of equal value]

The notion of equal work and work of equal value is defined in the Transparency in Wage Structures Act *(Entgelttransparenzgesetz – EntgTranspG)* which came into force 2017.

In accordance with the case law of the CJEU and the German Federal Labour Court *(Bundesarbeitsgericht – BAG)*, Section 4 of the Transparency in Wage Structures Act defines the term of *equal work* as follows: "Equal work means that female and male employees carry out an identical or similar activity at different workplaces or successively at the same workplace."

Employees perform work of equal value if they are in a comparable situation with regard to the value of the work on the basis of a set of criteria. This enables the comparison of works that are diverse in nature but whose value is comparable.

The factors that are regularly decisive for comparison include the type of work, the training requirements and the working conditions. The EU Pay Transparency Directive, which has to be transposed into national law by June 2026, stipulates that the factors to be used must include at least the four factors of skills, effort, responsibility and working conditions. As not all factors are equally relevant for a specific position, each of the four factors should be weighed by the employer depending on the relevance of those criteria for the specific job or position concerned. Additional criteria may also be taken into account, where they are relevant and justified. The Federal Government will implement the Directive and incorporate the criteria specified by the Directive into the Transparency in Wage Structures Act.

4. Question/request b) regarding Article 4 (3) of the RESC [Right of men and women to equal pay for work of equal value]

Please provide information on the job classification and remuneration systems that reflect the equal pay principle, including in the private sector.

5. Answer to question/request b) regarding Article 4 (3) of the RESC [Right of men and women to equal pay for work of equal value]

Section 4 (4) of the Transparency in Wage Structures Act stipulates that remuneration systems must be designed, both as a whole and in its individual remuneration components, in such a way as to exclude any discrimination based on gender.

To fulfil those criteria, the remuneration system must, in particular:

1. objectively take into consideration the type of activity to be carried out,
2. be based on common criteria for female and male employees,
3. weight the individual differentiation criteria in a discrimination-free manner, as well as
4. be transparent on the whole.

6. Question/request c) regarding Article 4 (3) of the RESC [Right of men and women to equal pay for work of equal value]

Please provide information on existing measures to bring about measurable progress in reducing the gender pay gap within a reasonable time. Please provide statistical trends on the gender pay gap.

7. Answer to question/request c) regarding Article 4 (3) of the RESC [Right of men and women to equal pay for work of equal value]

The Federal Government focuses on a strategy for overcoming pay inequality which is based on different causes.

a. <u>Primary legislation</u>

The following primary legislation is in place with the aim of exerting a positive impact on the gender pay gap:

i. <u>Act on the Equal Participation of Women and Men in Executive Positions</u>

In August 2021, the Act to Supplement and Amend the Regulations on the Equal Participation of Women and Men in Executive Positions in the Private Sector and Public Service, the Second Executive Positions Act *(Gesetz zur Ergänzung und Änderung der Regelungen für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen Dienst – Zweites Führungspositionen-*

Gesetz – FüPoG II) came into force and supplemented the Executive Positions Act of 2015 *(Führungspositionen-Gesetz – FüPoG)* with numerous regulations (further information on the Executive Positions Act can be also found below, see Section 3 under Article 20, pp. 105 et seq.).

The Second Executive Positions Act introduces a minimum participation requirement for women on boards of directors of listed companies with employee participation on the basis of parity, which comprise more than three members. The provisions on target values and sanctions have also been amended. If companies set a goal of appointing zero women to the board, they must justify this. Companies that do not report any target value at all or do not give a reason for the target value being zero face fines.

In 2021 the proportion of women on the supervisory boards of listed companies with co-determination on the basis of parity rose to 35.7% (2015: 25%).

The fixed quota of at least 30% women and men on the supervisory boards was expanded under the Second Executive Positions Act to include companies with a majority shareholding by the Federal Government. For these companies, a minimum participation of one woman on the management board has been introduced if the management board has more than two members. According to the Eighth Annual Information from the Federal Government on the Development of the Proportion of Women at Management Levels and in Committees in the Private Sector and the Public Service of the Federal Government as well as in Companies with a Direct Majority Shareholding by the Federal Government, the proportion of women on the supervisory bodies of the Federal Government's 54 direct majority holdings rose to 44.8% in 2022 (2021: 44.3%).

For the public service of the Federal Government (supreme federal authorities and subordinate areas) the goal of equal participation of women and men in management positions by the end of 2025 has been enshrined in the Federal Equal Opportunities Act. The Plan FüPo 2025 contains six measures to achieve this goal.

According to the equality index of 2023 (deadline 30 June 2023) the proportion of women in leadership positions in the highest federal authorities was 43%. In the subordinate area the participation of women in management positions was 45% (Monitoring FüPo 2025, deadline 30 June 2023).

ii. General statutory minimum wage

Since 1 January 2015, employees in Germany have been entitled to a general statutory minimum wage (Minimum Wage Act of 11 August 2014, Federal Law Gazette I-2014, p. 1348, *Mindestlohngesetz – MiLoG*).

Since the introduction of the general statutory minimum wage of EUR 8.50 gross per hour on 1 January 2015, the minimum wage has been gradually increased:

- to EUR 8.84 gross on 1 January 2017,
- to EUR 9.19 gross on 1 January 2019,
- to EUR 9.35 gross on 1 January 2020,
- to EUR 9.50 gross on 1 January 2021,
- to EUR 9.60 gross on 1 July 2021,
- to EUR 9.82 gross on 1 January 2022,
- to EUR 10.45 gross on 1 July 2022,
- to EUR 12.00 gross on 1 October 2022,
- to EUR 12.41 gross on 1 January 2024 and
- to EUR 12.82 gross on 1 January 2025.

As before, it is largely women who are benefiting from the cross-industry statutory minimum wage, which has further contributed to reducing the gender pay gap.

iii. Childcare

On 1 August 2013, Germany introduced a legal entitlement to a place in a nursery or daycare centre for all children over the age of one (Federal Act on Funding of Childcare for Children under the Age of Three, Federal Law Gazette, 2008-I, p. 2403, *Gesetz zur Förderung von Kindern unter drei Jahren in Tageseinrichtungen und Kindertagespflege*) which represented a milestone in family policy.

The nationwide expansion of child daycare provision is enabling parents in Germany to pursue gainful employment and better reconcile work and family life. Since 2008, the Federal Government has invested a total of EUR 5.4 billion in the expansion of childcare places. Taken together, these measures have led to the creation of more than 750,000 childcare places for children of pre-school age.

Furthermore, since 2019, the Federal Government has been providing additional funds to support the Länder in further developing the quality of early childhood education, care and participation in childcare. Through the Childcare Quality Act *(Kita-Qualitätsgesetz)*, from 2023 to 2024 the Federal Government has provided the Länder with around EUR 4 billion in funding to further develop the quality and improve access to children's daycare. The funds are primarily invested in areas crucial for quality improvement, including improving the staff-to-child ratio, strengthening childcare centre leadership and promoting language education. The Federal Government and the governments of the Länder share the common goal of further developing the quality of child daycare and harmonising it across Ger-

many. In August 2024, the Federal Government decided to continue supporting the Länder with an additional EUR 4 billion in 2025 and 2026 while further developing the Childcare Quality Act.

Parental contributions can be a barrier to access to early childhood education and care. Therefore, as part of the Act on Good Early Childhood Care and Education *(Gute Kita Gesetz)*, Book VIII of the Social Code *(Sozialgesetzbuch Achtes Buch – Kinder und Jugendhilfe – SGB VIII)* was amended on 1 August 2019 in order to relieve certain families across Germany of the burden of cost contributions: families in receipt of child supplement, housing benefit, unemployment benefit or other benefits according to Book II of the Social Code *(Sozialgesetzbuch Zweites Buch – Bürgergeld, Grundsicherung für Arbeitsuchende – SGB II*), or benefits according to Book XII of the Social Code *(Sozialgesetzbuch Zwölftes Buch – Sozilahilfe – SGB XII)* or the Asylum Seekers Benefits Act *(Asylbewerberleistungsgesetz – AsylbLG)* do not have to pay parental contributions.

In September 2021, a legal entitlement to all-day education and care for children of primary school age was introduced. The legal entitlement will initially apply to the first grade starting at 1 August 2026 and will be expanded annually by one grade. Every primary school child in the first four grades will be entitled to all-day care from 1 August 2029.

