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EUROPEAN SOCIAL CHARTER **(REVISED)**

1st National Report on the implementation of the
European Social Charter

submitted by

THE GOVERNMENT OF GERMANY

Articles 7, 8, 16, 17, 19, 27, and 31
for the period 01/01/2018 – 31/12/2021

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CYCLE 2023

Appendix Revised Charter GERMANY

Questions on Group 4 provisions (Conclusions 2023)

Children families and migrants

This questionnaire covers Thematic Group 4 – Children, families and migrants, comprising Articles:

- the right of children and young persons to protection (Article 7),
- the right of employed women to protection of maternity (Article 8),
- the right of the family to social, legal and economic protection, (Article 16),
- the right of children and young persons to social, legal and economic protection (Article 17),
- the right of migrant workers and their families to social, legal and economic protection (Article 19),
- the right of workers with family responsibilities to equal opportunities and equal treatment (Article 27),
- the right to housing (Article 31).

The ECSR will pursue the targeted and strategic approach adopted since 2019 (see Conclusions 2020 and 2021). It is therefore not asking that national reports address all accepted provisions in the Group. Certain provisions are excluded, except:

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

However as this is the first time Germany will report on the Revised Charter, notably on Articles 8§1, 8§2, 8§4, 8§5, 19§11 and 27, Germany should provide a full report on these provisions based on the [Form for reports](#).

Moreover, given the magnitude, implications and expected longer-term consequences of the Covid-19 pandemic, the ECSR will pay particular attention to pandemic-related issues. In this connection, it is relevant to note that the reference period for Conclusions 2023 is 1 January 2018 to 30 December 2021. The Committee draws attention to relevant parts of its Statement on Covid-19 and social rights adopted on 24 March 2021.

Given the date of transmission of this questionnaire, the Committee requests that state reports be submitted by **31 December 2022** (and not the usual deadline of 31 October).

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

Excerpts from the ECSR's case law

In application of Article 7§1, domestic law must set the minimum age of admission to employment at 15 years.

The prohibition on the employment of children under the age of 15 applies to all economic sectors, including agriculture, and all places of work, including work within family enterprises and in private households. It also extends to all forms of economic activity,

irrespective of the status of the worker (employee, self-employed, unpaid family helper or other).

The effective protection of the rights guaranteed by Article 7§1 cannot be ensured solely by legislation; the legislation must be effectively applied in practice and rigorously supervised. The Labour Inspectorate has a decisive role to play in this respect.

The ECSR has noted that many states' legislation is in conformity with the Charter regarding the minimum age for employment. Nevertheless, the ECSR has expressed concern about the situation in practice. There is data that suggests that in many countries there are significant numbers of children working illegally. However, there is little official data on the extent of the problem.

In application of Article 7§5, domestic law must provide for the right of young workers to a fair wage and of apprentices appropriate allowances. This right may result from statutory law, collective agreements, or other means.

The "fair" or "appropriate" character of the wage is assessed by comparing young workers' remuneration with the starting wage or minimum wage paid to adults (aged eighteen or above).

In accordance with the methodology adopted under Article 4§1, wages taken into consideration are those after deduction of taxes and social security contributions.

Article 7§10 of the Charter guarantees protection against sexual and other exploitation of children as well as protection against the misuse of information technology and social media (for the purposes of online bullying, child pornography, grooming, harassment, etc.), which is particularly pertinent in view of the acceleration of digitalisation and online activity brought about by the pandemic.

Article 7§10 is applicable to foreign children in an irregular situation on the territory of a State Party to the Charter as not considering States Parties to be bound to comply with this obligation in the case of foreign minors who are in a country unlawfully would mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious impairments of their rights to life, health and psychological and physical integrity.

Therefore, measures should be taken to ensure the protection of unaccompanied or separated minors. The failure to care for unaccompanied foreign minors present in the country and take the necessary measures to guarantee these minors the special protection against physical and moral hazards causes a serious threat to their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity, in violation of Article 7§10.

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

1. to provide that the minimum age of admission to employment shall be 15 years, subject to exceptions for children employed in prescribed light work without harm to their health, morals or education;

a) Please provide information on the measures taken by the authorities (e.g. Labour Inspectorates and social services) to detect child labour, including children working in the

informal economy. In this regard, please provide information on the number of children actually working (either from existing statistics on this issue or from surveys to be conducted to obtain such information), as well as on measures taken to identify and monitor sectors where it is strongly suspected that children are working illegally (General question, Conclusions 2019).

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

2. to provide that the minimum age of admission to employment shall be 18 years with respect to prescribed occupations regarded as dangerous or unhealthy;

No information required. However, if the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to the question(s) raised.

Germany:

The Committee requested updated information on authorities' measures and inspection results in its most recent conclusions on the topic, including on the number of violations uncovered and actual sanctions on employers for violations related to the employment of young people in dangerous or unhealthy work.

Under Section 51 of the Act on the Protection of Young People at Work

(Jugendarbeitsschutzgesetz, JArbSchG), the occupational health and safety authorities of the Länder are responsible for inspections in Germany. The Federal Government thus made enquires to the highest-level occupational health and safety authorities of the Länder concerning their experiences and findings as regards the reporting period. Within the framework of workplace inspections, **3,335 companies** were inspected by the supervisory authorities of all the Länder, i.e. nationwide, for compliance with the provisions concerning the protection of young people (and children) at work in 2019. For 2020, this number was **2,184**; for 2021, **2,225** (see Table 1 below). This review takes place within the framework of system monitoring, inspections and meetings with companies.

Table 1: Inspected companies and uncovered violations in Germany (2019, 2020, 2021)

Land	2019		2020		2021	
	Inspected workplaces	Violations	Inspected workplaces	Violations	Inspected workplaces	Violations
Baden-Württemberg	64	0	28	7	27	12
Bavaria	797	134	430	67	378	77
Berlin	38	4	23	5	31	6
Brandenburg	280	8	232	15	264	8
Bremen	56	16	42	5	29	2
Hamburg	71	6	101	3	126	8
Hesse	480	146	346	44	217	38

<i>Mecklenburg-Western Pomerania</i>	305	1	293	25	211	5
<i>Lower Saxony</i>	180	19	88	29	289	4
<i>North Rhine-Westphalia</i>	126	40	82	30	6	2
<i>Rhineland-Palatinate</i>	357	229	212	62	157	81
<i>Saarland</i>	26	3	12	1	0	0
<i>Saxony</i>	123	6	59	8	61	17
<i>Saxony-Anhalt</i>	133	18	79	11	127	17
<i>Schleswig-Holstein</i>	75	5	11	0	46	0
<i>Thuringia</i>	224	1	146	0	256	8
<i>Total</i>	3,335	636	2,184	312	2,225	285

The violations uncovered are usually not serious. In addition to the cluster of violations of working time regulations, another cluster of violations can be identified covering cases of violations in the employment of hazardous work as well as cases where risk assessments are lacking. This cluster was also seen to include lack of medical examinations and lack of instruction on hazards.

There are sanctions for violations of the prohibition against employing young people in hazardous work, against employing young people in prohibited work under time pressure and piecework, and against employing young people to work underground in Germany's legal framework for occupational health and safety in accordance with Section 58 (1) 18 to 20 of the Act on the Protection of Young People at Work. Most of the Länder gave a negative answer to the actual question of whether such violations within the meaning of Section 58 (1) 18 to 20 of the Act on the Protection of Young People at Work were uncovered.

With regard to Article 7 (2) of the Charter it should be mentioned that Article 7 of the Occupational Safety and Health Inspection Act (Arbeitsschutzkontrollgesetz, ArbSchKontrG) of 20 December 2020 (Federal Law Gazette I 2020, p. 3334) amended Sections 58 (4) and 59 (3) of the Act on the Protection of Young People at Work. The framework for fines, which had been unchanged in terms of amounts since 1997, was updated. The maximum fine was doubled; the framework of fines in Section 58 (4) was increased from 15,000 to 30,000 euros going forward and the maximum fine in Section 59 (3) was raised from 2,500 euros to 5,000 euros. The amendments entered into force on 1 January 2021. This reinforced the mechanism for sanctions and prevention, and thus rights derived from Article 7 (2) of the Charter.

3. to provide that persons who are still subject to compulsory education shall not be employed in such work as would deprive them of the full benefit of their education;

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

Germany:

A period of education being compulsory in Germany, the Länder implement various measures based on a combination of pedagogical, psychological and legal considerations to prevent school avoidance and truancy, which not only helps solve immediate problems, but also increases each individual's chances for a successful educational career in the long term.

Please note the following information, complementary to the last report, with regard to Article 7 (3) of the ESC, in particular also with reference to the Committee's question concerning decisions on uninterrupted time off during holidays:

Section 5 (1) of the Act on the Protection of Young People at Work and Section 1 of the Ordinance on the Protection Against Child Labour (Kinderarbeitsschutzverordnung, KindArbSchV) prohibit the employment of children subject to full-time compulsory education, i.e. young people under 15 years of age, even during holidays, with the narrow exception of internships in line with Section 5 (2) sentence 1 no. 2 and parental permission for light employment under Section 5 (3) of the Act on the Protection of Young People at Work. Only young people subject to compulsory schooling, i.e. young people between 15 and 18 years of age who are still subject to compulsory schooling, are subject to the further exemption provision of Section 5 (4) of the Act on the Protection of Young People at Work, according to which these young people may be employed for four weeks per calendar year during school holidays.

There are further legal restrictions on employment possibilities for internships for young people subject to compulsory schooling under 18 that are organised and supervised by schools: Such interns may only be employed in suitable light work up to a maximum of seven hours a day and a maximum of 35 hours a week (Section 5 (2) sentence 2 in conjunction with Section 7, sentence 1, no. 2, sentence 1 and Section 2 (3) of the Act on the Protection of Young People at Work). These internships are also closely supervised by the respective school, ensuring that the demands placed on the young people are not too high and that they are protected from dangers in the workplace in line with their development.

In addition to the requirement of the consent of the legal guardian, Section 5 (3) of the Act on the Protection of Young People at Work stipulates a further requirement for the employment of young people subject to compulsory schooling over 13 and under 18: the job must be both light and suitable for the young person and must be limited in time. Given a maximum five-day work week, children and young people subject to full-time compulsory schooling may not be employed for more than two hours a day (in family farms not for more than three hours a day), between 6 PM and 8 AM, before school lessons or during class.

Insofar as it is possible for young people over the age of 15 and under the age of 18 to be employed for a maximum of four weeks during the school holidays in accordance with Section 5 (4) of the Act on the Protection of Young People at Work, their (uninterrupted) periods of time off are based on the total days of holiday period, how they are distributed over several types of holiday periods and the limit on the working time of young people under Section 5 (4) sentence 1 of the Act on the Protection of Young People at Work. The latter stipulates that young people can work a maximum of 20 days per year during all holiday periods of the year. It should also be noted that Section 15 of the Act on the Protection of Young People at Work stipulates that young people may only be employed five days a week; the two weekly rest days should be contiguous if possible.

In contrast to the school holiday systems of many other countries, Germany does not have a uniform uninterrupted school holiday period of 3 months in the summer of each calendar year, but rather 75 working days of holidays over 12 months and usually 6 types of holiday periods (Christmas holidays, winter holidays/carnival holidays, Easter holidays, Whitsun holidays, summer holidays and autumn holidays). Six to seven weeks (i.e. 30-35 working days) of this fall around the summer holidays.

The school holidays are distributed evenly over the entire calendar year.

According to the "Hamburg Agreement" of 28 October 1964, the total annual duration of school holidays in Germany is 75 working days distributed over 6 types of holidays. As a rule, school holidays are each longer than ten days, but with the exception of the summer holidays, they are generally not longer than two weeks. They are regularly spaced throughout the calendar year. This means that the 20 permissible holiday working days for young people can never be spread over all holiday periods in such a way that can produce excessively long periods of employment contradicting the temporal qualification of the work as light without sufficient, uninterrupted periods off. After deduction of the 20 permissible days of employment during the holidays, there also remain 55 working days of employment-free holiday just for time off. In total this (almost) corresponds to the three

months of holidays in countries with uniform long summer holiday periods. This system thus ensures that children and young people subject to full-time compulsory schooling do not work for any excessively long period of time.

Germany thus has a school holiday system that grants children and young people subject to compulsory schooling sufficiently long periods of time off without employment at regular intervals and limits the time periods of employment in the year so that employment periods always qualify as "light work" even in terms of time.

The principle requirement of Section 5 (3) of the Act on the Protection of Young People at Work also stipulates that the work must be light, which must be assessed in each case according to the specific circumstances. This means that even work falling within the time limits set by the committee for light work may have to be shortened even further if, in a general assessment, the daily or cumulative workload would not be classified as light overall due to other circumstances. This overall assessment makes it possible to protect young people even beyond the fixed working time limits and to always grant them sufficient periods of time off.

The Committee also requested information on the type of agricultural work that children are allowed to perform on family farms and the conditions under which this work is supervised in practice by the national authorities.

The type of agricultural work that children over the age of 13 may perform on family farms with the consent of their legal guardian is determined in accordance with Section 2 (1) no 3 of the Ordinance on the Protection Against Child Labour in conjunction with Section 5 (3) of the Act on the Protection of Young People at Work. This means that permissible occupations in agricultural households are above all activities in the household and garden, errands, looking after children, looking after other persons belonging to the household, looking after pets and shopping. On farms, children over the age of 13 and young people subject to full-time compulsory schooling may only be employed in harvesting and cultivating fields, in the self-marketing of agricultural products and in the care of animals.

The type of agricultural work that children over the age of 13 and young people subject to full-time compulsory schooling may perform with the consent of their legal guardian must be light and suitable in line with the other requirements of Section 5 (3) of the Act on the Protection of Young People at Work and Section 2 (2) of the Ordinance on the Protection Against Child Labour. The work may not, therefore, in terms of the kind of work and the particular conditions under which the work is carried out, adversely affect the safety, health or development of children, their attendance at school, their participation in pre-vocational

or vocational training or their ability to benefit from lessons. Young people may therefore not be employed on family farms for more than three hours a day, or between 6 PM and 8 AM, or before school lessons or during school lessons.

Employment in agricultural households or on farms may also not be physically stressful due to an unsuitable posture. Work involving hazards is also not allowed, especially working on machines or looking after animals, when children over the age of 13 and young people subject to full-time compulsory schooling cannot recognise the hazards or avert them due to a lack of safety awareness or experience. Section 2 (2) of the Ordinance on the Protection Against Child Labour stipulates that these occupations in particular are not considered light or suitable; therefore, they may not be carried out by children over 13 and young people subject to full-time compulsory schooling working on family farms in agriculture.