The Federal Government provides EUR 3.5 billion of financial assistance for investments in the expansion and improvement of all-day education and care within the framework of the Act on Providing All-Day Care and Education for Primary School Children *(Ganztagsförderungsgesetz)*. Furthermore, the Federal Government will support the Länder by gradually increasing funding for operating costs starting in 2026. It will provide permanent funding of EUR 1.3 billion annually from 2030 onward.

iv. Act to Promote Transparency of Wage Structures among Women and Men (Transparency in Wage Structures Act)

(1) Entry into force of the Transparency in Wage Structures Act in 2017

The Transparency in Wage Structures Act *(Entgelttransparenzgesetz – EntgTranspG)* aims to help women and men better assert their right to equal pay for equal work or work of equal value. It establishes a clear legal basis for the principle of equal pay for equal work or work of equal value and addresses the lack of transparency in company pay structures as a cause of pay inequality.

It includes three key measures:

- **Individual entitlement to disclosure**: Employees in companies with more than 200 employees can request information on how their pay is determined. The entitlement to disclosure covers the criteria and practices for determining remuneration (an individual's own remuneration + comparable reference activity enquired about) and

the amount of the comparable remuneration enquired about (median remuneration of a group of at least six employees).

- **Internal company evaluation procedures**: Companies with over 500 employees are called to conduct internal company evaluation procedures to ensure equal pay and to inform employees accordingly.
- **Reporting obligation**: Employers with more than 500 employees, who are also required to prepare a management report under the Commercial Code *(Handelsgesetzbuch – HGB)*, must regularly report on their equality measures, including efforts towards pay equality. The reports must be published in the Federal Gazette as an annex to the management report.

(2) Second evaluation in 2023 and EU Pay Transparency Directive

The Federal Government is fundamentally obliged to evaluate the Transparency in Wage Structures Act two years after its entry into force and every four years thereafter. The first evaluation report of the Federal Government was presented in July 2019. The second evaluation report was presented in August 2023.

Compared to the first evaluation report, only selective improvements can be seen with regard to the effectiveness and application of the Transparency in Wage Structures Act. Employees are still not sufficiently aware of the Act and its instruments. To date, 4% of surveyed employees at companies with more than 200 staff have filed a request of disclosure. Employees are still rather reluctant to use their entitlement to disclosure. Only a few companies voluntarily review their pay structures and fewer companies than expected publish reports on equality and equal pay.

In the aftermath of the second evaluation, the Federal Government agreed to provide intensive support to the legal application of the Transparency in Wage Structures Act and implementation of the principle of equal pay. The Act will be further developed, also taking into account the EU Pay Transparency Directive that came into force in June 2023 and has to be transposed into national law by June 2026. The requirements stipulated by the EU Pay Transparency Directive significantly exceed the Transparency in Wage Structures Act. This includes a right to information for job applicants about the starting salary for the position in question or its range, as well as a prohibition on employers asking about the salary in the current or previous employment relationship. These requirements prior to employment are currently not contained in national law. Other requirements in the Transparency in Wage Structures Act will need to be fundamentally adapted in order to comply with the EU Pay Transparency Directive. This applies to the individual entitlement to disclosure on remuneration, which so far only applies to employers with more than 200 em-

ployees, but under the EU Pay Transparency Directive is granted to all employees regardless of the size of the employer. The threshold for the reporting obligation is also being reduced from employers with more than 500 employees to employers with 100 or more employees. Reporting is required on 7 statistical key indicators; if unjustified gender pay gaps are revealed in groups of employees that conduct equal work or work of equal value, employers can be obligated to take remedial measures. The EU Pay Transparency Directive furthermore provides for new regulations for better enforcement of the principle of pay equality.

The Federal Government has to implement the EU Pay Transparency Directive and consequently revise the Transparency in Wage Structures Act in 2026.

b. Further measures to reduce the gender pay gap

In order to reduce the earnings gap between women and men based on the causes of such gap, the Federal Government adopted a large number of secondary legislative measures. The goal of equal pay of women and men for equal work can often only be achieved in cooperation with civil society (social partners, women's and business associations) and with all other levels of government (Länder, i.e. the Federal States, and local authorities). The Federal Government's intention is therefore to bring together the different stakeholders so that each becomes active where they are able to bring about change. The following measures and stakeholders are worthy of mention in this regard:

i. Improvement of underlying conditions by means of family policy measures and promotion of return to work

Family-related interruptions to and reductions in gainful employment are a particularly significant cause of pay inequality in Germany. A comparison with other countries clearly shows that the gap in the average wages of women and men is lower due to a higher level of female labour market participation and good infrastructure for reconciling work and family life. Improved reconciliation of work and family life facilitates both uninterrupted working lives for women and forms of employment that secure livelihoods.

Creating suitable underlying conditions for parents in these areas is therefore crucial. The Federal Government has adopted a decisive stance in this regard with its family and equal opportunities policy in recent years. The further expansion of childcare, improved tax deductibility of childcare costs, parental allowance with partner months, parental allowance plus and the partnership bonus as income replacement benefits are measures that assist women and men in reconciling work and family life and that support a fair division of childcare duties between women and men.

(1) Parental allowance

Prior to the introduction of parental allowance in 2007, in 2006 a mere 3.5% of fathers drew benefits called “child-raising benefit” *(Erziehungsgeld)*. This share continued to increase to 46,2% in 2021. This shows that the current scheme of parental leave entitlements supports and fosters the ongoing trend towards active fatherhood in Germany and, as such, supports higher labour participation of women.

Parental allowance is a benefit for parents of babies and toddlers. It is meant to allow parents to spend time with, raise and care for their child. Parental allowance provides compensation if the parents’ income is lower because they are temporarily working fewer hours or stop working after the birth of their child. Parental allowance thereby helps secure the livelihood of these families. Parents who had no income at all before their child was born are also entitled to receive parental allowance. Parental allowance can be claimed by parents who live together, by a single parent or by separated parents.

Parents are entitled to basic parental allowance in the first 14 months after the birth. It replaces the income before birth at a replacement rate of usually 65%. Mothers and fathers have twelve monthly amounts at their disposal, which they can divide between themselves. Both parents can apply for parental allowance alternately or at the same time but only for one month, if their child was born after 1st of April 2024. If both parents apply for parental allowance and one parent is earning less than before, parental allowance can be paid for two additional months (partner months). These partner months provide an additional incentive for both parents to be involved.

Parental allowance plus is primarily aimed at parents who want to return to work earlier. It is calculated in the same way as parental allowance, but is at most half as high as the parental allowance that the respective parent would be entitled to after the birth without a part-time income. With parental allowance plus, parents can extend their parental allowance entitlement for up to 28 months. The evaluation of parental allowance plus shows that partnership levels are particularly high when the partnership bonus introduced in 2015 is used and that parents take on childcare in almost equal shares. It can be observed that fathers who take advantage of parental allowance plus receive parental allowance for longer (on average 8 months in 2023, compared to 2.8 months of basic parental allowance).

The partnership bonus provides additional months of parental allowance plus. It is an offer for parents who would like to share their family-related and professional responsibilities as equal partners. As part of the 2021 reform to make the partnership bonus more flexible, parents are entitled to receive two, three or four additional months of parental allowance plus if they work between 24 and 32 hours a week (previously 25 to 30 hours a week) during this time. This gives parents more flexibility in terms of the frequency and extent of

their working hours, e.g. a 3 or 4-day-week is possible. At the same time, it was made easier for parents to opt for the partnership bonus. Parents can therefore receive parental allowance plus for a total of up to 32 months of the child´s life.

In addition, the reform in April 2024 also changed the income limit for parental allowance: the income limit for couples and single parents is EUR 200,000 taxable income for births after 1 April 2024 and EUR 175,000 taxable income for births after 1 April 1 2025. If this limit is exceeded, parents cannot receive parental allowance. The limits are based on the taxable income in the calendar year prior to the birth of the child. Taxable income must be distinguished from gross income, which is generally significantly higher than taxable income.

(2) Corporate programme "Success Factor Family"

Many business leaders have realised that it is in their own interest to promote equal opportunities for women and men and the reconciliation of work and family life. Family-friendly working conditions involve fewer timing issues for parents, greater company loyalty and employee satisfaction. When companies invest in such measures and foster a family-oriented culture, this generates significant potential returns, for instance in terms of fewer absences, lower staff turnover rates and an earlier return to work.