In Germany's federal system, monitoring of youth occupational health and safety is the responsibility of the Länder. The competent supervisory authorities carry out both active and reactive monitoring in workplaces of all economic classes. Active monitoring measures or self-initiated workplace visits are carried out on the basis of a risk-based selection, mostly according to a quota set annually. One criterion is the sector-specific risk of suffering an occupational accident. Reports, complaints, notices of defects and other indications as well as accidents are grounds for reactive monitoring measures. Such indications come in particular from the child's or young person's family or social environment, from accident reports from the police or the workplace, from information from other authorities or from the framework of programmes such as the "harvest helpers" programme (Erntehelfer). In the case of active and reactive measures, the protection of young people at work and specifically the working hours of young people in agriculture are reviewed. This is because reviewing the Act on the Protection of Young People at Work is a fixed component of the visits and inspections in agricultural workplaces. Within the framework of supervisory activities, audits of workplaces also ascertain whether young people or children are employed; if so, the implementation of the Act on the Protection of Young People at Work within the workplace will be reviewed. If children are found to be employed at a place of employment or at an agricultural workplace, the legality of the respective employment is reviewed. In some Länder, monitoring is mainly carried out by employers' accident insurance associations (e.g. in Hesse or in Baden-Württemberg). The workplace provides information on any employment of children via a workplace questionnaire.

The results of the monitoring activities are however not recorded with the degree of differentiation requested by the Committee with regard to family farms, because most of

the Länder audit according to risk and economic classes. Moreover, there is usually no differentiation between workplaces and family workplaces.

In relation to the economic class that includes agriculture, the results of the audits show that many audits are carried out. For example, 661 farms were visited during inspections in North Rhine-Westphalia in the reporting period. In Schleswig-Holstein, 335 audits and inspections were carried out; in Hesse 150; in Brandenburg 197. In Thuringia, on the other hand, 133 farm inspections were carried out, nine of which were on family farms.

The inspections also covered farms or family farms and during the reporting period no significant violations of youth occupational safety and health requirements in family farms were found in the Länder. The authorities did not receive any reports or complaints about employment of children on family farms that was too long.

*The Committee also noted that the latest report did not contain specific information on the authorities' activities and audit findings regarding the prohibition against the employment of young people subject to compulsory schooling. **The Committee requested disaggregated data on the monitoring activities and audit results of the authorities regarding the prohibition against employment of young people subject to compulsory schooling, including on the number of violations found and sanctions actually imposed.***

The effective system of checks and inspections of youth occupational health and safety has long proven effective in the Länder. It does not distinguish between young people subject to compulsory schooling and those who are not, especially since both are guaranteed a right to protection under the Act on the Protection of Young People at Work in an undifferentiated, equal manner. Young people subject to compulsory schooling are in the end effectively covered by the occupational health and safety monitoring system for young people, because if a child or young person (subject to full-time compulsory schooling) is employed, the workplace's implementation of the Act on the Protection of Young People at Work is always checked as well.

If children and young people subject to compulsory schooling are found to be employed at a workplace, the legality of their employment is also checked. Please note the comments under Article 7 (2) with regard to this question and request of the Committee.

4. to provide that the working hours of persons under 18 years of age shall be limited in accordance with the needs of their development, and particularly with their need for vocational training;

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

Germany:

The Committee requests information on the number of children under 16 years of age no longer subject to full-time compulsory education actually in employment.

The Committee requests disaggregated data on the monitoring activities and audit results of the authorities with regard to the duration of working hours of young people under 16 years of age, including on the number of violations detected and sanctions imposed in practice.

The following comments are made in regard to that request: In the course of performing their responsibilities, the Länder do not document the absolute number of employees by age group. Each age group should receive the protection stipulated for it by the Act on the Protection of Young People at Work. Therefore, workplace inspections document whether young people or children are employed. If this is the case, the actual implementation of the Act on the Protection of Young People at Work in the workplace will be checked.

The Committee's question concerns the special situation in which 15-year-olds are no longer subject to full-time compulsory education. If subject to full-time compulsory schooling, these 15-year-olds would fall under the working time limit of Section 5 (3) sentence 3 of the Act on the Protection of Young People at Work. Without full-time compulsory schooling, however, they would be covered by Section 8 (1) of the Act on the Protection of Young People at Work, which seems to allow for much longer working hours. The Federal Government would like to address this concern with the following remarks.

The new version of Article 7 (4) of the Revised Charter no longer provides for the former age limit of 16 years, but now stipulates 18 years.

In line with several of the Committee's conclusions emphasising this point, the Federal Government sees the question of conformity with Article 7 (4) as closely linked to its purpose, namely to limit working time with a view to training-related needs.

Limiting the working hours of under-16s can also result from the way things are actually done (Conclusions 2006, Albania). Compulsory schooling in Germany is regulated by the Länder due to their sovereignty over education and cultural affairs in the federal system. It is therefore not legally regulated on a nationwide basis. Depending on the Land, full-time compulsory schooling lasts 9 or 10 school years (of attendance). It begins, again

depending on the Land and the specific circumstances or the developmental stage of the child, at the age of 5, 6 or 7.

Especially in the Länder with a 9-year period of compulsory full-time schooling (but also in other Länder), there is also compulsory vocational schooling in addition to or after compulsory full-time schooling (see e.g. Sections 8, 9 Compulsory Schooling Act Saarland (Schulpflichtgesetz Saarland), Section 28 School Act Saxony (Schulgesetz Sachsen)). Some Länder also combine the two into a (usually) 12-year compulsory schooling period, which may last until the age of 18 (see Section 54 Bremen School Act (Bremer Schulgesetz), Article 35 (2) Bavarian Act on Education and Teaching (Bayerisches Gesetz über das Erziehungs- und Unterrichtswesen), Section 7 Rhineland-Palatinate School Act (Schulgesetz Rheinland-Pfalz)). Compulsory vocational schooling commences after the end of full-time compulsory education and usually ends either with the completion of vocational training or with the end of the twelfth year of school attendance. Even in the highly unlikely case that a young person has completed full-time compulsory education at 15, they are then subject to compulsory vocational education or twelve years of compulsory schooling.

It is in this context that the youth occupational health and safety regulations must then be seen. For young people attending vocational school they guarantee the priority of vocational training enshrined in Article 7 (4) and reduce working hours accordingly. According to Section 9 of the Act on the Protection of Young People at Work, employers must grant the young person leave from work to attend vocational school. Furthermore, employers may not employ the young person before a lesson that starts before 9 AM. The same applies to one vocational school day per week if the young person has more than five lessons of at least 45 minutes each. It also applies in vocational school weeks with scheduled block lessons of at least 25 hours on at least five days. The vocational school days mentioned with the average daily working time are counted towards the young person's working time, as are the vocational school weeks mentioned with the average weekly working time and teaching time including breaks. This means that instruction and thus education take precedence over and significantly reduce working time and employment of a young person covered by compulsory (vocational) schooling. This guarantees both the purpose of Article 7 (4) and the limitation of employment time for under-16s.

According to Section 7 sentence 1 no. 1 of the Act on the Protection of Young People at Work, children who are no longer subject to full-time compulsory schooling may be employed in a vocational training relationship (then with the limitations just mentioned). According to Section 7 sentence 1 no. 2 of the Act on the Protection of Young People at

Work (although not practically relevant, as can be seen from the explanations here) they may be employed outside of a vocational training relationship in merely light work suitable for them up to seven hours a day and up to 35 hours a week. German law is thus systematically geared towards the gradual adaptation of the maximum length of working time according to age, developmental stage and educational requirements.

The Committee also requests information about how the labour inspectorate actually monitors the implementation of workplace agreements that allow for a different distribution of working time.

At the request of the Federal Government, the Länder reported that the monitoring of the implementation of workplace agreements that allow for a different distribution of working time than that provided for in the Act on the Protection of Young People at Work is done within the framework of workplace audits that are independent of any specific occasion or within the framework of ad hoc reactive inspections due to complaints that there is a regulation of the working time of young people in a collective agreement that is not in compliance. With regard to the number of these inspections, please refer to the remarks on Article 7 (2) of the Charter.

In practice, supervisory authorities become aware of collective agreements or workplace agreements that allow for a different distribution of working time in the context of an enquiry or a rule revision. They then advise both employers and young people on the lawful implementation of the provisions of the Act on the Protection of Young People at Work. Information on this is also requested from workplaces and taken into account in particular when checking and reviewing documentation of working hours. Complaints are also investigated.

If an active or reactive inspection in a workplace reveals that working hours are regulated in a fashion that differs from what is directly permitted by the provisions of the Act on the Protection of Young People at Work, the employer is required to give reasons for this. If the employer makes reference to a collective agreement or a workplace agreement, access to the collective agreement and the works agreement is requested. This is possible, for example, under Section 50 of the Act on the Protection of Young People at Work. A review is then conducted to determine whether the employer falls within the scope of the relevant collective agreement and whether the agreements made in the collective or in the workplace agreement that differ from the regulations are lawful. A review is then conducted to see whether the actual working time complies with the collective and workplace agreements. When reviewing the implementation of workplace agreements, the

required documents are usually checked for compliance with the legal requirements. If necessary, the parties involved are consulted on the practical implementation.

5. to recognise the right of young workers and apprentices to a fair wage or other appropriate allowances;

- a) *Please provide updated information on net minimum wages and allowances payable to persons under 18 years of age. Please provide information on measures taken to ensure that fair remuneration is guaranteed to young workers:*

Germany:

General Information:

Section 1 (1) sentence 1 of the Minimum Wage Act (Mindestlohngesetz, MiLoG) stipulates that every employee is entitled to being paid the minimum wage. When introduced on 1 January 2015, it amounted to 8.50 euros gross per hour and increased since then.

- to 8.83 euros on 1 January 2017,*
- to 9.19 euros on 1 January 2019,*
- to 9.35 euros on 1 January 2020,*
- to 9.60 euros on 1 January 2021*
- to 9.82 euros on 1 January 2022*
- to 10.45 euros on 1 July 2022*

Since 1 October 2022, the minimum wage has been 12 euros gross per hour. It is not possible to give general estimates of the net wages resulting from the gross wages listed, because the amount of the deductions depends on a large number of individual characteristics (tax bracket, additional deductions for health insurance, amount of deduction for long-term care insurance).

According to Section 22 (2) of the Minimum Wage Act, however, persons who have not yet reached the age of 18 and have not completed vocational training as well as persons employed for their vocational training according to Section 22 (3) alternative 1 of the Minimum Wage Act are excluded from the statutory minimum wage entitlement. The minimum wage does apply without exceptions for minors who have completed vocational training, though.

The exclusion of minors without completed vocational training from the scope of application of the statutory minimum wage is to promote the long-term integration of young people into the labour market, ensuring that minors who have completed lower secondary education do not pass up vocational training in favour of employment remunerated at the minimum wage. However, young people who have not completed vocational training

working as employees are not without protections with regard to the amount of their remuneration. The case law of the labour courts in connection with Section 138 of the Civil Code (Bürgerliches Gesetzbuch) has established a threshold of two-thirds of the (collectively agreed) wage usually paid in the industry and economic region concerned. Below that, remuneration agreements are considered immoral and are thus void.

The minimum training remuneration introduced on 1 January 2020 in accordance with the Vocational Training Act continues to apply for apprentices (see also the explanations below).

Interns within the meaning of Section 26 of the Vocational Training Act (Berufsbildungsgesetz, BBiG) are considered employees under Section 22 (1) sentence 2 of the Minimum Wage Act and are accordingly entitled to the minimum wage. The only exceptions are certain types of internships (mandatory internships and, under certain conditions, orientation and training-related internships of up to three months). The corresponding regulations on the treatment of internships represent a compromise between preventing the abuse of interns as cheap labour and the need for the acquisition of practical experience and vocational orientation.

Information on training remuneration:

*During the reporting period, Germany also significantly improved the situation of young people in vocational training by introducing a **minimum training remuneration**.*

In the amendment of the Vocational Training Act on 1 January 2020, however, bolstering collective bargaining autonomy was also a central objective. Collective agreements for apprentices covered by collective agreements thus have priority.

Since the amendment of the Vocational Training Act, apprentices have been protected in training relationships in which the training workplace is not bound by collective agreements and in external vocational training with the statutory minimum remuneration as the lower limit.

The Vocational Training Act provides for the following (gross) minimum monthly remuneration in the first year of vocational training:

- a) 515 euros gross if the vocational training is started in the period from 1 January 2020 to 31 December 2020,*
- b) 550 euros gross if the vocational training is started in the period from 1 January 2021 to 31 December 2021,*

- c) 585 euros gross if the vocational training is started in the period from 1 January 2022 to 31 December 2022, and
- d) 620 euros gross if the vocational training is started in the period from 1 January 2023 to 31 December 2023.

Increases (of 18, 35 and 40 percent respectively) are also provided for following years of vocational training.

The update mechanism for 2024 onwards has also already been set (arithmetic mean of the training remuneration collected within the framework of the vocational training statistics in comparison with the two preceding calendar years). There are also differentiated regulations for special cases.

It is not possible to give general estimates on the net wages derived from the gross wages listed above, because the amount for deductions from that depends on a variety of individual characteristics (tax bracket, additional deductions for health insurance, amount of deduction for long-term care insurance).

If the training remuneration is insufficient for living expenses and if other financial means are not available, apprentices are entitled to vocational training support during internal or external vocational training. (Participants in school-based training are entitled to benefits under the Federal Training Assistance Act (Bundesausbildungsförderungsgesetz, BAföG)) in comparable situations).

If there is a need, the Employment Agency pays a training allowance to trainees who do not live with their parents during their training and it is not possible to commute to the training company within a reasonable time. The aim of the allowance is to overcome financial difficulties that stand in the way of acquiring vocational qualifications and to ensure and improve occupational mobility. The amount of the training allowance depends on the type of accommodation, the amount of the training allowance and the annual income of the family, if this income exceeds certain allowances. The maximum monthly need for living expenses and rent is currently 781 euros. Travel costs may also be covered. There is also child benefit, which is not counted as income. Recipients of the vocational training allowance are also eligible for the heating allowance. The two flat-rate heating allowances of EUR 230 and EUR 345 are paid automatically to all eligible persons.

Persons with disabilities who complete external training in a vocational training centre or in another facility geared to the needs of persons with disabilities do not receive training remuneration, but instead receive means-tested training remuneration in accordance with

Sections 122 ff. of Book III of the Social Code (Sozialgesetzbuch Drittes Buch, SGB III). As an independent social benefit, this is linked to the regulations on vocational training support and the Federal Training Assistance Act. The amount depends on the type of accommodation. In order to ensure that apprentices with disabilities nevertheless profit from the minimum training remuneration introduced by the Vocational Training Modernisation Act (Berufsbildungsmodernisierungsgesetz), it has also been made part of the training remuneration benefit system. If the net minimum training remuneration is higher than the respective entitlement rate based on need for the training remuneration, that amount is increased accordingly.