In order to promote awareness at companies of the benefits of a family-friendly HR policy, since 2006 the Federal Government has been championing a family-friendly working world that supports men and women in reconciling work and family life by means of the corporate programme "Success Factor Family" *(Erfolgsfaktor Familie)* together with the umbrella associations of German businesses (Confederation of German Employers' Associations *[Bundesvereinigung der Deutschen Arbeitgeberverbände – BDA]*, German Confederation of Skilled Crafts *[Zentralverband des Deutschen Handwerks – ZDH]*, Association of German Chambers of Commerce and Industry *[Deutsche Industrie- und Handelskammer – DIHK]*), the German Trade Union Confederation *(Deutscher Gewerkschaftsbund – DGB)* and other industry associations. Part of the corporate programme is the "Success Factor Family" corporate network with almost 9,000 members – the largest nationwide platform for all employers committed to the theme of reconciling work and family life. The network office is based at the project company run by the German Chamber of Commerce and Industry, DIHK Service GmbH.

(3) Reconciliation of work and care

The Caregiver Leave Act *(Pflegezeitgesetz – PflegeZG)* and the Family Caregiver Leave Act *(Familienpflegezeitgesetz – FPfZG)* basically provide three legal measures to support informal caregivers to better reconcile work and long-term care:

- Short-term absence from work *(kurzzeitige Arbeitsverhinderung)*
    - The right to stay away from work for up to ten working days if this is necessary in order to organise appropriate care or to ensure the provision of long-term care for a close relative in an acute care situation. The right to additionally claim a career's grant for a period of up to ten working days once a year (Pflegeunterstützungsgeld). All employees are entitled to this benefit, regardless of the size of the company or the number of employees.
- Rights to work leave
    - Long-term carer's leave *(Pflegezeit)*: Right to complete or partial leave from work for up to six months in order to care for a close relative in need of long-term care at home. The entitlement only exists in companies with more than 15 employees.
    - Family carer's leave *(Familienpflegezeit)*: Right to partial work leave for up to 24 months with a minimum working time of 15 hours per week. The entitlement only exists in companies with more than 25 employees.

Both types of leave are also possible in order to care for a child in need of long-term care, even if care is not provided at home but in a residential setting.

(4) Right to return from part-time to full-time work

Since 1 January 2019, the right to return from part-time to full-time work *(Brückenteilzeit)* applies in German law. The right to return from part-time to full-time work in accordance with Section 9a of the Part-Time and Fixed-Term Employment Act *(Teilzeit- und Befristungsgesetz – TzBfG)* ensures that eligible employees who reduce their working hours for a limited period of time can return to their original working hours after the part-time phase ends. It also allows for a temporary part-time job with a right to return to the previous working hours and can thus also prevent women from involuntarily remaining in part-time work for too long.

ii. <u>Removing gender stereotypes – expanding career paths / the spectrum of career opportunities</u>

Eliminating the gender-specific segregation of the labour market will make an important contribution towards equal opportunities and equal pay given that traditional notions regarding gender roles are a significant reason for the restricted spectrum of career opportunities enjoyed by women and men and pose obstacles for women along their career paths and limit income perspectives. The measures taken by the Federal Government to tackle this issue are described in detail under Article 20, question a (see below, under Article 20, section 3. a., pp. 105 et seq.).

iii. Enhancing the value of social professions

Social professions largely attract women: around 80% of those working in the nursing sector are women, rising to over 90% in early education. This form of horizontal labour market segregation is cited as one of the core structural reasons for the unadjusted wage gap between men and women. Enhancing the value of social professions by means of material improvement is therefore an important task towards strenthening equal opportunities. The Federal Government, the Federal States *(Länder)*, local authorities, partners and civil society have achieved important goals in terms of value enhancement. These particularly include decent training pay and a decent salary as well as career advancement opportunities.

In Germany societal attitudes still tend to produce negative reactions when it comes to men taking up social professions, such as (early) education, care or nursing careers. Overcoming such and similar role stereotypes would also help to address the existing severe shortage of skilled workers in education and nursing professions, which is expected to worsen over the coming years.

To improve working conditions and remuneration in the care sector, the prevailing Sixth Ordinance on Mandatory Working Conditions in the Nursing Care Sector *(Sechste Verordnung über zwingende Arbeitsbedingungen in der Pflegebranche)* entails a continuous rise in the minimum wage for nursing staff up until 1 July 2025 (to EUR 16.10 for unskilled nursing staff and EUR 20.50 for nursing specialists). In addition to that, licensed long-term care facilities have been obliged to pay their nursing and care staff (at least) in accordance with a collective wage agreement since 1 September 2022. This regulation was implemented within the scope of the Health Care Advancement Act *(Gesetz zur Weiterentwicklung der Gesundheitsversorgung)*.

iv. Initiatives for the promotion of a fair distribution of paid employment and unpaid care work

The unequal distribution of gainful employment and care work between the sexes has a strong economic impact: on average, women perform more unpaid care work than men – with noticeable consequences for their economic self-sufficiency, especially for their income, assets and pension provision. A fair distribution of unpaid care work by being substantially gainful employed enables women to participate more in the workforce, experience fewer career interruptions, and achieve better salary development, thereby reducing the gender pay gap**.** It is therefore the aim of the Federal Government to strengthen men and women in their gainful employment as well as in sharing care work equally.

This is why the Federal Government has been funding the coordination unit for the “Sharing care work fairly” alliance *(Sorgearbeit fair teilen)* since 2020. The “Sharing care work

fairly" alliance consists of 32 organisations from churches, trade unions, womens', mens', family and social associations that are committed to the gender-equitable distribution of paid work and care work and to closing the gender care gap (https://www.sorgearbeit-fair-teilen.de). In the current funding phase, a new thematic focus was placed on the strong links between equality in partnerships and economic equality as well as on the topic of economic self-sufficiency.

v. Co-operation with social partners

Another important point is the cooperation with social partners. Within the framework of its collaboration with the German Trade Union Confederation *(Deutscher Gewerkschaftsbund – DGB)*, the Federal Government has been funding the project "What's in it for women? – Economic Independence" (www.was-verdient-die-frau.de) since September 2014, to strengthen the economic self-sufficiency of women.

The current fifth project phase, which runs until 2026, focuses on the topics of equal pay, working hours and sexism in the workplace by strengthening the exchange with companies, works councils and employees. By deploying knowledge-based social media contributions, digital toolkits and a network, the project also continues to raise the awareness of young women of the importance of their employment biography to ensure economic self-sufficiency.

vi. Public relations campaign

The *Equal Pay Day* is an event day for the equal payment of women and men that has been held in Germany since 2008 at the initiative of the association, Business and Professional Women e.V. Germany. The *Equal Pay Day* symbolically marks the day of the year up to which women work for nothing, while men are paid for their work from the beginning of the year. Numerous events take place nationwide on this day in order to raise awareness of the pay differences between women and men.

In order for the *Equal Pay Day initiative* to be significantly strengthened beyond the event day itself by means of year-round commitment, the *Equal Pay Day Office* has been supported by the Federal Government since 2011. To this end, information material is prepared, the *Equal Pay Day* homepage (www.equalpayday.de) is updated and a kick-off event is organised for distributors, supporters and other interested parties. Furthermore, the *Equal Pay Day Office* supports action groups with guidelines for events, event notices and promotional material and is the central point of contact for companies and the public for all questions concerning the gender wage gap.

vii. Activities by the Federal Anti-Discrimination Agency, esp. the equal pay check

With the entry into force of the General Act on Equal Treatment *(Allgemeines Gleichbehandlungsgesetz – AGG)* in August 2006, the Federal Anti-Discrimination Agency *(Antidiskriminierungsstelle des Bundes – ADS)* commenced its operations. The Agency is an independent point of contact for persons who encounter discrimination on grounds prohibited by the General Act on Equal Treatment, e.g. gender. The Federal Anti-Discrimination Agency can offer victims free first advice and bring about an amicable settlement between the parties. From the time at which the Federal Anti-Discrimination Agency was established up until the end of June 2024, there have been a total of 253 consultancy cases concerning gender wage discrimination.

Since 2013, the Federal Anti-Discrimination Agency has been assisting as a voice in raising awareness of the **"***equal pay check***"** *(Entgeltgleichheits-Check)* analysis tool that was developed in 2010. The equal pay check helps to evaluate the key remuneration components (monthly basic salary, performance bonuses, overtime payment, additional remuneration for special challenges) by offering three separate tools: statistics, process analyses and pairwise comparisons. Since 2013, a total of 26 employers have reviewed their remuneration system with the analysis tool and received a corresponding certificate from the Federal Anti-Discrimination Agency for their commitment. Further information about the project can be found at www.eg-check.de.

viii. Federal States *(Länder)* measures

The Federal States (*Länder*) strengthen the Federal Government's initiatives to combat pay differences with their own diverse range of measures and at the same time regularly call on the Federal Government at the annual Conference of the Ministers and Senators of the Länder for Gender Equality and Women's Affairs to adopt targeted measures to reduce the pay difference also proven to exist in public service.

c. Continuation of statistical data series

The latest statistical surveys on the gender pay gap can be found on the homep. of the Federal Statistical Office: https://www.destatis.de/EN/Themes/Labour/Earnings/GenderPayGap.

According to the latter, the average hourly gross earnings of women in 2024 came to EUR 22.24, which is 16% lower than those of men (EUR 26.34). Compared to the previous year, it fell by two percentage points. This is the sharpest decline since calculations began in 2006. Although the rate has been declining for some time, it recently remained at the 2020 level.

The gender pay gap amounted to 17% in the western part of Germany in 2024 and 5% in eastern part of Germany in 2024. According to in-depth statistical analyses of the pay gap on the basis of a new earnings survey, some two thirds of the unadjusted gender pay gap is attributable to structural differences, such as differences in the sectors and occupations in which women and men are employed, as well as an unequal distribution of job requirements in terms of management and skills. In addition, women are more frequently employed part-time or in mini-jobs than men.

The remaining third of the earnings gap cannot be explained statistically based on the information of the earnings survey. This so-called adjusted gender pay gap came to 6 % nationwide in 2024 (6% in the western part and 8% in the eastern part of Germany). This means that women with comparable qualifications and tasks earned an average of 6% less than men per hour. However, it must also be borne in mind here that the adjusted gender pay gap may have been lower if other wage-relevant influencing factors had been available for the analyses. For example, there was no data available concerning individual behaviour in wage negotiations or family-related interruptions to gainful employment. This statistically unexplained part of the pay gap known as the adjusted gender pay gap cannot be equated with gender-based pay discrimination. At the same time, the explained part of the pay gap is not free of discrimination.

The analyses of the Federal Statistical Office reveal a slight decrease over time in both the adjusted and unadjusted gender pay gaps. Women are thus gradually catching up in terms of their earnings.

Article 5 and Article 6 of the RESC

The right to organise and the right to bargain collectively

1. Explanatory remark

Questions concerning the long-term decline in unionisation and collective bargaining coverage rates across Europe from a social rights perspective are proposed. While the causes of low trade union density rates are complex, these include deindustrialization and globalization, as well as the presence of large non-unionized segments of the workforce, including many workers who are low paid and/or have a precarious contractual situation. One of the questions under Article 5 seeks to articulate the scope of State Party obligations in arresting that decline, without unduly interfering with trade union freedom. Another question looks at some of the reported ways in which unionisation at the workplace has been undermined, for instance by the promotion of alternative sources of representation that are more prone to being controlled by the employer. The decline in trade unionisation is accompanied in many places by the demotion of joint consultation mechanisms in bipartite and tripartite mechanisms, by diluting the contents of the matters of joint interest addressed or downgrading the status of these exchanges.

The decline in collective bargaining coverage has been uneven, with some countries more affected than others. However, in many cases the decline has been associated with a decentralisation of collective bargaining arrangements and an increase in the discretion afforded to employers in terms of fixing the terms and conditions of the employment relationship. The targeted questions seek to uncover some of the common elements underpinning this process, including, for example, the way in which collective bargaining is articulated across different bargaining levels. They also seek to ascertain what measures are taken by States Parties to arrest and reverse this decline, in line with their duty under Article 6 (2) to promote collective bargaining. The questions under Article 6 (4) take a closer look at some of the restrictions to the right to strike reported in many States Parties, including the minimum service requirement or the availability of injunctive relief for preventing a strike from taking place.

2. Question/request a) regarding Article 5 of the RESC [Right to organise]

Please indicate what measures have been taken to encourage or strengthen the positive freedom of association of workers, particularly in sectors which traditionally have a low rate of unionisation or in new sectors (e.g., the gig economy).

3. Answer to question/request a) regarding Article 5 of the RESC [Right to organise]

The Act to Strengthen Collective Bargaining Autonomy *(Tarifautonomiestärkungsgesetz)* of 11 August 2014 (Federal Law Gazette I, p. 1348) has already taken important measures to stabilise the collective agreement system. The Act has expanded the possibilities for increasing the broad impact of collective agreements and thus strengthening their regulatory effect. The declaration of general applicability of collective agreements under the Collective Agreements Act *(Tarifvertragsgesetz – TVG)* has been simplified and the possibility of extending working conditions under the Posted Workers Act *(Arbeitnehmer-Entsendegesetz – AEntG)* has been opened up for all sectors (please also refer to the remarks below on Article 6 (2), Section 13., pp. 93 et seq.). The introduction of the Minimum Wage Act *(Mindestlohngesetz – MiLoG)* in 2014 created a minimum wage level even for those areas in which the parties to a collective agreement were often unable to ensure adequate protection for employees themselves.

The Federal Government continues to pursue the goal of further strengthening collective bargaining coverage. In their coalition agreement for the 20th legislative period, the Federal Government had agreed, among other things, to make federal public procurement conditional upon compliance with a representative collective agreement in the respective industry; the award of the contract is based on a simple, unbureaucratic declaration. This is intended to eliminate the disadvantages faced by companies bound by collective agreements when competing for public contracts and licences from the Federal Government and to curb predatory competition based on wage and staff costs. The draft of an Act on Collectively Agreed Pay in Public Procurement *(Tariftreuegesetz)*, which also includes the aforementioned Federal Act on Collectively Agreed Pay in Public Procurement *(Bundestariftreuegesetz)* was passed by the cabinet at the end of November 2024. However, the parliamentary procedure could not be completed within the expiring legislative period.

The measures taken by the Federal Government are not limited to strengthening collective bargaining coverage in specific sectors, but are fundamentally suitable for strengthening collective bargaining coverage in all sectors and provide a strong incentive for increased collective bargaining coverage.

This also includes the fact that digitalisation and certain areas or groups must be considered when strengthening the right to organise and its exercise: changing communication channels and forms of work resulting from digitalisation make it more difficult to reach employees, for example in the platform economy. The measures required with regard to Article 20 of the EU Directive on improving working conditions in platform work (Directive (EU) 2024/ 2831) of 23 October 2024 establishing communication channels for persons

performing platform work and Article 25 on the promotion of collective bargaining in platform work will be examined and, if necessary, implemented as part of the ongoing national directive transposition process.

4. Question/request b) regarding Article 5 of the RESC [Right to organise]

Please describe the legal criteria used to determine the recognition of employers' organisations for the purposes of engaging in social dialogue and collective bargaining.

5. Answer to question/request b) regarding Article 5 of the RESC [Right to organise]

Section 2 (1) of the Collective Agreement Act *(Tarifvertragsgesetz – TVG)* stipulates that – in addition to trade unions – individual employers and employers' associations are parties to collective agreements. In German law, it is therefore possible either for a trade union to conclude a collective agreement directly with an employer on behalf of the latter, or for the collective agreement to be concluded with the employers' association. In the latter case, the collective agreement concluded applies to those employers who are members of the employers' association, unless the statutes of the employers' association stipulate otherwise (which is known as *OT-Mitgliedschaft* or *Ohne-Tarifbindung-Mitgliedschaft*, which stands for "membership without collective bargaining coverage"). In Germany, employers' associations are generally organised by industry or industry group. The corresponding collective agreements are therefore concluded for the respective industry.

Due to the fact that, according to Section 2 (1) of the Collective Argeement Act, individual employers also have the capacity to conclude collective agreements, trade unions have a point of contact and negotiating partner for the conclusion of collective agreements. The capacity of individual employers to conclude collective agreements therefore safeguards the effective implementation of the principle of autonomy in collective bargaining as it allows collective agreements to be concluded even if an employer does not belong to an employers' association. The capacity of individual employers to conclude collective agreements thus protects trade unions on the one hand, but also the interests of individual employers on the other, who can leave an employers' association without having to relinquish the advantages of autonomy in collective bargaining.

The requirements for the capacity to conclude collective agreements are not specifically laid down by law but follow from the freedom of association enshrined in constitutional law and corresponding case law. The starting point is the concept of association in Article 9 (3) of the Basic Law, i.e. the German Federal Constitution *(Grundgesetz – GG)*. Associations of employers must meet the requirements defined by Article 9 (3) of the Basic Law.