Collectively agreed training remuneration and wages in selected collective bargaining areas are also set out in the following table (as of 9 August 2022):

In the table, the first number in each field is the gross monthly amount in euros, and the number below it is the net monthly amount for tax bracket 1 - single person without children - and deducting social security contributions. One collective agreement from western Germany and one collective agreement from eastern Germany from each collective bargaining area are given as examples (if possible).

Industry	Year 1	Year 2	Year 3	Year 4	Initial amount for Adult employees who have completed training	Lowest amount for young workers without training
	Gross Net	Gross Net	Gross Net	Gross Net		
Euros per month						
Gardening and landscaping FRG	960 770	1060 850	1170 938	-	2803 1918	-
Chemical industry Bavaria	1031 827	1095 878	1155 926	1239 990	2949 2000	2701 1860
Chemical industry Eastern Germany	1046 839	1100 882	1122 900	1179 945	2917 1982	2686 1852
Steel industry Germany	980 786	1029 825	1102 884	1197 960	1953 1427	-
Metal and Electrical Industry Bavaria	1035 830	1089 873	1160 930	1207 968	2241 1596	-
Metal and Electrical Industry Saxony	1007 802	1064 848	1122 900	1179 945	2416 1698	-
Woodworking Industry Bavaria	905 726	985 790	1080 866	1140 914	2784 1907	-
Woodworking Industry Saxony	830 666	894 717	963 772	1017 815	2485 1737	-
Paper industry Bavaria	1037 831	1115 894	1182 948	1267 1009	2145 1540	-

Industry	Year 1 Gross Net	Year 2 Gross Net	Year 3 Gross Net	Year 4 Gross Net	Initial amount for Adult employees who have completed training	Lowest amount for young workers without training
Paper industry Eastern Germany	995 798	1055 846	1115 894	1175 942	2320 1642	-
Printing industry Schleswig-Holstein/ Hamburg/ Mecklenburg-Western Pomerania	1006 807	1058 848	1110 890	1163 932	2156 1546	-
Printing industry Saxony/Saxony-Anhalt Thuringia	987 791	1038 832	1089 873	1140 914	2113 1521	-
Textile industry Southern Bavaria	971 779	1034 829	1115 894	1192 956	1957 1429	-
Textile industry Eastern Germany	820 657	875 702	925 742	980 786	2149 1542	-
Confectionery industry Lower Saxony/Bremen	981 787	1074 861	1169 937	1292 1026	2999 2028	2070 1496
Confectionery industry Eastern Germany	892 715	1008 808	1119 897	1205 966	2683 1850	2068 1495
Bakery trade North Rhine- Westphalia/ Koblenz/Trier	680 545	755 605	885 710	-	1883 1385	-
Bakery trade Brandenburg	680 545	755 605	885 710	-	1874 1380	-
Construction Western Germany	915 734	1108 888	1384 1086	-	3232 2157	-
Construction Eastern Germany	848 680	965 774	1184 949	-	3112 2091	-
Painting trade Western Germany (without Saarland)	740 593	815 653	980 786	-	2401 1689	-
Painting trade Eastern Germany	740 593	815 653	980 786	-	2401 1689	-
Wholesale and foreign trade Lower Saxony	972 779	1050 842	1105 886	-	2242 1597	-
Wholesale and foreign trade Saxony-Anhalt	984 789	1052 843	1096 879	-	2149 1542	-
Retail Berlin	910 730	1000 802	1120 818	-	2233 1591	-
Retail Saxony/Thuringia/ Saxony-Anhalt	910 730	1000 802	1120 818	-	2232 1591	-
Private transport Hesse	815 653	865 694	915 734	-	2401 1689	-
Private transport Thuringia	843 676	957 767	1071 859	-	2186 1564	-
Private banking	1146	1208	1270	-	2366	-

Industry	Year 1	Year 2	Year 3	Year 4	Initial amount for Adult employees who have completed training	Lowest amount for young workers without training
	Gross Net	Gross Net	Gross Net	Gross Net		
Germany	919	969	1011		1669	
Private insurance industry Germany	1070 858	1145 918	1230 984	-	2803 1918	-
Hotel and restaurant industry Bavaria	1000 802	1100 882	1200 962	-	2028 1471	-
Hotel and restaurant industry Thuringia	900 722	1000 802	1100 882	-	1961 1432	-
Housing industry Germany	1020 818	1130 906	1240 991	-	2925 1987	-
Public service Collective Agreement for Public Service Trainees-Vocational Training Act ((Tarifvertrag für Auszubildende des öffentlichen Dienstes, TVAöD)-BT (Besonderer Teil)- (Berufsbildungsgesetz, BBiG)) Germany	1068 856	1118 896	1164 933	12 28 98 3	2576 1789	-
Public service Collective Agreement for Public Service Trainees-Care ((Tarifvertrag für Auszubildende des öffentlichen Dienstes, TVAöD)-TVAöD-BT-Pflege)) Germany	1191 955	1252 999	1353 1066	-	2932 1990	-

Durchschnittliche tarifvertragliche Ausbildungsvergütungen

Stand: 16. August 2022

Ausbildungsjahr	Westdeutschland		Ostdeutschland	
	Brutto	Netto	Brutto	Netto
€ je Monat				
1.Ausbildungsjahr	973	780	951	762
2.Ausbildungsjahr	1052	843	1026	823
3.Ausbildungsjahr	1147	920	1115	894
4.Ausbildungsjahr	1214	973	1146	919

The second table shows the average of collectively agreed training remuneration and wages in Germany (Western/East and gross/net) per year and their increase in the course of the apprenticeship.

Because they are not subject to social insurance, unlike all other salaries dealt with here, and thus would not systematically fit the gross/net calculations of salaries subject to social insurance, calculations for the salaries of civil servant aspirants regulated by salary law are not included here.

There is an independent collective agreement for public service apprentices in the form of the Collective Agreement for Public Service Trainees (Tarifvertrag für Auszubildende des öffentlichen Dienstes, TVAöD) of 13 September 2005 (last amended by collective agreement no. 11 of 25 October 2020). The Collective Agreement for Public Service Trainees covers all public-service occupations that require vocational and is supplemented by specific regulations.

The Collective Agreement for Public Service Trainees contains regulations for apprentices in the occupations that require training under the Vocational Training Act in the "Special Part of the Vocational Training Act" and regulations for students in health care and nursing in the "Special Part on Care Professions".

The regulations on apprentices' pay are also found there. Training remuneration in the public service is above average.

- i) In atypical jobs (part-time work, temporary work, fixed-term work, casual and seasonal work, self-employed people, independent workers and homeworkers.)*
- ii) in the gig or platform economy and*
- iii) having zero hours contracts.*

Germany:

For employment relationships subject to minimum wage according to the principles set out above, the minimum wage also applies to atypical forms of employment such as part-time employment, temporary work, fixed-term work and casual and seasonal work. The minimum wage also applies to workers in the platform economy if they are employees. The minimum wage does not apply to the self-employed and homeworkers, because they are not employees within the meaning of the Minimum Wage Act, however.

Section 12 of the Part-time and Fixed-term Employment Act (Teilzeit- und Befristungsgesetz, TzBfG) allows for on-call employment. Employer and employee may agree that the employee has to perform his or her work in line with the amount of workload that occurs. In order to protect workers and to ensure socially acceptable working

conditions, Section 12 of the Part-time and Fixed-term Employment Act restricts the free establishment of flexible working time arrangements in the case of work on call in several respects. Section 12 of the Part-time and Fixed-term Employment Act stipulates, for example, that employers must give four days' notice of the placement of working hours and that a specific duration of daily and weekly working hours must be specified. In the absence of a stipulation of the duration of the working time, a legal fiction applies in line with Section 12 (1) of the Part-time and Fixed-term Employment Act. A twenty-hour work week is then deemed to have been agreed. This fictional amount was increased from 10 hours to 20 hours within the framework of an amendment to the legislation on improving legal regulations for part-time work of 1 January 2019 (Federal Law Gazette I 2384). The amending legislation also legally limited the amount of additional work that could be called for in the case of on-call work. The share of additional work that can be unilaterally called for by the employer in this form of work may not exceed 25 percent of the agreed minimum weekly working time. If there exists an agreement to reduce the agreed maximum working time, the volume may be 20 percent of the agreed working time. These regulations provide affected workers with reliable income and planning security. **They also show that concluding zero-hour employment contracts is not possible under Section 12 of the Part-time and Fixed-term Employment Act.**

- b) Please provide information on measures taken to ensure that this right is effectively enforced (e.g., through Labour Inspectorates and similar enforcement authorities, trade unions) (General question, Conclusions 2019).

Germany:

Compliance with the statutory minimum wage is monitored by the authorities of the customs administration, in particular the Federal Customs Administration unit responsible for enforcing the law on illegal employment and benefit fraud.

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

Germany:

The Committee recently concluded that the situation in Germany is not in conformity with Article 7 (5) of the 1961 Charter, because the training remuneration paid to apprentices is insufficient.

We do not agree with the conclusion that training remuneration at the end of the training is not compliant with Charter requirements.

The Committee's interpretation of Article 7 (5) of the Charter does not sufficiently take into account the special aspects of the dual training system in Germany. Apprentices are not young workers. Analogous to university studies, the training relationship is not to provide an income, but to impart knowledge and skills. The training lays the foundations for skilled employment after the training, which, in addition to higher job satisfaction, also opens up better income opportunities.

Collective agreements are also concluded between the social partners, such as the Collective Agreement for Public Service Trainees (TVAöD).

Without contradicting this, let it also be noted: Assuming a 38-hour work week and 4.33 weeks per month, a minimum wage of 10.45 euros per hour would result in a gross monthly salary of 1,719 euros. The target of 2/3 of this amount is met by most of the collectively agreed training remuneration in the 3rd year of training listed in the table above.

6. to provide that the time spent by young persons in vocational training during the normal working hours with the consent of the employer shall be treated as forming part of the working day;

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

7. to provide that employed persons of under 18 years of age shall be entitled to a minimum of four weeks' annual holiday with pay;

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

8. to provide that persons under 18 years of age shall not be employed in night work with the exception of certain occupations provided for by national laws or regulations;

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

Germany:

The Committee requests data on the number of young workers affected by night work (evening or early morning) in specific sectors.

As the Federal Government has outlined in previous reports, in the federal system the Länder do not have specific statistical documentation of the number of young people employed in specific sectors in night work.

In the course of the comprehensive active and reactive inspections, however, there are checks as to whether there are violations of the regulations on night-time rest for young people in accordance with Section 14 of the Act on the Protection of Young People at Work. These are also documented, so that the effectiveness of the right referred to in Article 7 (8) can be guaranteed. Findings and experience can be provided regarding this.

Complaints about or knowledge of such violations are also only documented in small numbers in the entirety of the many reviews (see above on Article 7 (2)). It can therefore be concluded that either the number of young people affected by night work is small and/or that the young people affected are protected by Section 14 of the Act on the Protection of Young People at Work and thus do have the rights outlined in Article 7 (8) in practice. Within the framework of workplace inspections, 3,335 companies were inspected by the supervisory authorities of all the Länder, i.e. nationwide, for compliance with the provisions concerning the protection of young people (and children) at work in 2019; in 2020, this figure was then 2,184 workplaces and in 2021 it was 2,225 workplaces. In the complaints, only isolated violations were found concerning the employment of young people after 10 PM.

*In 2019/20 in Hesse, for example, in **only one case** out of a total of 190 violations found during inspections under the Act on the Protection of Young People at Work was a young person found to be working in a pub after 10 PM. Only in this one case was there a violation of the night-time rest period. A fine was issued for the offence. In Lower Saxony, too, some of the 52 violations of the Act on the Protection of Young People at Work in 2019, 2020 and 2021 concerned night-time rest periods under Section 14 of Act on the Protection of Young People at Work, as were some of the 31 violations in Brandenburg. In Saxony, out of 31 violations of the Act on the Protection of Young People at Work in 2019 to 2021, **one** violation (2019) concerned the night-time rest period. In 15 violations in Berlin from 2019 to 2021, one concerned the night-time rest period (2019) and resulted in a fine.*

However, none of the violations uncovered during the checks were serious.

Some Länder carry out regular checks of working hours in bakeries, as young people (mainly in training) who fall under the Act on the Protection of Young People at Work are employed there relatively often. Here, compliance with the regulations of the Act on the Protection of Young People at Work was the rule. To judge by the reports, in other areas (restaurants, butcher shops, sales shops), young people over 16 are only employed in training or in exceptional cases and for a limited period of time (internships).

During the reporting period, there were some cases in livestock agriculture (dairy farming, milking) where young people were employed before 5 AM.

The fact that violations of night-time rest periods are investigated and sanctioned, while at the same time they are absolutely isolated cases, shows that the system of regulations and checks in place in Germany to ensure the protection of young people from night work has proven to be effective.

9. to provide that persons under 18 years of age employed in occupations prescribed by national laws or regulations shall be subject to regular medical control;

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

Germany:

*Article 7 (9) of the revised Charter requires that children and young people in certain employment relationships receive regular medical examinations. **The Committee requested a complete and up-to-date presentation of the legal and practical situation.***

In Germany, health protection through medical examinations for children and young people in employment is particularly strict. Employment is not permitted without a prior medical examination.

No employer may employ young people, whether as apprentices or workers, without a medical certificate of health. Before entering working life, young people must therefore have had a thorough health check-up by a doctor. The examination is intended to ensure that young people are not employed in work that they are not capable of doing in terms of health or development. A follow-up examination must take place one year after the start of work in order to determine any effects of the employment on the health and development of the young people.

This medical certificate must also be submitted to the employer, at the latest 14 months after the start of employment. Without this certificate, the young people may not be employed further. Young people may voluntarily have a follow-up examination every year. An exception to the requirement of a prior medical examination is only possible in the cases of Section 32 (2) of the Act on the Protection of Young People at Work if the employment is minor or it is a light activity that does not last longer than two months.

All examinations are paid for by the respective Land. So there are no costs to the young people or the employers.

10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work.