They must therefore be a voluntary association of employers, which continues to exist independently of changes in membership and is capable of organised decision-making. It must be an association for the representation of collective employer interests. The key factor is the role of the members as employers; there is no minimum number or size requirement. Employers must be direct members of the employers' association. Unlike trade unions, an employers' association's capacity to conclude collective agreements does not depend on it having a certain level of assertiveness ("assertive strength", see below, section 7., p. 93 et seq.).

The employers need to have formed the association voluntarily. Compulsory associations, i.e. those in which membership is mandatory under public law (e.g. chambers), lack capacity to conclude collective agreements. The employer association's capacity to negotiate collective agreements also requires that it does not have any opponents. An association does not have any opponents if it is not financially or personally dependent on or linked to social opponents (e.g. employees, employee associations, trade unions). An employers' association that also has employees as members lacks capacity to negotiate collective agreements. Finally, a further prerequisite for the capacity to negotiate collective agreements is the willingness to do so. The conclusion of collective agreements must be one of the responsibilities of the employers' association as state in their statutes.

6. Question/request c) regarding Article 5 of the RESC [Right to organise]

Please describe the legal criteria used to determine the recognition and representativeness of trade unions for the purposes of engaging in social dialogue and collective bargaining.
Please provide information:

- **on the status and prerogatives of minority trade unions;**
- **on the existence of alternative representation structures at enterprise-level, such as elected worker representatives.**

7. Answer to question/request c) regarding Article 5 of the RESC [Right to organise]

Under German labour law, only trade unions have the right to negotiate and conclude collective agreements on behalf of its members and, if an agreement cannot be reached, to call for a strike to force the other side to resume negotiations. Minority trade unions / small trade unions have the same rights and legal status as bigger trade unions. The rights that are granted to trade unions under German labour law are irrespective of the size of the trade union or of whether it represents only a specific groups of employees (which would be a so-called *Spartengewerkschaft*; "branch-level union") as long as the requirements for being considered a trade union are met.

In their case law, German labour courts have developed requirements that have to be met to qualify as a union. Most importantly, a trade union needs to have the capacity to conclude collective agreements *(Tariffähigkeit)*. To be considered to be "*tariffähig*" – i.e. to have capacity to conclude collective agreements – trade unions must be strong enough to assert themselves in negotiations with employers, hence to have "assertive strength" *(soziale Mächtigkeit)*. Assertive strength ensures equal bargaining power, which in turn ensures that a fair and balanced reconciliation of conflicting labour contract interests is achieved through collective bargaining. Without assertive strength, there is no effective representation of workers' interests by unions. Courts apply this criterion primarily by looking at how many workers a trade union organises in their operating range. The strength of a trade union lies in the fact that the workers can negotiate as a collective, thus compensating for the structural inferiority of workers in the employment relationship. A trade union therefore, in principle, is considered assertive the moment it can conclude collective agreements for a substantial number of workers in the sector the trade union chooses to operate in.

Fulfilling these minimum criteria lies, in principle, in the hands of the trade unions. Trade unions themselves have the autonomy to decide on their operating range, e.g. the sectors or groups of workers they want to represent. This is part of the autonomy of social partners. They choose who they want to represent and in which sectors of the labour market they want to be active. Assertive strength is always (only) assessed for the operating range in question, not in general terms.

At the company level, employees can elect works councils. Works councils are not an alternative to trade unions and are not associations in the sense of the constitutionally guaranteed freedom of association. Works councils do not conduct collective bargaining; nor do they have the right to strike.

Rather, co-determination at the company level – as the second element of the dual system – complements the system of representing employee interests in Germany. The Works Constitution Act grants works councils a variety of rights in terms of being heard, receiving information, being consulted and to co-determination in order to represent the interests of employees.

The prerequisite for the election of works councils is that typically at least five permanent employees entitled to vote are employed by the company. The initial election of a works council can be initiated by three employees of a company or a trade union represented in the company by inviting them to a works meeting at which an electoral board is elected. The electoral board conducts the election.

8. Question/request d) regarding Article 5 of the RESC [Right to organise]

Please indicate whether and to what extent the right to organise is guaranteed for members of the police and armed forces.

9. Answer to question/request d) regarding Article 5 of the RESC [Right to organise]

The right to form or join associations to safeguard and promote working and economic conditions (freedom of association) and to be active in them is guaranteed for everyone and for all occupations under Article 9 (3) of the Basic Law, i.e. the German Federal Constitution *(Grundgesetz – GG)*. This fundamental right also applies to members of the German armed forces and the police.

In addition to employees, this fundamental right also applies to members of the public service, despite the relationship of service and loyalty defined by public law of the members of the public service and the traditional principles of the professional civil service (Article 33 (4) and (5) of the Basic Law). The civil rights of soldiers may be restricted by their statutory duties in accordance with Section 6 of the Military Service Act *(Soldatengesetz – SG)* in the context of the requirements of military service; however, this does not affect their freedom of association.

10. Questions/requests a)–c) regarding Article 6 (1) of the RESC [Joint consultation]

a) Please state what measures are taken by the Government to promote joint consultation.
b) Please describe what issues of mutual interest have been the subject of joint consultation during the past five years, what agreements have been adopted as a result of such discussions and how these agreements have been implemented.
c) Please state if there has been any joint consultation on matters related to (i) the digital transition, or (ii) the green transition.

11. Answers to questions/requests a)–c) regarding Article 6 (1) of the RESC [Joint consultation]

Questions a), b) and c) will be answered together.

The freedom of association protected by Article 9 (3) of the Basic Law, i.e. the German Federal Constitution *(Grundgesetz – GG)* guarantees the associations, among other things, the right to “undertake specific association-related activities”. Activities that are aimed at maintaining and promoting working and economic conditions are therefore pro-

tected. These may also include joint consultations that are not necessarily aimed at concluding collective agreements. As a rule, there are no statutory provisions in this regard. Rather, the social partners are free to decide whether and to what extent they enter into such joint consultations as part of their association-related activities.

Consultations between (and with) the social partners occur, for example, as part of the legislative process. Section 47 of the Joint Rules of Procedure of the Federal Ministries *(Gemeinsame Geschäftsordnung der Bundesministerien – GGO)* stipulates that, as part of all legislative procedures, central and general associations of employee and employer organisations must be heard in a timely manner, and this is consistently put into practice. This practice is also applied with regard to legislative proposals in the areas of digital and ecological transformation.

Beyond the requirements of Section 47 of the Joint Rules of Procedure of the Federal Ministries and with the aim of involving stakeholders as early and comprehensively as possible, in April 2023 the Federal Ministry of Labour and Social Affairs, in joint leadership with the Federal Ministry of the Interior and Community, conducted a stakeholder dialogue on the basis of the “Proposals for modern employee data protection” which also involved representatives of the social partners. Another stakeholder dialogue involving the social partners took place in the autumn of 2024 on the topic of platform work in order to get the stakeholders’ views on the Directive and practical tips for implementing the Directive at an early stage, even before the EU Directive to improve working conditions in platform work (Directive (EU) 2024/2831) of 23 October 2024 comes into force. The dialogue with stakeholders continues during the work on the draft ministerial bill.

One example of joint deliberations with the social partners is the package of measures pursued in the expiring legislative period to strengthen collective bargaining coverage (see above, under Article 5 and Article 6, section 3., p. 91). To this end, the 2021 coalition agreement also provided for issues relating to the strengthening of collective bargaining coverage to be discussed in a social partner dialogue. In February 2023, a dialogue took place with the umbrella organisations of employees (the German Trade Union Confederation *[Deutscher Gewerkschaftsbund – DGB]*) and employers (the Confederation of German Employers’ Associations *[Bundesvereinigung der Deutschen Arbeitgeberverbände – BDA]*), as well as other associations and individual trade unions. The main topic of the dialogue was an exchange of views on the social partners’ ideas regarding the measures envisaged in the coalition agreement, to make sure that the social partners’ perspective could be effectively taken into account when drafting the proposed regulations.