- a) *Please provide updated information on the measures taken to strengthen the protection of children, including migrant, refugees, and displaced children, from sexual exploitation and abuse (in particular in response to the risks posed by the Covid-19 pandemic) during the reference period, including information on the incidence of such abuse and exploitation.*

Germany:

*With the Act to Combat Sexualised Violence against Children (Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder) of 16 June 2021 (Federal Law Gazette I p. 1810), the basic offence of child abuse in particular has been made a felony (minimum prison sentence of one year; previously being a misdemeanor with a lower **minimum** prison sentence). In addition, the overall range of penalties has been made more severe. In cases of consensual sexual acts between persons of approximately the same age, prosecution may be waived under Section 176 (2) of the Criminal Code (Strafgesetzbuch, StGB) for reasons of proportionality. For the qualifying offence of aggravated sexual abuse under Section 176 c of the Criminal Code, the less severe case has been abrogated. The offences under Section 184 b of the Criminal Code (distribution, acquisition and possession of child pornography) have also been made into felonies (minimum prison sentence of one year) and the range of penalties has been made much more severe. Section 184 l of the Criminal Code also now criminalises the production, advertising, marketing, acquisition and possession of physical replicas of a child or a part of a child's body (so-called sex dolls with a childlike appearance), which by their nature are intended for the performance of sexual acts.*

The law of criminal procedure has also been amended: The range of investigative means possible in criminal procedures (telecommunications surveillance, online searches,

collection of traffic data) have been expanded. The offences of aggravated sexual abuse of children under Section 176 c of the Criminal Code and of sexual abuse of children resulting in death under Section 176 d of the Criminal Code are now among the grounds for pre-trial detention for the most serious crimes under Section 112 (3) of the Code of Criminal Procedure (Strafprozessordnung, StPO). Section 48a of the Code of Criminal Procedure also stipulates that criminal proceedings involving underage victim witnesses must be expedited.

A bundle of preventive measures has also been standardised. For example, the law makes provisions for the introduction of special qualification requirements for family court judges and the establishment of specific personal and professional suitability requirements for guardians ad litem. Comparable provisions are in place for juvenile court judges and juvenile public prosecutors, who must be able to deal with child victim witnesses in juvenile protection cases in an understanding and empathetic manner. An amendment to the regulations on child hearings in the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit FamFG) ensures that the family court regularly hears the child in child custody proceedings, irrespective of the child's age, and obtains a first-hand impression of the child. The Federal Central Criminal Register Act (Bundeszentralregistergesetz, BZRG) was also amended to provide comprehensive protection for children and young people. The time limits for the inclusion of relevant convictions in extended certificates of good conduct, which serve to protect children and young people, were lengthened considerably: in the case of convictions that are particularly relevant for the protection of children, up to 20 years plus the duration of the custodial sentence. In future, the convictions of offenders sentenced to at least five years imprisonment for serious sexual child abuse or sexual child abuse resulting in death, or repeatedly sentenced for such serious offences, will remain on the extended criminal record for life.

With the Act to Amend the Criminal Code - Improving Criminal Law Protection against So-called Lists of Enemies, Making the Dissemination and Possession of Instructions for the Sexual Abuse of Children a Criminal Offence and Facilitating the Fight against Content that Incites Hate and Combating Propaganda Materials and Symbols of Unconstitutional Organisations and Terrorist Organisations (Gesetz zur Änderung des Strafgesetzbuches – Verbesserung des strafrechtlichen Schutzes gegen sogenannte Feindeslisten, Strafbarkeit der Verbreitung und des Besitzes von Anleitungen zu sexuellem Missbrauch von Kindern und Verbesserung der Bekämpfung verhetzender Inhalte sowie Bekämpfung von Propagandamitteln und Kennzeichen verfassungswidriger und terroristischer Organisationen) of 14 September 2021 (Federal Law Gazette I p. 4250), the distribution

and possession of instructions for the sexual abuse of children was made a criminal offence (Section 176 e of the Criminal Code). This was in response to "abuse instructions" available on the internet.

The legislation is available on the website of the Federal Ministry of Justice and Consumer Protection (<https://www.bmju.de>). The **Criminal Code** can be found at <http://www.gesetze-im-internet.de/stgb/>, the **Code of Criminal Procedure** at <http://www.gesetze-im-internet.de/stpo/>, the **Courts Constitution Act** (Gerichtsverfassungsgesetz, GVG) at <http://www.gesetze-im-internet.de/gvg/>, the **Federal Central Criminal Register Act** at <http://www.gesetze-im-internet.de/bzrg/> and the **Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction** at <http://www.gesetze-im-internet.de/famfg/>.

Section 25 (1) sentence 1 no. 3 of the Act on the Protection of Young People at Work was amended with Article 3 (4) of the fifty-ninth Act to Amend the Criminal Code - Improvement of the Protection of Personal Rights regarding Capturing Images (Neunundfünfzigsten Gesetzes zur Änderung des Strafgesetzbuches – Verbesserung des Persönlichkeitsschutzes bei Bildaufnahmen, StrÄndG 59) of 9 October 2020 (Federal Law Gazette Part I 2020, page 2075). This norm prohibits persons who have been (legally) convicted of certain offences against sexual self-determination from employing, supervising, instructing or training young people or children.

The list of sexual offences mentioned in this norm (Sections 174 to 184 i of the Criminal Code) was adapted to the Criminal Code, which was supplemented by Section 184 k Criminal Code (violation of the private sphere by capturing images, so-called upskirting) in Division 13 of the Criminal Code (offences against sexual self-determination) (with the article legislation mentioned above). This amendment was also made for the protection of children and young people in Section 25 (1) sentence 1 no. 3 of the Act on the Protection of Young People at Work. Final convictions under Section 184 k of the Criminal Code now also lead to the restriction mentioned above. In this respect they extend or enhance the effective enforcement of Article 1 in conjunction with Article 3 (d) of Convention No. 182 of the International Labour Organisation, according to which work harmful to the morals of children and young people is to be prevented. This amendment came into force on 1 January 2021.

Article 8 (3) of the Act to Combat Sexualised Violence against Children (Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder, SexualGewKBekG) of 16 June 2021 (Federal Law Gazette Part I 2021, page 1810) again amended Section 25 (1) sentence 1 no. 3 of the Act on the Protection of Young People at Work or adapted it to the

amendment in the Criminal Code (StGB). With Section 184 j of the Criminal Code (group offences) and Section 184 l of the Criminal Code (putting into circulation, acquisition and possession of sex dolls with a childlike appearance), the entire 13th Division of the Criminal Code on offences against sexual self-determination was included within the framework of the protection of young people at work, thus further enhancing their protections. The amendment came into force on 1 July 2021.

As soon as the first lockdown started, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth established or expanded various support services so that young people can get support when they need it. These include counselling services provided by telephone or digitally, such as the "Nummer gegen Kummer" ("A number to call when you are worried") or the "JugendNotmail" ("Emergency email support for young people").

In a cabinet decision of 5 May 2021, the Federal Government adopted the programme of action "Aufholen nach Corona für Kinder und Jugendliche ("Catching up after Corona for children and young people"), with funding of two billion euros for the years 2021 and 2022, to help children and young people get up to speed and make up for what they have missed. This applies not only to material to be learned, but also to their social life. Spending around one billion euros in this framework, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has established services that reach children, young people and families quickly in the field of early childhood education, additional sports, leisure and holiday activities and support for children and young people in everyday life.

- b) Please provide information on the impact of the Covid-19 pandemic on the monitoring of the exploitation and abuse of children, as well as measures taken to strengthen monitoring mechanisms.*

Germany:

Through the 57th Act to Amend the Criminal Code of 3 March 2020 (Federal Law Gazette I p. 431), attempting cybergrooming was penalised, which had previously gone unpunished. In cases where perpetrators mistakenly believe that they are showing pornographic content to a child attempting to do so is punishable although the person being shown the content is an adult (such as a police officer or parent) or a young person. This was also a help to law enforcement.

- c) Please provide information on the protection of children from all forms of violence, exploitation and abuse in the digital environment, in particular sexual exploitation and abuse and solicitation for sexual purposes (grooming).*

Germany:

In May 2021 the Young Persons Protection Act (Jugendschutzgesetz, JuSchG) was reformed. The Young Persons Protection Act now includes an obligation for service providers to provide effective, structural preventative measures to protect against impairments of the personal integrity of children and young people, such as in the case of cyberbullying, cybergrooming or other types of sexual exploitation. Possible measures under Section 24 a of the Young Persons Protection Act include the provision of technical means for age verification, reporting and complaint functions, functions for age-appropriate guidance and limitation of media use by parents as well as age-appropriate default settings. The supervisory authority responsible for compliance with preventative measures is the Federal Centre for the Protection of Children and Young People in the Media (Bundeszentrale für Kinder- und Jugendmedienschutz, BzKJ).

The National Council against Sexual Violence against Children and Young People (Nationale Rat gegen sexuelle Gewalt an Kindern und Jugendlichen) also advocates that children and young people be better protected against sexual abuse and exploitation online. The body aims to support the Federal Centre for the Protection of Children and Young People in the Media in developing guidelines on corresponding "digital protection plans".

The network "Keine Grauzonen im Internet" ("No grey areas on the internet") was integrated into the working group "Keine sexualisierte Gewalt gegen Kinder im Internet" ("No sexualised violence against children on the internet") at the turn of the year 2020/2021. The focus is on cybergrooming, sexual harassment in forums, social media and chats, the misuse of self-generated sexting content, and all other risky interactions that can be promoted by rapid media development and new usage habits. New developments and needs for action are to be analysed continuously. The aim of the working group is to combat the spread of sexualised violence in all online channels.

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

Germany:

In order to improve the identification of trafficking in children and the referral of affected minors to the assistance system, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports the association ECPAT Deutschland e.V.. In June 2018,

ECPAT published the federal cooperation paper "Schutz und Hilfen bei Handel mit und Ausbeutung von Kindern" ("Protection and assistance in cases of trafficking in and exploitation of children"). The paper provides recommendations for cooperation between child and youth welfare services, police, specialised counselling centres and other sectors in order to quickly identify human trafficking and start effective assistance. Since 2019, ECPAT has been holding workshops with professionals from child and youth welfare, police and counselling centres on the implementation of the paper. In the course of this support, ECPAT has also provided training for asylum procedure counsellors and special representatives for trafficking in human beings. The National Council against Sexual Violence against Children and Young People also addresses the issue of trafficking in minors. The implementation of the federal cooperation paper in the Länder is regularly dealt with in the Working Group on Protection against Exploitation and International Cooperation.

Supplementary to the above remarks on cybergrooming: Sexually motivated harassment and assaults including cybergrooming are well-known communication risks to which children and young people are exposed. Every third girl in grades 9 and 10 has already been sexually propositioned or harassed on the internet at some point (SPEAK-Studie 2017, Kurzbericht, p. 6). In recent years, a significant increase in 'sexual cyberbullying' has been seen (Jugendsurvey Niedersachsen 2019, p. 46).

In order to counteract these dangers, the Federation has amended the Youth Protection Act with effect from 1 May 2021. In this context, the (protection) goals of the protection of children and young people from harmful media were redefined in Section 10 a Youth Protection Act and personal integrity was explicitly included as a protection goal in No. 3. It covers the protection of their personal rights in the broad sense in indirect third-party effect from Article 2 (1) in conjunction with Article 1 (1) of the Basic Law as well as, concomitantly, the right to informational self-determination and overall protection against identity violations. In addition, Sections 24 a ff of the Youth Protection Act created an obligation for service providers to take structural preventative measures to ensure the protection goals of Section 10 a nos. 1 to 3 of the Youth Protection Act. Such measures also cover efforts against cybergrooming in particular.

Article 8 – The right of employed women to protection of maternity

Excerpts from the ECSR's case law

Article 8 of the Charter provides specific rights protecting employed women during pregnancy and maternity. The aim of such protection is the protection of the health of a mother and a child. Such protection is possible where employed women are entitled to safe and healthy working conditions, i.e. such working conditions which take due regard to their specific needs during respective periods. Safe and healthy working conditions include also protection against less favourable treatment due to pregnancy and maternity.

Since pregnancy and maternity are gender-specific, any less favourable treatment due to pregnancy or maternity is to be considered as direct gender discrimination. Consequently, the non-provision of specific rights aimed at protecting the health and safety of a mother and a child during pregnancy and maternity, or the erosion of their rights due to special protection during such a period are also direct gender discrimination.

It follows that, in order to ensure non-discrimination on the grounds of gender, employed women during the protected period may not be placed in a less advantageous situation, also with regard to their income, if an adjustment of their working conditions is necessary in order to ensure the required level of the protection of health. It follows that, in the case a woman cannot be employed in her workplace due to health and safety concerns and as a result, she is transferred to another post or, should such transfer not be possible, she is granted leave instead, States Parties must ensure that during the protected period, she is entitled to her average previous pay or provided with a social security benefit corresponding to 100% of her previous average pay. Further, she should have the right to return to her previous post.

With a view to ensuring the effective exercise of the right of employed women to the protection of maternity, the Parties undertake:

1. to provide either by paid leave, by adequate social security benefits or by benefits from public funds for employed women to take leave before and after childbirth up to a total of at least fourteen weeks;

a) Please provide information whether the Covid-19 crisis had an impact of on the right to paid maternity leave (in particular whether all employed women concerned – in the private as in the public sector - continue to receive at least 70% of their salary during the whole length of the compulsory maternity leave during the Covid-19 crisis).

Germany:

The Covid-19 crisis had no impact on the right to benefits under maternity protection law during the periods of protection according to Sections 19 and 20 of the Maternity Protection Act (Mutterschutzgesetz). During the periods of protection, women do not receive lower benefits as a result of short-time work (see also orientation paper “Maternity benefits in case of short-time work”, evaluation made by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth with the participation of the Federal Ministry of Health and the Federal Ministry of Labour and Social Affairs, 3 June 2020).

2. to consider it as unlawful for an employer to give a woman notice of dismissal during the period from the time she notifies her employer that she is pregnant until the end of her maternity leave, or to give her notice of dismissal at such a time that the notice would expire during such a period;

a) *Please provide information:*

- i) *whether the Covid-19 crisis had an impact on the possibility of dismissing pregnant employees and employees on maternity leave and*
- ii) *whether there were any exceptions to the prohibition of dismissal during pregnancy and maternity leave during the pandemic.*

Germany:

The Covid-19 crisis had no impact on the regulation that prohibits an employer from dismissing a woman during pregnancy or during the periods of protection under maternity protection law, provided that the employer was informed of the pregnancy (Section 17 of the Maternity Protection Act).

Additionally, as Article 8§2 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*
- 2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*
- 3) *Please provide pertinent figures, statistics or any other relevant information, if appropriate.*

Germany:

Section 17 of the Maternity Protection Act provides that an employer may not dismiss a woman during her pregnancy, until the expiry of four months after a miscarriage after the twelfth week of pregnancy and until the end of her period of protection after childbirth, but at least up until the expiry of four months after childbirth, if the employer is aware of the pregnancy, the miscarriage after the twelfth week of pregnancy or the childbirth at the time of the dismissal or if the information is communicated to them within two weeks after receipt of the notice of dismissal. Preparatory measures taken by the employer with a view to dismissing the woman are also unlawful.

The Länder are responsible for enforcing the Maternity Protection Act.

The supreme Land authority responsible for occupational safety and health or the body designated by it may exceptionally declare dismissal permissible in special cases not connected with the condition of the woman during pregnancy, after a miscarriage after the twelfth week of pregnancy or after childbirth. If notice of dismissal has been given, the

pregnant woman can have recourse to a labour court that will rule on the unlawfulness of the dismissal. The Maternity Protection Committee advises the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on all issues relating to maternity protection (Section 30 (3) sentence 1 no. 3 of the Maternity Protection Act), thus also on issues relating to the protection against dismissal.

For the relevant target groups, detailed information is provided on their rights and responsibilities in flyers published by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (see guidance on maternity protection and guidance for employers on maternity protection) and on the web (Familienportal).

3. to provide that mothers who are nursing their infants shall be entitled to sufficient time off for this purpose;

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

4. to regulate the employment in night work of pregnant women, women who have recently given birth and women nursing their infants;

- a) Please provide updated information to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that in case of exemption from work related to pregnancy and maternity, the woman concerned is entitled to paid leave.*

Germany:

See the following comments made because Germany newly accepted Article 8§4.

Additionally, as Article 8§4 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Germany:

According to Section 5 of the Maternity Protection Act, an employer may not have a pregnant or breastfeeding woman work between 8pm and 6am. The Länder are responsible for enforcing that regulation. On a case-by-case basis, the competent supervisory authority may grant exemptions.

The supervisory authority may, at the employer's request, approve the pregnant or breastfeeding woman working if the woman expressly declares her willingness to do so, if there is no medically certified reason to stop her working until 10pm and no irresponsible risk to the pregnant woman or her child from working alone (Section 28 (1) sentence 1 of the Maternity Protection Act).

In particularly justified cases, the supervisory authority may grant exemptions from the ban on night work between 10pm and 6am if the woman expressly declares her willingness to do so, if there is no medically certified reason to stop her working and, in particular, an irresponsible risk to the pregnant woman or her child from working alone is excluded.

The Maternity Protection Act of 2018 ensures a uniform level of protection for working women. Exemptions from the general ban on night work may be granted through a mechanism that is not sector-specific.

Nevertheless, it has to be considered whether the approval procedure for work between 8pm and 10 pm is objectively necessary (cf. Bundestag document BT-Drs. 20/2510, Bundesrat document BR-Drs. 289/17, (B)).

*A pregnant or breastfeeding woman who is not allowed to work at all or in part because of a ban on work outside the periods of protection laid down in Section 3 of the Maternity Protection Act receives **maternity protection pay (Mutterschutzlohn)** from her employer. Maternity protection pay is calculated as the average earnings of the last three calendar months prior to the start of pregnancy. This applies also if, because of this ban, the employment or the type of remuneration changes. If the employment contract does not begin until after the onset of pregnancy, the average earnings are calculated based on the earnings of the first three months of employment (Section 18 of the Maternity Protection Act).*

The Maternity Protection Committee determines and justifies the nature, extent and duration of the possible irresponsible risks to a pregnant woman and her unborn child in accordance with scientific findings and establishes safety-related, occupational health and hygiene rules for their protection (Section 30 (3) sentence 1 nos. 1 and 2 of the Maternity Protection Act). In addition, the Maternity Protection Committee advises the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on all issues relating to maternity protection (Section 30 (3) sentence 1 no. 3 of the Maternity Protection Act).

For the relevant target groups, detailed information is provided on their rights and responsibilities in flyers published by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (see guidance on maternity protection and guidance for employers on maternity protection) and on the internet (Familienportal).

5. to prohibit the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.

a) *Please provide updated information to confirm that no loss of pay results from the changes in the working conditions or reassignment to a different post and that the women concerned retain the right to return to their previous employment at the end of the protected period.*

Additionally, as Article 8§5 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

2) *Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.*

Germany:

The employer must organise the working conditions of a pregnant or breastfeeding woman in such a way that any irresponsible risks to the woman’s health or that of her (unborn) child are excluded. A risk is defined as irresponsible if the likelihood of a health impairment occurring is unacceptable in view of the anticipated severity of the possible damage to health (Section 9 (1) and (2) of the Maternity Protection Act). If the employer is unable to eliminate irresponsible risks to the pregnant or breastfeeding woman either by protective measures (modification of working conditions) or by a change of workplace, the employer may not continue to have the pregnant or breastfeeding woman perform work (Section 13 (1) no. 3 of the Maternity Protection Act).

A list of inadmissible activities and working conditions for pregnant women is laid down in Section 11 of the Maternity Protection Act. According to Section 11 (4) sentence 2 no. 3 of the Maternity Protection Act, pregnant women may not perform work in underground mining. This applies also to breastfeeding women (Section 12 (4) sentence 2 no. 2 of the Maternity Protection Act).

A mandatory period of protection including an absolute ban on work applies after childbirth (Section 3 (2) of the Maternity Protection Act). Normally, this period ends eight weeks after the child’s birth. It can be extended to twelve weeks:

- *in the event of a premature birth,*
- *in the event of a multiple birth, and*
- *if the child is diagnosed with a disability within eight weeks after delivery and an application for an extension of the period of protection is submitted.*

The period of protection after childbirth may be shortened in the event of the death of the child (Section 3 (4) of the Maternity Protection Act).

Failure to observe these provisions of the Maternity Protection Act may, depending on the facts of the case and the severity of the act of non-compliance, constitute a regulatory offence attracting a fine of up to 30,000 euros, or a criminal offence punishable by a custodial sentence not exceeding one year (Sections 32, 33 of the Maternity Protection Act).

The Maternity Protection Committee determines and justifies the nature, extent and duration of the possible irresponsible risks to a pregnant or breastfeeding woman and her child in accordance with scientific findings and establishes safety-related, occupational health and hygiene rules for their protection (Section 30 (3) sentence 1 nos. 1 and 2 of the Maternity Protection Act). In addition, the Maternity Protection Committee advises the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth on all issues relating to maternity protection (Section 30 (3) sentence 1 no. 3 of the Maternity Protection Act).

For the relevant target groups, detailed information is provided on their rights and responsibilities in flyers published by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (see guidance on maternity protection and guidance for employers on maternity protection) and on the internet (Familienportal)

Article 16 – The right of the family to social, legal and economic protection Excerpts from the ECSR’s case law

Article 16 of the Charter applies to all forms of violence against women and domestic violence and States Parties are required to ensure an adequate protection against such violence in both law and practice. It follows that States Parties must show due diligence in deploying measures such as restraining orders penal sanctions for perpetrators, adapted judicial procedures, and adequate compensation for victims, and training, particularly for police officers and other working directly with victims as well as collection and analysis of reliable data. States must ensure provision of shelter or protected accommodation for victims or for women at risk of violence, as well as services to reduce the risk of violence and support and rehabilitate victims. Victim empowerment should also be strengthened through early advice and protection measures as well as minimum or supplemented income for victims or would-be victims.

States Parties are required to ensure the economic protection of the family by appropriate means. The primary means should be family or child benefits provided as part of social security, available either universally or subject to a means-test.

Family benefits must constitute an adequate income supplement for a significant number of families. Adequacy is assessed with respect to the median equivalised income (Median equivalised income (Eurostat): the income of a household is established by summing all monetary income received from any source by each member of the household. In order to reflect differences in household size and composition, this total is divided by the number of “equivalent adults” using a standard scale (the so-called modified OECD equivalence scale). The resulting figure is attributed to each member of the household.).

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means

- a) *Please provide updated information on measures taken to reduce all forms of domestic violence against women including information on incidence and conviction rates.*

Germany:

When ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (the so-called Istanbul Convention), Germany committed itself at all levels of the state to doing everything to combat violence against women and domestic violence, to provide protection and support for affected persons and to prevent violence. This means that it is addressed equally to the Federation, the Länder and the local authorities. Because of the federal system, the Länder are, as a rule, responsible for establishing, developing and financing the assistance and support structures for women affected by violence. Any activities of the Federation are restricted to its constitutionally defined scope of competences.

The Federal Government has ambitious plans also in the new legislative period to considerably advance the protection of women and the implementation of the Istanbul Convention at the federal level.

This includes setting up an independent reporting body. Since February 2020, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has provided funding for a project at the German Institute for Human Rights. The aim of the project is to develop a blueprint for independent reporting bodies on gender-specific violence and human trafficking. Further projects include setting up a public coordination body and the development of an interministerial overall political strategy for the prevention and combating of violence. The needs of vulnerable groups such as women with disabilities or female refugees as well as queer persons should be taken into account. The time schedules for the two projects and the details of their implementation are still being coordinated. Developing the overall strategy will be the first task of the coordination body. The coalition agreement also provides for the introduction of a uniform legal framework for the protection against violence in Germany. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is in the process of drafting key points. On that basis the Federal Government will agree on how to proceed.

To support the Länder even more strongly in their efforts to establish a nationwide network of assistance services, the federal programme “Working together to prevent violence against women” (“Gemeinsam gegen Gewalt an Frauen”) was launched, among other things. To reach this aim, two ways of funding are possible in the context of the federal programme: On the one hand, funds from the federal innovations programme are available for innovative projects to reach all women affected by violence and their children and to support them in a target-group-oriented way. On the other hand, funds from the federal investment programme are used to finance building measures to expand capacities and to improve access to women’s shelters and specialised counselling centres. For the investment-related part, a total of 150 million euros are available until 2024 (30 million euros each year from 2020-2024). For the other part of the programme, a last slice of 5 million euros was earmarked for 2022 (from 2019-2021 already 5 million euros each year).

However, as in the past (over the past decades), the Federal Government will continue to initiate and finance measures in the subject area “violence against women” in the context of the Federation’s competence to provide support. One focus will be the further implementation of the Istanbul Convention.

The Federal Criminal Police Office has published special evaluations of crime statistics on violence in partnerships annually since 2015. They provide a comprehensive overview of

acts of violence in (ex-) relationships. Starting in the reference year 2023, the special evaluations will be expanded and include information on violence within families.

No data is available on convictions in the context of domestic violence. Criminal prosecution statistics differentiate only according to the elements of a criminal provision of the Criminal Code (Strafgesetzbuch) and other criminal provisions outside the Criminal Code. Other criminologically relevant data relating to the way in which the offence was committed is not recorded. This applies in particular to the place where the offence was committed and the offender-victim relationship. As regards physical injuries, for example, it is not possible to identify domestic violence offences.

By virtue of Article 19 of the Act to further develop the German Code of Criminal Procedure and to amend other provisions (Gesetz zur Fortentwicklung der Strafprozessordnung und zur Änderung weiterer Vorschriften) dated 25 June 2021 (Federal Law Gazette I 37/2099), the protected right of “sexual self-determination” was included in Section 1 of the Act on Protection against Violence (Gewaltschutzgesetz). The Act entered into force on 1 July 2021.

In 2021, 47,806 proceedings relating to measures under Sections 1 and 2 of the Act on Protection against Violence were settled by the local courts (a slight increase compared to 2016: 47146).

By virtue of Article 2 of the Act to amend the German Criminal Code - more effective fight against stalking and better coverage of cyberstalking as well as measures to improve the criminal law protection against forced prostitution (Gesetz zur Änderung des Strafgesetzbuches - effektivere Bekämpfung von Nachstellungen und bessere Erfassung des Cyberstalkings sowie Verbesserung des strafrechtlichen Schutzes gegen Zwangsprostitution) dated 10 August 2021 (Federal Law Gazette I 53/3513), the range of penalties under Section 4 of the Act on Protection against Violence was raised from “up to one year” to “up to two years”. The Act entered into force on 1 October 2021. The measures will improve the protection of sexual self-determination and have a stronger deterrent effect.

b) For States Parties not having accepted Article 31, please provide updated information on the availability of adequate affordable housing for families.

Germany:

In Germany, social housing benefits households - and thus also families - that, in particular because of their income, are not able to provide themselves with adequate housing on the market and need support in accordance with Länder law provisions. Upon application, these households receive a certificate of eligibility for subsidised housing that entitles them

to rent subsidised housing, if available. If several holders of such a certificate apply for one and the same subsidised accommodation, it is up to landlords to decide on their future tenants, as a rule; in cases where a particular need for assistance prevails, the landlord's freedom to decide may be restricted by the competent authority. Furthermore, housing allowances are an effective means to reduce the burden of the costs of housing. They are granted as a rent subsidy to households with low incomes just above the level of basic income support. The majority of housing allowance recipients are pensioners and families (especially single parents).

- c) Are family or child benefits provided subject to a means-test? If so, what is the percentage of families covered?

Germany:

In Germany, there are different forms of financial support and relief for families. Some of them are means-tested (for example, basic income support benefits, child **supplement**, housing allowance), others are not (child **benefit**, tax relief measures, family-related elements in the social insurance systems).

A family is entitled to a child **supplement** if that supplement, when added to the parents' income to be taken into account, the child benefit and, if applicable, a housing allowance under the Housing Allowances Act (Wohngeldgesetz), helps to prevent a situation of need as described in Section 9 of Book Two of the Social Code (Sozialgesetzbuch Zweites Buch, SGB II). Since 1 January 2020, a family is entitled to a child supplement also in cases where tests show that their income exceeds the threshold where need would arise by not more than 100 euros. A family applying for a child supplement must not be in receipt of basic income support for job seekers. The standard needs of the parents and the children, any additional needs and the total costs of housing and heating are taken into account as needs under Book Two of the Social Code. Currently, child supplements are paid for 790,000 children (November 2022).

More information on child **supplements** and child **benefits** is supplied in the following comments.

- d) Please provide information about the amounts paid in child/family benefit as well as the median equivalised income for the reference period.

Germany:

The child benefit is the major financial support for families. Currently, it is graded according to the number of children. It amounts to 219 euros per month for a first and second child each, to 225 euros for a third child and to 250 euros per month for a fourth

and any further child. As from 1 January 2023, child benefits will rise to 250 euros per month and per child.

The child supplement supports families with up to 229 euros (including immediate supplement) per child and per month - in addition to child benefits. A family receiving child supplements is also entitled to education and participation benefits and can be exempted from the fees payable for child day-care.

As from January 2023, the maximum amount of the child supplement will rise to up to 250 euros per month and per child (relief package III, "Entlastungspaket III"). The child supplement is index-linked. It is calculated taking into account the current subsistence level report and the level of child benefits which means that it rises automatically, if necessary.

It is expected that the take-up of child supplements will go up in 2023 because of the increase of the monthly maximum amount and the coming housing allowances reform. According to the SILC micro-census, the median of the equivalence-weighted net income amounted to 25,015 euros in 2021; this corresponds to a monthly value of 2,085 euros.