12. Question/request a) regarding Article 6 (2) of the RESC [Collective bargaining]

Please provide information on how collective bargaining is coordinated between and across different bargaining levels including information on:

- **the operation of factors such as *erga omnes* clauses and other mechanisms forthe extension of collective agreements;**
- **the operation of the favourability principle and the extent to which local/workplace agreements may derogate from legislation or collective agreements agreed at a higher level.**

13. Answer to question/request a) regarding Article 6 (2) of the RESC [Collective bargaining]

a. <u>Extension of collective agreements under German law</u>

German law provides for two main ways of making collective agreements binding on employers and employees who are not bound by collective agreements in their respective industry: the declaration of universal applicability *(Allgemeinverbindlicherklärung – AVE)* in accordance with Section 5 of the Collective Agreements Act *(Tarifvertragsgesetz – TVG)* and the extension of a collective agreement by issuing a statutory instrument under the Posted Workers Act *(Arbeitnehmer-Entsendegesetz – AEntG)*. The Posted Workers Act in turn provides two legal bases for the extension of a collective agreement: Section 7 of the Posted Workers Act governs the extension of collective agreements to sectors that are explicitly referred to in the Posted Workers Act. The provision of Section 7a of the Posted Workers Act, introduced by the Act to Strengthen Collective Bargaining Autonomy *(Tarifautonomiestärkungsgesetz)*, also allows the extension to all other sectors.

b. <u>Declaration of universal applicability</u>

Pursuant to Section 5 of the Collective Agreements Act *(Tarifvertragsgesetz – TVG)*, collective agreements can be extended irrespective of their territorial scope of application, e.g. collective agreements that are applicable only to one Land. In contrast to the Posted Workers Act (see below, under the following subsection c.), Section 5 of the Collective Agreements Act does not provide for any restriction regarding suitable subjects to be covered in a collective agreement which means that, in principle, all subjects that may be regulated by collective agreement are eligible for an extension.

Furthermore, declaration of universal applicability according to the Collective Agreements Act is only possible if it appears necessary in the public interest. Section 5 (1) sentence 2 of the Collective Agreements Act contains two standard cases where there is a presumption of public interest according to the case law of the Federal Labour Court *(Bundesarbeitsgericht – BAG)*. Of these, only the standard case of the primary importance of

the collective agreement within its scope of application is of practical relevance (i.e. the majority of the employment relationships within the scope of application of the collective agreement are structured in accordance with the collective agreement). In the context of the standard case of primary importance, quantitative aspects, i.e. the prevalence of the collective agreement in practice, are also examined.

In procedural terms, the declaration of universal applicability requires not only a joint application by the parties to the collective agreement but also a majority vote in favour by the members of the collective agreements committee. The collective agreements committee is composed of three employee and three employer representatives. A declaration of universal applicability always requires a majority decision, i.e. the approval of at least four members of the collective agreements committee.

c. Statutory instrument pursuant to Sections 7, 7a of the Posted Workers Act

The subject of a statutory instrument pursuant to Sections 7, 7a of the Posted Workers Act *(Arbeitnehmer-Entsendegesetz – AEntG)* can only be legal norms of a nationwide collective agreement or – insofar as the amount of holidays, holiday pay or holiday allowance, maximum hours of work and minimum rest periods or the supply of temporary workers are concerned – also of several regional collective agreements that apply collectively across the whole of Germany.

The Posted Workers Act contains restrictions with regard to the subject matter of the extendable provisions. According to Sections 7, 7a in conjunction with Section 5 of the Posted Workers Act, provisions on the following aspects can be extended by way of statutory instrument:

- minimum pay rates including overtime rates differentiated by type of tasks and qualifications (up to three pay grades) and region,
- amount of holidays, holiday pay and additional holiday pay,
- holiday pay fund procedure,
- requirements for employer-provided accommodation,
- maximum hours of work and minimum rest periods,
- conditions for the provision of workers,
- safety, health and hygiene at work,
- protection of pregnant women and women who have recently given birth, children and young people,
- anti-discrimination and
- allowances and reimbursement of costs to cover travel, accommodation and meals.

The extension of collective bargaining provisions in accordance with the Posted Workers Act must also appear necessary in the public interest in order to achieve the statutory objectives stated in Section 1 of the Posted Workers Act, namely to establish and enforce appropriate minimum working conditions, to guarantee fair and effective conditions of competition, to preserve jobs which are subject to social security contributions and to safeguard the role which collective bargaining autonomy plays in terms of conflict resolution and structuring relations between the social partners. The prevailing opinion is that the public interest is based on the criteria established for the term “public interest” in Section 5 of the Collective Agreements Act. When extending a collective agreement pursuant to Section 7a of the Posted Workers Act, it must also be considered whether extending the collective agreement provisions counteracts predatory competition regarding wage costs.

When extending a collective agreement pursuant to the Posted Workers Act, it is mandatory to check which collective agreement is the more representative if, in addition to the collective agreement whose extension is sought, there is another collective agreement in the industry in question that covers at least some of the same subject matter. Whether a collective agreement is more representative is determined primarily on the basis of the evidence referred to in the Posted Workers Act: this includes the number of workers covered by the scope of application of the collective agreement who are employed by the employers bound by the collective agreement, and the number of members of the trade union which concluded the collective agreement who are covered by its scope of application. According to the case law of the Federal Labour Court *(Bundesarbeitsgericht – BAG)*, it is sufficient for the collective agreement to have a certain significance in the industry.

From a procedural point of view – same as for the declaration of general applicability – in addition to a joint application by the parties to the collective agreement, Sections 7, 7a of the Posted Workers Act require the involvement of the collective agreements committee. However, the collective agreements committee only has to be involved when a statutory instrument is issued in one of the sectors explicitly referred to in the Posted Workers Act in accordance with Section 7 of the Posted Workers Act if it concerns the initial extension of a collective agreement (Section 7 (5) of the Collective Agreements Act). In all other industries, the collective agreements committee must always be involved (Section 7a (5) of the Collective Agreements Act). Furthermore, according to Section 7 (5) and Section 7a (4) of the Posted Workers Act, the requirements for involvement are less strict than those set out in Section 5 (1) of the Collective Agreements Act, since a statutory instrument of the Federal Government can also be issued if only two or three members of the collective agreements committee vote in favour of the application.

d. The most-favourable arrangement principle

Under German law, collective agreements apply directly and on a mandatory basis, known as “mandatory effect” (*Normwirkung*, Section 4 (1) of the Collective Agreements Act). Norms in collective agreements therefore override contractual agreements in a similar way to a law. The possibilities for deviation from collective agreements under German law are primarily determined by whether other provisions than those of the collective agreement are more favourable for the employee. The aspect of “lex specialis” only comes into play when it is necessary to distinguish between working conditions at the same level of regulation.

Other aspects regarding the relationship between collective agreements and other levels of regulation are laid down in Section 4 (3) of the Collective Agreements Act *(Tarifvertragsgesetz – TVG)*: agreements that derogate from a collective agreement are only permitted if the collective agreement allows for this or contain an amendment of the terms in favour of the employee. This means, on the one hand, that terms in an employment contract may always derogate in favour of the employee (“upwards”). On the other hand, “downwards” derogations are only allowed if the parties to a collective agreement have included this option in what are known as “opening clauses” *(Öffnungsklauseln)*. Accordingly, the parties to a collective agreement may, in their own regulations, provide for options to make the working conditions more flexible. In collective bargaining practice, opening clauses are used in particular to lower collective bargaining standards in economic emergencies in order to safeguard employment. The collective bargaining opening clause must be expressly provided for in the collective agreement. An implied opening clause is out of the question.

As regards other statutory provisions, these may be deviated from in favour of the employee. Labour laws set protection standards for employees and are therefore only mandatory to the extent that no agreements shall be entered into that fall below these protection standards (so-called “unilateral mandatory law”: *einseitig zwingendes Recht*). Only in a few exceptional cases (so-called “mutually mandatory law”: *beiderseitig zwingendes Recht*) is it not possible to modify statutory provisions by collective agreement in favour of employees. In special cases, the partners to a collective agreement are also granted the authority to make arrangements that deviate from the law, even to the detriment of employees (so-called “non-mandatory law”: *tarifdispositives Gesetzesrecht*).

In the relationship between collective agreements, it is generally possible under German collective bargaining law to deviate from a higher-level collective agreement for an industry sector with the same trade union *(Verbandstarifvertrag)* by means of a “more local” collective agreement at company-level *(Firmentarifvertrag)*.

14. Questions/requests b) and c) regarding Article 6 (2) of the RESC [Collective bargaining]

Please provide information on the obstacles hindering collective bargaining at all levels and in all sectors of the economy (e.g. decentralisation of collective bargaining).