- e) Is there a length of residence requirement imposed on nationals of other States Parties lawfully resident in your country for eligibility to child/family benefits?*

Germany:

Foreign nationals can claim child benefits if they

- are nationals of a member state of the European Union (EU), the European Economic Area (EEA) or Switzerland,*
- are nationals of one of the following states: Algeria, Bosnia-Herzegovina, Kosovo, Morocco, Montenegro, Serbia, Tunisia or Turkey and, in addition, hold a job subject to compulsory social insurance contributions or are in receipt of unemployment benefits or sickness benefits in Germany,*
- hold a valid settlement or residence permit that allows them to work in Germany or belong to the group of incontestably recognized refugees and persons entitled to asylum.*

There are no uniform regulations on the required length of residence in Germany for the various groups of foreign nationals.

Foreigners may be entitled to a child supplement if they are inter alia entitled to child benefits and have a minimum income.

- f) *What measures have been taken to ensure that vulnerable families can meet their energy needs, in order to ensure their right to adequate housing (which includes access to essential services)?*

Germany:

Further measures were taken in view of the strong energy price increases in 2022. They are not described in this report because they were taken outside the reference period from 1 January 2018 to 31 December 2021.

- g) *If specific temporary measures were taken to financially support vulnerable families during the Covid-19 pandemic, will they or are they expected to they been maintained or withdrawn? If they have been withdrawn, what effect is this expected to have on vulnerable families?*

Germany:

During the Covid-19 pandemic, the child supplement has been adjusted several times with the aim to simplify and speed up the provision of support for entitled families. To a large extent, these simplifications have been maintained.

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

Germany:

In the last conclusions, the Committee refers to its previous conclusions (Conclusions XX-4 (2015)) for a description of the procedural framework for the protection of persons threatened by eviction. It also takes note of the information provided in the last report in respect of Article 19§4 of the Charter, concerning social housing (see Conclusions XXI-4 (2019), Article 19§4). There is a system of funding for owner-occupied residential property, which is particularly suited to households with two or more children, provided that the specified income limits are met.

The Committee wishes that detailed information and figures (demand and supply) be provided on the various types of housing support for vulnerable families, including social housing and housing allowances. In this regard, it notes from another source (Housing Europe, The State of Housing in the EU 2017, p. 68) that while the social housing stock has been decreasing over the past two decades, in recent years (2014-2015) the number of new completed social housing has risen again for the first time.

The following comments are made with regard to the last conclusions:

In Germany, no statistics are available at the federal level on support for social housing. Annual reports of the Länder may be used as data sources. However, they do not contain any specific data on housing support for vulnerable families.

Housing allowances are an effective means to reduce the burden of the costs of housing. They are granted as a rent subsidy to households with low incomes just above the level of basic income support. About 48 per cent of the households where all members receive housing allowances are families (as of: 2019).

In the last conclusions, the Committee further observes that the United Nations Committee on Economic, Social and Cultural Rights, in its Concluding observations on the sixth periodic report of Germany adopted on 12 October 2018, expressed concern about the very high level of rents and rent increases, the acute shortage of affordable housing, coupled with the decreased number of apartments available as social housing, as well as the situation of homeless families in metropolitan areas. In this connection, the Committee asks for information on whether the offer of emergency accommodation (shelters or other centres) corresponds to the demand.

The following comments are made with regard to the last conclusions:

In Germany, the local authorities are responsible for the provision of emergency accommodation for homeless persons. No statistics are available on the number of places for emergency accommodation in Germany. Consequently, it cannot be said whether that number is adequate.

The Committee previously asked, with reference to the comparative report on “Housing conditions of Roma and Travellers in the European Union” (October 2009), European Union Agency for Fundamental Rights (FRA), information on conditions in accommodation provided to Roma asylum-seekers from non-EU Member States, particularly as regards children. The Committee refers to its Statement of Interpretation on the rights of refugees under the Charter (Conclusions 2015). In this connection, it notes that during the reference period Germany has been particularly affected by the refugee movements across Europe, experiencing a very high number of arrivals of asylum-seekers or persons seeking protection, particularly from Syria. The Committee therefore asks the next report to indicate which measures are taken to ensure adequate housing for refugee families and whether they have access in practice to social housing schemes and housing allowances after leaving reception centres. It wishes to be provided with any figures and statistics available on this issue.

The following comments are made with regard to the last conclusions:

Asylum-seekers who have been recognized as refugees are residing permanently in the Federal Republic of Germany. If they are in need (in general, this can be assumed for asylum-seekers due to a lack of income) they receive a certificate of eligibility for subsidised housing upon application that entitles them to rent subsidised housing. If several holders of such a certificate apply for one and the same subsidised accommodation, it is up to landlords to decide on their future tenants, as a rule; in cases where a particular need for assistance prevails, the landlord's freedom to decide may be restricted by the competent authority.

As a result of the influx of refugees and the related need for additional accommodation, the payments made by the Federation to the Länder from 2007 to 2019 to compensate for the withdrawal of federal financial assistance in social housing were raised (withdrawal in the context of the federalism reform I of 2006). Originally, about 0.5 billion euros were paid per year. First, this amount was raised to 1.0 billion euros in 2015 and then to 1.5 billion euros each year from 2016 to 2019. (NB: Due to another constitutional amendment, financial assistance granted by the Federation to the Länder was reintroduced in 2020.)

No information is available to the Federal Government on the number of refugee families that had access to social housing or were in receipt of housing allowances after leaving reception centres.

Article 17 – The right of children and young persons to social, legal and economic protection

Excerpts from the ECSR's case law

The ECSR has noted with concern the increasing number of children in Europe registered as stateless, as this will have a serious impact on those children's access to basic rights and services such as education and healthcare. In 2015, UNHCR estimated the total number of stateless persons in Europe at 592,151 individuals. Therefore, the ECSR examines what measures have been taken by States Parties to reduce statelessness (such as ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and identifying children who were not registered at birth).

The prevalence of child poverty in a States Party, whether defined or measured in either monetary or multidimensional terms, is an important indicator of the effectiveness of state efforts to ensure the right of children and young persons to social, legal and economic protection. The obligation of States Parties to take all appropriate and necessary measures to ensure that children and young persons have the assistance they need is strongly linked to measures directed towards the amelioration and eradication of child poverty and social exclusion. Therefore, the Committee will take child poverty levels into account when considering the state's obligations in terms of Article 17 of the Charter.

The Committee recalls that Article 17§2 of the Charter requires States Parties to establish and maintain an educational system that is both accessible and effective (Conclusions 2011). The Charter provides that the obligations under this provision may be met directly or through the involvement of private actors. The Committee notes further that in many states private education is also available.

The Committee is also mindful in this respect of the *Abidjan Guiding Principles on the human rights obligations of States to provide public education and to regulate private involvement in education*. It recalls that the requirement that States respect the freedom of parents to choose an educational institution other than a public institution leaves unchanged the obligation under the Charter to provide free quality public education. Similarly, the offer of educational alternatives by private actors must not be to detrimental to the allocation of resources or otherwise undermine the accessibility and quality of public education. Moreover, States are required to regulate and supervise private sector

involvement in education strictly by making sure that the right to education is not undermined.

The closures of schools and other educational institutions during the pandemic have unmasked and exacerbated pre-existing inequalities in education, raising issues in terms of Articles 10, 15, 17, and Article E of the Charter. The necessary recourse to remote learning during lockdown periods has highlighted and exacerbated the issue of digital exclusion. There is a generalised risk of learning loss and a development gap that for many children, and also for a number of adolescents and adults, will be difficult if not impossible to make up. In many instances, a move from face-to-face teaching has severely impacted on access to, and the quality of education enjoyed by, children with disabilities and special educational needs, with implications for Article 15 and Article 17 of the Charter.

Under Article 17§2 of the Charter equal access to education must be ensured for all children during the COVID-19 crisis. In this respect, particular attention should be paid to vulnerable groups such as children from minorities, children seeking asylum, refugee children, children with disabilities, children in hospital, children in care, pregnant teenagers, children deprived of their liberty, etc.

1. With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;**
- b) to protect children and young persons against negligence, violence or exploitation;**
- c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;**

a) Please provide information on measures taken by the State to:

- i) reduce statelessness (e.g., ensuring that every stateless migrant child is identified, simplifying procedures to ensure the acquisition of nationality, and taking measures to identify those children who were not registered at birth) and*

Germany:

The Federal Republic of Germany has ratified the UN Convention relating to the Status of Stateless Persons of 28 September 1954 (Federal Law Gazette II 1976, p. 473), which

stipulates that Contracting States accord to stateless persons the same treatment as is accorded to aliens generally. The State of residence is also to accord stateless persons treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom, as regards the religious education of their children, access to the courts of law, and provision of sufficient means of subsistence.

Federal Republic of Germany has ratified the UN Convention on the Reduction of Statelessness of 30 August 1961 (Federal Law Gazette 1977 II p. 597), which stipulates that Contracting States grant their nationality to a person born in its territory who would otherwise be stateless. In 1977, the German Bundestag passed the Law to Implement the Convention of 30 August 1961 on the Reduction of Statelessness and the Convention of 13 September 1973 to Reduce the Number of Cases of Statelessness (Federal Law Gazette I 1977, P. 1101), which facilitates the naturalisation of persons who are stateless under the UN Convention of 28 September 1954 relating to the Status of Stateless Persons: Stateless persons who were born in Germany and have been legally resident in the territory of the Federal Republic of Germany for five years are entitled to naturalisation pursuant to Article 2 if they have not been punished for a severe crime and apply for naturalisation before reaching the age of 21.

Stateless persons may apply to have a travel document issued pursuant to Article 28 of the Convention relating to the Status of Stateless Persons. Within the framework of this procedure, the foreigners authority checks whether statelessness is actually given or whether the applicant has a nationality.

ii) facilitate birth registration, particularly for vulnerable groups, such as Roma, asylum seekers and children in an irregular situation. (General question posed in Conclusions 2019).

b) Please provide information on measures taken to:

j) child poverty (including non-monetary measures such as ensuring access to quality and affordable services in the areas of health, education, housing etc.) and

Germany:

Concerning the at-risk-of-poverty rate, it is to be noted that poverty is a social phenomenon with many facets. Poverty is essentially a lack of means and opportunities to lead the life of one's choice. Being a complex phenomenon, poverty defies simple, unambiguous measurement. This also applies to child poverty. The at-risk-of-poverty rate often cited in this context represents a statistical measure of income distribution. It does not provide information about individual's needs. Moreover, using different data bases produces different results:

At-risk-of-poverty rate among young people below the age of 18

- *Microcensus 2021: 20.8 %*
- *SOEP 2020 (income year 2019): 22.6 %*
- *EU-SILC 2020 (income year 2019): 15.4 %*

Depending on their respective income, families with children may be households in need of support and receive a housing entitlement certificate entitling them to rent a social housing apartment upon application. See also the comments under Article 8.

Those entitled to benefits under the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz, AsylbLG), also can receive benefits to secure their livelihood, including benefits for accommodation, food, personal hygiene etc. and health benefits. Other benefits may in particular also be granted if they are necessary on a case-by-case basis to meet the special needs of children.

- ii) *combat discrimination and promote equal opportunities for children from particularly vulnerable groups such as ethnic minorities, Roma children, children with disabilities, and children in care.*

Germany:

Those limited by a disability or at risk of a disability can receive support within the framework of integration assistance under Part Two of Book IX of the Social Code (Sozialgesetzbuch Neuntes Buch, SGB IX) or Book VIII of the Social Code (Sozialgesetzbuch Achtes Buch, SGB VIII). The integration assistance benefits are intended to improve the living situation of people with substantial disabilities (also those at risk) and to enable them to participate in life in society comprehensively. The scope of the benefits depends on the individual needs of the person entitled to them.

If persons with special needs are entitled to benefits under the Asylum Seekers Benefits Act, Section 6 (1) of that Act allows for the granting of benefits to cover such special needs. That may also include benefits that are materially equivalent to the benefits of integration assistance. It is always necessary to consider the circumstances of the individual case.

- iii) *States should also make clear the extent to which child participation is ensured in work directed towards combatting child poverty and social exclusion.*

Germany:

Children's and youth camps, open events, youth encounters and extracurricular educational offers can help children and young people particularly affected by the Covid-

19 pandemic or the war in Ukraine. The Federal Government is therefore making up to an additional 15 million euros available this year (2022) for additional child and youth work services. It is to be used in particular for the following purposes:

- Further activities in the framework of the action programme "Aufholen nach Corona für Kinder und Jugendliche" ("Catching up after Corona for children and young people").
 - Leisure and educational activities for Ukrainian children and young people, also from the war zone
 - Services that address the war in Ukraine in a way that is appropriate for children and young people
 - Measures to (re-)recruit volunteer youth leaders.
- c) Please provide information on any measures adopted to protect and assist children in crisis situations and emergencies.

Germany:

As soon as the first lockdown started, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth established or expanded various support services so that young people can get support when they need it. These include counselling services that are provided by telephone or digitally, such as the "Nummer gegen Kummer" ("A number to call when you are worried") or the "JugendNotmail" ("Emergency email support for young people").

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and Nummer gegen Kummer e.V., have set up the "Helpline Ukraine" for refugee families from Ukraine with the support of Deutsche Telekom. The "Helpline Ukraine" has been available Monday to Friday from 2 PM to 5 PM since 1 June 2022 under the toll-free number 0800-500 225 0. The counsellors listen to and provide support for Ukrainian refugee children, young people, their parents and other relatives with the concerns and issues that are currently important to them. The counselling is confidential and provided in Ukrainian and Russian.

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

Germany:

Regarding the Committee's question on out-of-home placements and in-custody placements:

The legal provisions on child and youth welfare set out in Section 27 of the Book VIII of the Social Code (Sozialgesetzbuch Achtes Buch, SGB VIII) set out an entitlement to

supportive social services for raising children and young people. Legal guardians are entitled to help with raising a child or young person if the child's or young person's best interests are not being served and the help is both suitable and necessary for the child's or young person's development. (Section 27 (1) of Book VIII of the Social Code). The assistance is based on the needs for raising a child (Section 27 (2) sentence 2 of Book VIII of the Social Code) and includes the provision of pedagogical services and related therapeutic services in particular. The law regulates out-of-house and in-house help with raising a child. The principle of proportionality applies: This principle ensures that family-preservation help services take precedence over out-of-home placements if they are equally suitable for meeting the child-rearing needs.

Data on out-of-home placements and in-custody placements are shown in tables 1 and 2.

Table 1: Number of child-rearing help cases by forms of help with placement outside the family of origin for under 18-year-olds (sum of instances of help in place on 31.12. and those terminated within the year; Germany; 2018 to 2021; absolute numbers)

	Total out-of-home placements	<i>Full-time care in line with Section 33 of the Book VIII of the Social Code</i>	<i>Being raised in a children's home according to Section 34 of the Book VIII of the Social Code</i>	<i>Help for child-rearing according to Section 27 (2) of the Book VIII of the Social Code, only "primarily out-of-home".</i>
2018	181,123	81,379	94,978	4,766
2019	179,297	80,920	93,752	4,625
2020	174,941	79,951	90,708	4,282
2021	171,847	77,904	89,665	4,278

Source: Federal Statistical Office: Statistics on child and youth welfare - help with child-rearing, integration assistance for mentally handicapped young people, assistance for young adults; various years. Volumes; compilation of the child and youth welfare statistics unit

Table 2: Number of in-custody placements (Germany; 2018 to 2021; number absolute)

	In-custody placements Total	<i>Regular in-custody placements under Section 42 of the Book VIII of the Social Code not including unaccompanied minors</i>	<i>Temporary in-custody placements of unaccompanied minors under Section 42 a of the Book VIII of the Social Code</i>	<i>Regular in-custody placements of unaccompanied minors under Section 42 of the Book VIII of the Social Code</i>
2018	52,590	40,389	6,385	5,816
2019	49,510	40,863	4,886	3,761
2020	45,444	37,881	4,565	2,998
2021	47,523	36,245	7,279	3,999

Source: Federal Statistical Office: Child and Youth Welfare Statistics - Provisional Protection Measures; various years; compiled by the Child and Youth Welfare Statistics Unit

Accommodation of accompanied and unaccompanied minors

The child and youth welfare system is primarily responsible for the accommodation, care and support of unaccompanied minors from abroad. Putting child and youth welfare first ensures that this group is accommodated, cared for and supported in line with what is in the best interest of the child. For their own protection, unaccompanied minors are not given accommodation in reception facilities or shared accommodation.

Procedures for dealing with unaccompanied minors are regulated by law in the Book VIII of the Social Code. The "Act to Improve the Accommodation, Care and Support of Foreign Children and Young People (Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher), which has been in force since 1 November 2015, added Sections 42 a ff. to the Book VIII of the Social Code. This established an initial procedure of provisional in-custody placements by a youth welfare office. Previously, unaccompanied minor refugees had been taken into care at the place of arrival (follow-up assistance also being provided there) with subsequent cost sharing. Currently, the young people are distributed nationwide according to the Königstein table (cf. Section 42 b of the Book VIII of the Social Code) following a clearing phase. This is to ensure that unaccompanied minors can be accommodated, cared for and supported in a way that meets their needs and is in their best interests.

This is followed by in-custody placements according to the previously applicable regulations. Accommodation, further care and pedagogical support are provided. Youth welfare offices make use of the facilities for youth welfare run by independent institutions and facilities that are Länder-owned or municipal.

Section 42 (1) sentence 2 of the Book VIII of the Social Code includes the power of the youth welfare offices to place a child or young person

- with a suitable person,*
- in a suitable facility or*
- in another form of housing*

in temporary accommodation. The youth welfare offices decide on a case-by-case basis which placement is suitable and appropriate to the situation. The necessary maintenance and assistance in cases of sickness must be guaranteed. The in-custody placement ends either with the handing over of the child or young person to the custodian or legal guardian or with the decision to grant child and youth welfare assistance. Accommodation and care are provided within the framework of the assistance specified by the Book VIII of the Social Code, either according to Sections 27 ff. (e.g. placement in a foster family or children's home or other forms of housing) or according to Section 13 of the Book VIII of the Social Code (socio-pedagogical form of housing within the framework of school or vocational training measures or during vocational integration).

Age assessment

The age assessment of unaccompanied minors is carried out according to Section 42 f of the Book VIII of the Social Code on the basis of a three-stage procedure: Inspection of identity papers, qualified in-person assessment (including pedagogical or psychological assessment, in particular of the physical appearance and the behaviour of the person concerned) and medical assessment in cases of doubt.

The medical examination may be carried out at the request of the person concerned or initiated ex officio. Where there is doubt, the youth welfare offices have no discretionary power and the medical assessment is mandatory (Section 42 f (2) sentence 1 of the Book VIII of the Social Code).

The examination may only be carried out with the consent of the person concerned and their representative (Section 42 f (2) sentence 3 half-sentence 2 of the Book VIII of the Social Code). The unaccompanied minor must be informed about the assessment methods, the possible consequences and the consequences of refusing. Medical assessment are to be carried out by qualified medical professionals using the least invasive and, as far as possible, most reliable methods.

Section 42 f of the Book VIII of the Social Code does not specify which assessment methods are to be used. Psychosocial and physical maturity may be analysed, for example, the latter including dental maturity if necessary, or measurement of the hands or collarbone. Examination of the genitals not allowed.

In practice the different methods are applied in the described three-step procedure according to the principle of proportionality. The individual assessment methods must be suitable, necessary and appropriate means of age determination. An exact determination

of age is not possible by medical, psychological, pedagogical or other means. The procedures can only determine approximate values. Doubts may still exist even after the medical assessment. In this case, it is to be assumed that the person is a minor to uphold the best interests of children.

The evaluation report on the Act to improve accommodation, care and assistance for foreign children and young persons (Gesetz zur Verbesserung der Unterbringung, Versorgung und Betreuung ausländischer Kinder und Jugendlicher) was approved by the Federal Cabinet on 15 July 2021. Among other things, the Act standardised the age assessment procedure in Article 42 f of the Book VIII of the Social Code. The report showed that age assessment in the context of temporary in-custody placement is handled differently in the various Länder and municipalities. In order to determine the need for future action, the Bundestag will continue to monitor the procedure of age assessment with regard to the partly inconsistent handling of the methods and their effects.

Regarding the request for further information on accommodation for accompanied and unaccompanied migrant children, including via measures to ensure that children are placed in appropriate accommodation:

Responsibility for the reception, accommodation and care of people seeking protection lies with the Länder and municipalities, which, according to Sections 44 (2 a) and 53 (3) of the Asylum Act (Asylgesetz), are obliged to take "appropriate measures" to protect women and other vulnerable persons, such as children and young people, in reception centres and shared accommodation.

Since 2016, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, working with the United Nations Children's Fund UNICEF and a broad alliance of partner organisations, such as the international child protection organisations Save the Children and Plan International, have been working to protect women, children and other vulnerable persons in refugee accommodation with the federal initiative "Protection of Refugees in Refugee Accommodation" ("Schutz von geflüchteten Menschen in Flüchtlingsunterkünften"). Guidelines for the creation, implementation and monitoring of accommodation-specific protection strategies are provided in the "Minimum Standards for the Protection of Refugees in Refugee Accommodation" ("Mindeststandards zum Schutz von geflüchteten Menschen in Flüchtlingsunterkünften"), published as part of the federal initiative and including annexes on refugees with disabilities, refugees dealing with trauma and LGBTQI+ refugees (4th edition 2021, <https://www.bmfsfj.de/bmfsfj/service/publikationen/mindeststandards-zum-schutz-von-gefuechteten-menschen-in-fluechtlingsunterkuenften-117474>). Since 2016, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has been helping the Länder, municipalities and local shelters implement measures to protect against violence

through various measures. From the start, a special focus has been placed on the promotion of child protection measures.

Children in conflict with the law:

In this context, the Committee asks whether sentences for children and resulting imprisonments are subject to regular review.

On this topic, it is noted that juvenile court judgements are not subject to regular review, even if enforceable or suspended juvenile sentences. They can, however, be challenged via usual legal remedies of appeal and revision with the goal of obtaining a review of the judgement and the sentence imposed by a higher court. The right of appeal is available both to the convicted young people and to their legal guardians and legal representatives (usually the parents). The public prosecutor's office can also file for these legal remedies, also in favour of the convicted person when it considers the judgment to be erroneous after the objective examination it requires. Since the end of 2019, the law has also expressly stipulated that a public defender must be appointed for the accused in juvenile criminal proceedings, if necessary also already in the preliminary proceedings, when an enforceable juvenile sentence or a suspended juvenile sentence for probation is to be expected and the accused does not have a defence lawyer. Defence lawyers must also review the sentence finally handed down and will seek legal remedy if it is considered to be flawed.

2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

- a) *What measures have been taken to introduce anti-bullying policies in schools, i.e. measures relating to awareness raising, prevention and intervention? (General question, Conclusions 2019).*

Germany:

The Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany (Kultusministerkonferenz) constantly advocates for thorough investigations and solid preventive measures in order to ensure trust in schools as safe, protected places. Many Länder have significantly increased their prevention efforts for schools in recent years. Implementing the development of protection strategies is linked to topics such as child protection, violence prevention and/or crisis intervention in many Länder.

The Länder have also pushed ahead with the expansion of training (offers) for teachers and support schools in the development of protection strategies.

Reporting procedures for incidents of violence have been developed, are being evaluated and improved. Independent complaints offices have been established and more are on the way.

The topic is also addressed in various teaching contexts across and within grades. It forms part of the general or internal school curricula.

See also the "Recommendations for action to prevent and deal with cases of sexual abuse and acts of violence in schools and school-related institutions" ("Handlungsempfehlungen zur Vorbeugung und Aufarbeitung von sexuellen Missbrauchsfällen und Gewalthandlungen in Schulen und schulnahen Einrichtungen" (Recommendations of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany of 20 April 2010, as amended on 7 February 2013), in which the Länder have presented a catalogue of measures that can be implemented immediately.

With the prevention programme "Respect Coaches" ("Respekt Coaches"), the Federal Government has been supporting schools nationwide since 2018 with additional staff and a variety of activities to reduce prejudice and promote prejudice-free tolerance in social interactions. The aim is to broaden perspectives and increase understanding of different world views and ways of life. The project combats all forms of extremism, racism and group-based xenophobia.

- b) *What measures have been taken by the State to facilitate child participation across a broad range of decision-making and activities related to education (including in the context of children's specific learning environments)? (General question, Conclusions 2019).*

Germany:

Rights and forms of pupil participation in teaching and school life are regulated in more detail in the school laws and laws on representation in school decision making bodies of the Länder. They recognise the pupils' participation rights and regulate the composition and tasks of the pupil representatives. Pupils elect representatives at class or grade level according to the principle of representation to safeguard their interests. The pupil representatives together form the pupil parliament (pupil council, pupil committee) of the school. This body elects one or more pupil representatives. In some Länder, pupil representatives are directly elected by all pupils. At the level of the municipality, city or district, the pupils' representatives organise themselves in municipal, city or district pupils' councils. At the level of the Länder in Land pupils' councils. Schools and school authorities are generally not allowed to influence the election of pupil representatives. In addition to the bodies of the pupil representatives, most school laws or laws on representation in school decision making bodies provide for general assemblies of the entire school or of

school levels where an exchange of opinions, debate or discussion among all pupils of a school or level can take place.

In various resolutions of the Standing Conference of the Ministers of Education and Cultural Affairs (e.g. "Democracy as a Goal, Object and Practice of Historical-Political Education and Upbringing in Schools" ("Demokratie als Ziel, Gegenstand und Praxis historisch-politischer Bildung und Erziehung in der Schule", Standing Conference of the Ministers of Education and Cultural Affairs resolution of 6 March 2009 in the version of 11 October 2018) and "Human Rights Education in Schools" ("Menschenrechtsbildung in der Schule", Standing Conference of the Ministers of Education and Cultural Affairs resolution of 4 December 1980 in the version of 11 October 2018)), the rights enshrined in the UN Convention on the Rights of the Child (including the right to life, the right to health, the right to personal development, the right to education, the right to participation, the right to having ones views given due weight in decisions, and the prohibition of discrimination) are dealt with. These resolutions make it clear that in order to protect these rights, children need schools that give every child every opportunity to optimally develop their abilities, skills and talents and that provide every child with participation and involvement opportunities.

Even primary schools play a key role in education towards democracy and the development of a democratic world view. Primary schools provide a variety of active forms of participation and involvement for pupils at class and school levels. A participatory school culture respects the dignity of children, the commitment and joint responsibility of pupils. It contributes to making school into a democratic place to live and learn. This includes, for example, elections for class representatives, class council and pupil's parliament, support for school newspapers and other media products. Teachers involve their pupils in planning, implementation and evaluation of lessons, taking their experience, questions, concerns, knowledge and competences as the starting point of lessons in an age-appropriate manner. Opportunities for participation are also provided to influence school life, project-oriented initiatives and overarching projects. This participation in instruction promotes taking responsibility for one's own learning process and motivation. Continuing this in the next phase, instruction in secondary schools provides an education that enables pupils to develop and shore up their personalities, shape their own lives in a socially responsible manner and participate in democratic society.

The core mandate for the cooperation of schools and youth welfare services of focussing on the interests and needs of young people in their striving for independence, representation in decision making bodies, self-organisation, recognition, and self-efficacy, in addition to responsibility for the professional qualification of young people, is based on the recommendations "Development and expansion of cooperative all-day education at lower secondary level" ("Entwicklung und Ausbau einer kooperativen Ganztagsbildung in der Sekundarstufe I", Resolution of the Conference of the Ministers of the Länder for

Youth and Family Affairs of 27 May 2020/Decision of the Standing Conference of the Ministers of Education and Cultural Affairs of 18 June 2020). In this context, all-day schools with their specific services provide the opportunity to support children and young people in the diversity of their interests, talents and needs in particular.

In the recommendations, the joint task of schools, youth welfare services and other education partners is set out, including

- improving young people's competence in representing themselves in decision-making bodies and their willingness to participate,*
- systematically involving young people in negotiating and decision-making processes about services, rules and objectives; and*
- anchoring opportunities for self-organisation in which they initiate their projects independently, carry them out responsibly and decide on them in democratic procedures in the relevant structures.*

In the intervention phase of the European Social Fund (2021-2027), the Federation intends to use the ESF Plus programme "Together for Quality: Children's Participation in All-Day Activities" ("Gemeinsam für Qualität: Kinder beteiligen im Ganztag") to provide momentum for the necessary development of all-day services at primary school age and ensure the associated quality standards as well as educational and participation opportunities for all children. The ESF Plus programme is currently being carried out in a model phase (until the end of 2024) with an implementation phase to follow (until the end of 2027).

A central concern of the programme is the creation of participatory structures in all-day primary schools as a joint service of schools and youth welfare authorities. The main goals are to bolster the fundamental right of young people to participation, to promote the establishment and maintenance of a democratic society and to support the quality development of the work in all-day schools by changing the culture of learning and teaching. The needs of children are the central starting point in this process. The focus is thus on promoting participation structures for children over the entire school day, i.e. bolstering democratic interactions in school care and education. An environment of trust for all children is necessary for participation. This means in particular the acceptance of diversity. All children need to experience security, appreciation and respect and bolstering of their personal competences. An environment that promotes appreciation and a positive school culture can be the basis of high motivation to learn, and thus the basis of greater learning successes.