Please provide specific details on:

- **the measures taken or planned in order address those obstacles;**
- **the timelines adopted in relation to those measures;**
- **the outcomes achieved/expected in terms of those measures.**

15. Answers to questions/requests b) and c) regarding Article 6 (2) of the RESC [Collective bargaining]

Questions b) and c) will be answered together.

Germany is experiencing a steady decline in collective bargaining coverage. While in 2000, 68% of employees worked in companies with collective bargaining coverage, this figure had fallen to 50% by 2023. In light of this, the Federal Government is carefully monitoring the decline in collective bargaining coverage and considers it an important issue to strengthen collective bargaining autonomy, the parties to collective agreements and collective bargaining coverage.

The decline in union density is not due to a single cause but is based on a number of reasons. Germany's aim is to progressively strengthen the effectiveness of collective bargaining autonomy and to stabilise the collective agreement system. To this end, Germany is continuously developing specific measures to strengthen collective bargaining coverage, which follow on from the Act to Strengthen Collective Bargaining Autonomy *(Tarifautonomiestärkungsgesetz)* and remove existing obstacles to strengthening collective bargaining coverage (see description of the measures above, in the response to question a) regarding Article 5 and Article 6, section 3., pp. 91 et seq.).

16. Question/request d) regarding Article 6 (2) of the RESC [Collective bargaining]

Please provide information on the measures taken or planned to guarantee the right to collective bargaining of (i) economically dependent (self-employed) persons showing some similar features to workers and (ii) self-employed workers.

17. Answer to question/request d) regarding Article 6 (2) of the RESC [Collective bargaining]

In accordance with German collective bargaining law, collective agreements can only be concluded for employment relationships. For genuinely self-employed persons – in contrast to employees – German law does not provide an option to conclude collective agreements.

Beyond the applicability of the Collective Agreements Act to employment relationships, Section 12a of the Collective Agreements Act *(Tarifvertragsgesetz – TVG)* allows for the conclusion of collective agreements for "employee-like persons". According to Section 12a (1) no. 1 of the Collective Agreements Act, these are persons who are economically dependent and in need of social protection comparable to an employee. Which groups of persons specifically fall within the scope of Section 12a of the Collective Agreements Act as employee-like persons must be decided on a case-by-case basis and in accordance with the further requirements of Section 12a of the Collective Agreements Act.

18. Question/request a) regarding Article 6 (4) of the RESC [Collective action]

Please indicate:

- **the sectors in which the right to strike is prohibited;**
- **those sectors for which there are restrictions on the right to strike;**
- **sectors for which there is a requirement of a minimum service to be maintained.**

Please give details about the relevant rules concerning the above and their application in practice, including relevant case law.

19. Answer to question/request a) regarding Article 6 (4) of the RESC [Collective action]

a. <u>Ban on civil servant strikes</u>

The ban on strikes in Germany does not concern the entire public service, but only the group of professional civil servants. Whether the ban applies therefore depends on the respective status group. Individuals who fall into such status group can obtain a right to strike by waiving their civil servant status and entering into an employee relationship instead.

The right to strike is part of the constitutional right to freedom of association. Freedom of association applies to everyone. This right is restricted by the ban on strikes as an independent, systematically necessary and therefore fundamental structural principle of the professional civil service (Article 33 (5) of the Basic Law, i.e. the German Federal Constitution *[Grundgesetz – GG]*). The German Federal Constitutional Court has ruled that the

German legislator may not make any structural changes in this regard, as a right to strike would undermine the essential functional principles of German civil service law.

The prohibition of a strike by civil servants, such as the remainder of the core body of structural principles of professional civil servants within the meaning of Article 33 (5) of the Basic Law, serves to ensure a stable administration, the performance of public tasks and thus the functioning of the State and its institutions.

On 14 December 2023, the Grand Chamber of the European Court of Human Rights, delivered its judgment in the case of Humpert v. Germany (applications nos. 59433/18, 59477/18, 59481/18 and 59494/18). The Court found that the ban on strikes for civil servants in Germany did not violate the European Convention on Human Rights since the German legal framework puts a variety of different institutional safeguards in place to enable civil servants and their unions to defend occupational interests. While the right to strike surely is an important element of trade-union freedom and collective action, strike action is not the only means by which trade unions and their members can protect the relevant occupational interests. Hence, States are in principle free to decide what measures they wish to take in order to ensure compliance with the right to freedom of association as long as they ensure that trade-union freedom does not become devoid of substance.

b. Restrictions on the right to strike and emergency service agreements

Apart from the ban on strikes for professional civil servants, strikes are subject to the general rules developed for the right to strike in Germany. There is no specific legislation on the right to strike in Germany. It is guaranteed in Article 9 (3) of the German Basic Law and has been further developed and formed by the jurisprudence of the courts, especially the Federal Labour Court *(Bundesarbeitsgericht – BAG)* and the Federal Constitutional Court *(Bundesverfasungsgericht – BVerfG)* of Germany. It can be restricted by conflicting rights of the employer and third parties. Consequently, the limitations to the right to strike are determined by the principle of proportionality and the weighing of interests in the specific case at hand. This is assessed on a case-by-case basis by labour courts and cannot be generalised.

Industrial action in areas of critical infrastructure is subject to special proportionality requirements. In such cases, it has been successful practice that the social partners conclude agreements which guarantee emergency supplies for critical infrastructure when industrial action is taken. This allows for tailor-made agreements that respect the specific situation of the strike and the different interests at stake. Thus, the social partners ensure that on the one hand industrial action remains possible to respect the right to strike under

Article 9 (3) of the Basic Law, while on the other a minimum level of supplies is also guaranteed in terms of critical infrastructure. In principle, such agreements are required to guarantee the proportionality of the strike.

20. Question/request b) regarding Article 6 (4) of the RESC [Collective action]

Please indicate whether it is possible to prohibit a strike by seeking injunctive or other relief from the courts or other competent body (administrative body or arbitration body). If affirmative, please provide information on the scope and number of decisions in the last 12 months.

21. Answer by to question/request b) regarding Article 6 (4) of the RESC [Collective action]

It is possible to prohibit a strike by seeking a temporary injunction from a labour court. However, the requirements are high since such prohibitions affect the right to strike granted under Article 9 (3) of the Basic Law, i.e. the German Federal Constitution *(Grundgesetz – GG)*, hence a right guaranteed by the Constitution. Even a temporary prohibition of a labour dispute can only be considered in exceptional cases, since – due to the fact that strikes are generally limited in time – a dispute is de facto finally decided by issuing a preliminary injunction. The German Government does not have specific information on the scope and number of such decisions in the last twelve months.

Article 20 of the RESC

Equal opportunities between women and men

1. Explanatory remark

See and confer to the remark above under Article 4 (under section 1., p. 76).

2. Question/request a) regarding Article 20 of the RESC [Equal opportunities]

Please provide information on the measures taken to promote greater participation of women in the labour market and to reduce gender segregation (horizontal and vertical). Please provide information/statistical data showing the impact of such measures and the progress achieved in terms of tackling gender segregation and improving women's participation in a wider range of jobs and occupations.

3. Answer to question/request a) regarding Article 20 of the RESC [Equal opportunities]

The Federal Government is taking several measures to promote greater participation of women in the labour market and to reduce gender segregation. Those include:

a. <u>Removing gender stereotypes – expanding career paths and the spectrum of career opportunities</u>

In view of the lack of future skills potential, it is important for the economy to eliminate the gender-specific segregation of the labour market, while simultaneously making an important contribution towards equal opportunities. An increase in the share of women in male-dominated professions and the share of men in social occupations is an important instrument to achieve this aim. Traditional role conceptions are a significant reason for the restricted spectrum of career opportunities of women and men and pose obstacles for women on their career path. The prevailing goal of the Federal Government in its equal-opportunities policy is therefore to expand the spectrum of career opportunities of women and men and to improve their overall job and career prospects.

Examples of successful initiatives of the Federal Government on these issues include the *Girls' Day* (since 2001) and *Boys' Day* projects (since 2011); these are nationwide event days aimed at fostering career orientation beyond traditional role perceptions at an early stage. Due to the nationwide focus and the uniform date, *Girls' Day* and *Boys' Day* concentrate regional limited individual initiatives and achieve a unique broad effect.

Together with its partner organisations, the *Klischee-Frei* ("beyond stereotypes") initiative has been campaigning since 2016 for career and study choices to be freed from gender

stereotypes. On its website (www.klischee-frei.de), the initiative offers extensive information and support material from experts and interested parties along the education chain.

Since 2020, the *YouCodeGirls* initiative has been working to create an online platform intended to promote an interest in coding among girls and young women. First successes are already visible: since its launch in July 2022, the interactive learning platform has had more than 41,000 visitors and over 100,000 views (as of December 2024). The development of this platform has been funded by the Federal Ministry for Digital and Transport since 2024, while the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth continues to support the *YouCodeGirls* initiative with a project for the development of gender-sensitive methodological and didactic concepts for career guidance and raising awareness of IT topics and professions, including the career choice test to be developed at www.youcodegirls.de.

The Federal Government is also funding *The Federal Forum for Men*, which advocates a gender equality-orientated men's policy that not only aims to win men as supporters and allies for gender equality policy but also supports a better distribution of unpaid care work. An equal distribution of unpaid care work is one of the key conditions to enable equality on the labour market. The current project of the Federal Forum for Men is particularly concerned with promoting sustainable, caring masculinity with regard to society, family, partnership and themselves.

b. MINT action plan

The Federal Government also supports strengthening the share of women in MINT subjects (MINT stands for: *Mathematik, Informatik, Naturwissenschhaft, Technik*, i.e. the subjects of mathematics, computer science, natural sciences and technical sciences). Under the strategic umbrella of the MINT action plan the Federal Ministry of Education and Reseach is funding MINT measures along the education chains.

Its other goal is to strengthen the opportunities of girls and women across all fields of action. This takes place in regional MINT clusters for the promotion of out-of-school MINT education, at the nationwide MINT networking centre *(MINTvernetzt)*, in the promotion of research on the conditions for successful MINT education and in the #MINTmagie communication offensive. *MINTvernetzt* also promotes networking opportunities for partners in the Alliance for Women in MINT Careers. The MINT action plan helps to pique the interest of girls and young women in MINT careers.

c. Action Programme “Equality on the labour market. Creating Prospects” (“GAPS”)

In 2022, the Action Programme “Equality on the labour market. Creating Prospects” (“GAPS”, an acronym standing for: *Gleichstellung am Arbeitsmarkt. Perspektiven schaffen*) was initiated, which sets new impulses for gender equality on the labour market. It is based on labour market-related gender-equality targets contained in the 2021 Coalition Treaty, the Federal Government’s Gender-Equality Strategy and the Third Gender-Equality Report.

Those targets include, for example, fostering independent economic security throughout a person’s life, setting standards for gender equality in the digitalized labour market and society, and promoting a fair distribution of paid work and unpaid care work between women and men.

The programme also aims at increasing the labour-market participation of women as well as contributing to the preservation of a skilled labour force. To achieve this, within the “GAPS” framework the Federal Government is funding different model projects that are each directed at specific target groups and topics, such as fostering female entrepreneurs and women in skilled crafts, supporting female migrants and refugees in their process of joining the German labour market, or promoting digital competences for people re-entering the labour market.

d. ESF Plus federal programme, MY TURN

Since especially newly immigrated women without German citizenship are heavily underrepresented in skill development programmes and in the labour market, the Federal Government initiated the new ESF Plus federal programme, MY TURN – Women with migration experience get started.

MY TURN accompanies women with few (formal) qualifications with own migration experience and an increased need for support on their way to achieving a qualification, training and employment (preferably subject to social insurance contributions). The focus on newly immigrated women is aimed at counteracting a possible (further) entrenchment of dependency on social support services. MY TURN ensures a women-specific and situation-oriented approach, (referral) advice and continuous, trusting and individual support.

e. Activities by the Federal Anti-Discrimination Agency, esp. the gender bias check

Since 2017, the Federal Anti-Discrimination Agency *(Antidiskriminierungsstelle des Bundes – ADS)* has also offered companies the Gender Bias Check (*gb-check*), which facilitates a review of the equal treatment of genders in working life. This was developed in

2016 together with the Berlin School of Economics and Law as part of an EU-funded project (which ran from 1 January 2016 until 31 August 2017).

The *gb-check* is an analysis tool that assists employers and interest groups in identifying discrimination, preventing discriminatory treatment and adopting measures for enhanced equal opportunities by means of statistics, process analyses and pairwise comparisons. The tool is used in the areas of job advertisements, personnel selection, working and employment conditions, continuing vocational training, appraisals and working hours.

Further information about the project can be found at www.gb-check.de/english.

f. Measures aimed at the reconciliation of work, family life and caregiving

Further measures by the Federal Government to promote women's labour-market participation are specifically aimed at improving the reconciliation of work, family life, and caregiving, as well as fostering a fair distribution of paid employment and unpaid care work. These measures and their impact are detailed above under Article 4, Question c (see above, under Article 4, section 7., pp. 77 et seq.).

4. Question/request b) regarding Article 20 of the RESC [Equal opportunities]

Please provide information on:

- **measures designed to promote an effective parity in the representation of women and men in decision-making positions in both the public and private sectors;**
- **the implementation of those measures;**
- **progress achieved in terms of ensuring effective parity in the representation of women and men in decision-making positions in both the public and private sectors.**

5. Answer to question/request b) regarding Article 20 of the RESC [Equal opportunities]

The Federal Government has employed various legal measures to increase the share of women in leadership positions – both in the private, but also in the public sector, including in Federal Ministries and Commissions.

On 1 May 2015, the Act on the Equal Participation of Women and Men in Leadership Positions in the Private and the Public Sector *(Führungspositionen-Gesetz – FüPoG)* came into effect. An evaluation of the Act started in 2019. The key findings of the evaluation were considered in the Act to Supplement and Amend the Regulations on the Equal Participation of Women in Leadership Positions in the Private and the Public Sector *(Gesetz zur Ergänzung und Änderung der Regelungen für die gleichberechtigte Teilhabe von Frauen und Männern an Führungspositionen in der Privatwirtschaft und im öffentlichen*

Dienst – Zweites Führungspositionen-Gesetz – FüPoG II), which came into force on 12 August 2021.

FüPoG II aims to further increase the representation of women in leadership positions in private companies and the public sector. It includes a minimum participation requirement for members of the management board: if the management board of a large corporation (listed and co-determined with equal representation) consists of four or more persons, at least one woman shall be appointed in future appointments. Furthermore, the sanctions for non-compliance with reporting obligations on targets were developed further.

Further information on the Act to Supplement and Amend the Regulations on the Equal Participation of Women in Leadership Positions in the Private and the Public Sector can be also found above (see above, under Article 4, section 7. a. i., pp. 77 et seq.).

6. Question/request c) regarding Article 20 of the RESC [Equal opportunities]

Please provide statistical data on the proportion of women on management boards of the largest publicly listed companies, and on management positions in public institutions.

7. Answer to question/request c) regarding Article 20 of the RESC [Equal opportunities]

The aforementioned acts impose regular monitoring obligations. The figures are published in annual reports: www.bmfsfj.de/frauen-in-fuehrunspositionen.

The share of women in board positions continues to increase. In 2021, the share of women on the supervisory boards of listed companies that are subject to co-determination with equal representation of shareholders and employees has increased to 35.7%, compared to 25% in 2015. The share of women on executive boards of these undertakings is also rising (11.5% in 2021; 2015: 6.1%).

The Federal Government is approaching its goal of setting a good example as an employer and achieving equal participation of women and men in leadership positions in the federal administration by the end of 2025. The proportion of women in leadership positions in the federal administration is currently 45%.

The goal of filling leadership positions equally by the end of 2025 is enshrined in law and in the German Sustainable Development Goals (SDG 5.5).

The Federal Government has introduced a programme *(Plan FüPo2025)* that brings together a range of instruments to increase the share of women in leadership positions in the federal public service, including the expansion of part-time leadership. Only 11% of employees in leadership roles lead in part-time positions. 75% of them are women. The

Federal Government is committed to more part-time and shared leadership roles in the public service. Therefore the programme “Part-time Leadership in Public Service” was implemented. The aim was to publish a practical guideline for the public sector including a set of best practice examples. The guideline was published in June 2024.

The Act on the Participation of the Federation in Appointments to Bodies of the Federal Government *(Gesetz über die Mitwirkung des Bundes an der Besetzung von Gremien)* requires a quota even for those bodies where the Federal Government can only appoint two seats. Since the Act entered into effect, the share of women in bodies of the Federal Government has almost reached parity.

Germany has already established an efficient system. It can therefore suspend the provisions of the EU Directive on improving the gender balance among directors of listed companies and related measures that came into effect in December 2022 and has no need for transposition.

For further information please see: www.bmfsfj.de/frauen-in-fuehrungspositionen.