For many years, the Federal Government has been funding the central federal structures of the child and youth education system in Germany through the Child and Youth Plan of the Federation (Kinder- und Jugendplan des Bundes, KJP) and on the basis of Article 83 of the Book VIII of the Social Code, thus enabling a broad range of extracurricular educational opportunities for children and young people. All these services are voluntary. Ideally, they are relevant to the realities of young people's lives in all their variety.

- c) *What measures have been taken to address the effects of the Covid-19 pandemic on the education of children (including in particular disabled children, Roma and Traveller children, children with health issues and other vulnerable children)?*

Germany:

Different strategies are being pursued in the 16 Länder to address the effects of the Covid-19 pandemic. There have been both hygiene and protection measures (testing and mask-wearing obligations, vaccinations, etc.) and pedagogical and psycho-social support. Various platforms were used. Based on surveys at the Länder and federal level, these strategies are being continuously adapted depending on current developments. In some cases, special measures for groups of pupils with special needs have been or are being arranged, such as for final-year classes and special needs schools.

A key contribution is made by the joint action programme "Catching up after Corona" ("Aufholen nach Corona") of the Federation and the Länder. The particular aim of the programme is to close pandemic-related learning gaps. Länder-specific programmes already in place before the pandemic are also being used to counter the effects of the Covid-19 pandemic.

Education is much more than just going to school. For this reason, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth places a special focus on extracurricular education, specifically on children's and youth activities in culture and sport. We want to offer all children and young people the opportunity to discover and develop their talents, regardless of the social status of their parents. This contributes to the holistic development of their personalities and fosters their sense of community over the long term. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports a wide range of activities, competitions and prizes in the fields of culture and sport: the "Young People Make Music" ("Jugend musiziert") competition, the Federal Youth Choir (Bundesjugendchor), the German Children's Literature Award (Deutscher Jugendliteraturpreis), but also the Federal Youth Games (Bundesjugendspiele), to name but a few. The activities range from the stage to multimedia to the soccer stadium.

All these activities have become even more important as a result of the Covid-19 pandemic. At the same time, however, the Covid-19 pandemic led to immense restrictions. Gymnasiums, sports fields, rehearsal rooms and meeting places remained closed for months. As a result, not only physical exercise and cultural activities, but also the social contacts and personal interactions of children and young people were neglected.

In order to counteract the severe restrictions for children and young people caused by the Covid-19 pandemic, the Federal Government has adopted a nationwide action programme for the years 2021 and 2022 called "Catching up after Corona for children and young people". Around two billion euros have been made available. Children and young people should be able to quickly catch up on what they have missed. This applies not only to material to be learned, but also to their social life. They should have time for friends, sports and leisure and get the support they and their families need now. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth provides funding of around one billion euros for services that quickly reach children, young people and families. This also includes additional offers to maintain children's and youth activities in culture and sports and to inspire young people to participate.

In order to implement the relaunch of children's and youth sport for the long term, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is also funding the MOVE exercise campaign, which is being implemented by the German Sports Youth (Deutsche Sportjugend, dsj). Within the framework of three action days (in October 2021, May 2022, September 2022), 90,000 sports clubs nationwide were called on to provide public, low-threshold offers for children and young people to motivate them to exercise more. A broad publicity campaign accompanies the action days nationwide. Since July 2022, the movement campaign has expanded to include a component that specifically addresses children and young people who have fled from Ukraine to Germany. Likewise, additional funds have been provided for cultural education work with children and young people from Ukraine.

- d) *Please provide information on the measures taken to ensure that state allocation of resources to private education does not negatively impact on the right of all children to access free, quality public education (based on a Statement of Interpretation from Conclusions 2019).*

Germany:

The regulations on state funding for so-called alternative schools are laid down in the respective laws of the Länder.

An "alternative school" is an independently run school that corresponds to public schools in terms of organisational form, tasks and teaching content and at which the compulsory education requirement can be satisfied. In the primary school sector, the establishment of independently run schools is only possible under narrow conditions (Article 7 (5) of the Basic Law). This includes whether the school authority recognises a special pedagogical interest or, at the request of legal guardians, they are to be established as a community school, as a confessional or ideological school and a public school of this type does not exist in the municipality.

In the secondary school sector, two categories of independently run schools can be distinguished:

- In line with their overall purpose, alternative schools are to serve as substitutes for public schools that exist or are planned in the respective Land and require approval by the school authorities. The compulsory education requirement can be fulfilled at these schools. Alternative schools can fulfil their own educational mission, e.g. as denominational schools, reform schools, schools with a bilingual or international profile or boarding schools.*
- Supplementary schools are intended to supplement public education with educational pathways that do not usually exist in public schools, especially in the vocational field. In the case of supplementary schools, it is only obligatory to notify the school authorities of the commencement of school operations. However, under certain conditions, the school authorities may also prohibit the opening and operation of a supplementary school.*

The requirements for the approval of an alternative school are laid down in the Basic Law (Article 7 (4)). Approval is granted by the competent school authority of the Land concerned if the independently run school is not inferior to the state schools in terms of educational aims, their facilities and the professional training of their teaching staff and when segregation of pupils according to the means of their parents will not be encouraged. Approval shall be withheld if the financial and legal position of the teaching staff is not adequately assured. The school supervisory authorities are to ensure that these conditions of approval are met and may withdraw the approval if the conditions are no longer met.

These requirements for state approval of alternative schools include specifically:

- the equivalence of educational aims;*
- the equivalence of the facilities;*
- the equivalence of professional training of their teaching staff;*
- the financial and legal position of the teaching staff and*
- not segregating pupils according to means.*

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

Additionally, as Article 17§2 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Germany:

Responsibility for education in Germany is determined by the federal structure. Insofar as the Basic Law does not confer legislative powers on the Federation, the Länder have the right to create legislation. In the field of education this includes schools, higher education, adult education and continuing education. Administration in these areas is almost exclusively the responsibility of the Länder. They have so-called cultural sovereignty. This principle entails that each Land is responsible for its own education and cultural policy, on the condition that the Länder, in accordance with the principle of federalism, can express the historical, geographical, cultural and political-social characteristics of their Land, thus providing diversity and competition in the education system and in the field of culture. Detailed regulations are established in the constitutions of the Länder and within the framework of the legislation of the Länder concerning pre-school institutions, schools, higher education, adult education and continuing education. On the other hand, the Länder bear joint responsibility for the state as a whole. This overall responsibility for the state both entitles and obliges them to cooperate with each other and with the Federation. In 1948, the Länder founded the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (Kultusministerkonferenz, KMK) to coordinate cooperation in the fields of education and instruction, higher education, research and cultural affairs. The Standing Conference of the Ministers of Education and Cultural Affairs is based on an agreement of the Länder and deals with policy matters concerning education, higher education, research and cultural policy of national importance with the aim of forming a common position and policy and representing common concerns. Decisions of the Standing Conference of the Ministers of Education and Cultural Affairs are taken unanimously, by qualified majority or by simple majority, depending on the issue. As long as the resolutions have not been implemented in binding legislation by the Länder, they have the character of recommendations, albeit with the political obligation of the responsible ministers to work to implement them in the law of the respective Land. Implementation of the resolutions occurs in the respective Länder through administrative action, ordinances or acts. The parliaments of the respective Länder are involved in the legislative process.

The "Länder Agreement on the Common Basic Structure of the School System and the National Responsibility of the Länder in Central Questions of Education Policy" ("Ländervereinbarung über die gemeinsame Grundstruktur des Schulwesens und die gesamtstaatliche Verantwortung der Länder in zentralen bildungspolitischen Fragen") of the Standing Conference of the Ministers of Education and Cultural Affairs resolution of 15 October 2020 is the main basis for the common framework of the education system in the Federal Republic of Germany since its entry into force on 9 February 2021. It replaced the "Agreement between the Länder of the Federal Republic of Germany on Unification in the Field of School Education" ("Abkommen zwischen den Ländern der Bundesrepublik zur Vereinheitlichung auf dem Gebiete des Schulwesens", the so-called Hamburg Agreement).

In a total of 44 articles, the agreement outlines and regulates central questions concerning quality management, overarching principles of education and instruction in the Länder, the responsibilities of school stakeholders, general regulations (holiday regulations, for example), the structure and organisation of the school system and questions of teacher training. The Standing Conference of the Ministers of Education and Cultural Affairs also established the "Standing Research Commission of the Standing Conference of the Ministers of Education and Cultural Affairs" ("Ständige wissenschaftliche Kommission der Kultusministerkonferenz") on the basis of the Länder agreement. Its task is to advise the Länder on questions of the improvement of the education system and how to deal with challenges.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Germany:

In 1992, Germany ratified the UN Convention on the Rights of the Child. It is therefore obliged to submit regular reports to the UN Committee on the Rights of the Child on the implementation of children's rights outlining the progress it has made. Article 28 establishes the right to education (including free compulsory primary education). One key role of the Standing Conference of the Ministers of Education and Cultural Affairs in terms of schools is to promote the equality of living conditions throughout Germany. One goal is uniform and comparable quality standards in schools in order to facilitate the mutual recognition of certificates and degrees. The right to education and safety guides all resolutions of the Standing Conference of the Ministers of Education and Cultural Affairs; this was reaffirmed by the Standing Conference of the Ministers of Education and Cultural Affairs in its resolution "Promoting the Right to Education and Safety of Children and Young People" ("Für das Recht auf Bildung und Unversehrtheit von Kindern und Jugendlichen") of 18 March 2021.

In order to implement the right to education, there is free full-time compulsory education (general compulsory education), which lasts nine years (ten years in five Länder). The subsequent compulsory part-time schooling (compulsory vocational schooling) lasts three years.

There is consensus in Germany that great efforts will be needed in the coming years to improve the German education system given both demographic trends and the expected need for skilled workers, but also the challenges represented by the spread of digital technologies and the current refugee migration.

The following initiatives and programmes have been launched for the school sector, for example:

- Initiative "School makes you strong" ("Schule macht stark"): At the beginning of 2021, the joint Federation/Länder initiative to support schools in socially disadvantaged areas, "Schule macht stark", was launched. The aim is to improve the educational opportunities of socially disadvantaged pupils. Two hundred schools in socially disadvantaged areas are receiving support in fulfilling their educational mission to enable their pupils to achieve the best possible educational outcome using their individual potential. Tailor-made solutions and ideas from the schools receive support.*
- A legal entitlement to all-day care in primary school: All-day care for children of primary school age is of central importance to raising the level of long-term educational attainment and reducing educational inequalities. The legislation on all-day care for children of primary school age was finally passed by the Bundesrat on 10 September 2021. The legal entitlement to all-day care will come into force on 1 August 2026. Initially, it will apply to primary school children in the first grade and will be extended by one grade level in each of the following years. That means that from 1 August 2029 every primary school child in grades one to four will have a right to all-day care. There is federal level support for the necessary expansion of all-day service in the form of financial support of up to 3.5 billion euros for investments in infrastructure. Of this, 750 million euros have been available since the end of 2020 via the investment programme for the accelerated expansion of educational infrastructure for primary school children. The Federation will also contribute to the running costs and thus support the Länder in the long term. The funding will increase annually from 2026 up to 1.3 billion euros per year from 2030.*
- Action programme "Catching up after Corona" ("Aufholen nach Corona"): Expansions to the Digital Pact (DigitalPakt) were agreed in 2020 (immediate provision of equipment for pupils, support for administration and loans equipment for teachers), amounting to 500 million euros from the federal level and 50 million euros from the Länder. In addition to this, the Federation and Länder have*

responded to the learning deficits that have arisen among pupils due to the absence of in-person teaching and to psychosocial burdens on children, young people and their families with the "Action Programme Catching Up after Corona". The federal support launched on 25 June 2021 comprises two billion euros and is provided through the Financial Equalisation Act (Finanzausgleichsgesetz). The Länder provide 1.29 billion euros. The implementation of the measures is carried out by the Länder within the framework of existing structures. Independently of this, the Länder have launched a wide range of learning support measures and funding instruments to combat pandemic-related deficits in the school year 2020/2021.

For many years, the Federal Government has been funding the central federal structures of the child and youth education system in Germany through the Child and Youth Plan of the Federation (Kinder- und Jugendplan des Bundes, KJP) and on the basis of Article 83 of the Book VIII of the Social Code, thus enabling a broad range of extracurricular educational opportunities for children and young people. All these services are voluntary. Ideally, they are relevant to the realities of young people's lives in all their variety.

3) Please provide pertinent figures, statistics or any other relevant information, in particular on the number of children failing to complete compulsory schooling dropping out of education without qualifications and on measures to combat absenteeism.

Germany:

Support for lower-performing pupils is a particular focus of joint activities of the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder in the Federal Republic of Germany. The corresponding "Support Strategy for Lower-Performing Pupils" ("Förderstrategie für leistungsschwächere Schülerinnen und Schüler") of March 2010 pursues the goal of substantially reducing the proportion of pupils who do not develop a minimum level of competence by the end of their education and thus do not receive a school-leaving certificate.

The Federation and the Länder agreed to cut the number of pupils without a school-leaving certificate in half in 2006 as part of the quality initiative "Advancement through Education - The Qualification Initiative for Germany" ("Aufstieg durch Bildung – Die Qualifizierungsinitiative für Deutschland"). This objective is also the second main objective of the support strategy for lower-performing pupils. The current report on the status of the implementation of the funding strategy dated 14 May 2020 presents the progress made towards achieving the target since the beginning of the surveys in 2006 up to the years 2013-15. The proportion of pupils who left school without a lower secondary school leaving certificate after finishing compulsory full-time schooling had fallen steadily, but has since risen steadily again without reaching the initial level of 2006. A comparison of the Länder also shows that the trend is not uniform. In the period from 2018 to 2020, the proportion of

those leaving full-time compulsory education without a lower secondary school leaving certificate fell from 6.8% to 5.9%.

The report on the implementation of the support strategy for lower-performing pupils also presents the current measures taken by the Länder following the agreed guidelines. The guidelines include, for example, individual support during lessons, targeted support and enabling more learning time, lessons geared towards practical situations, more support for pupils with a migration background and the use of many kinds of opportunities.

The Federal-Länder -Federal Employment Agency initiative "Forging Links in Educational Chains - No getting done without getting on" ("Bildungsketten – kein Abschluss ohne Anschluss") aims for better integration of the funding instruments of the Federation and the Länder. The Federation, the Länder and the Federal Employment Agency (BA) conclude Länder-specific agreements on the transition from school to work to achieve this. The goal is to create more coherent structures in vocational orientation and in the transition from school to work. This would not only ensure the acquisition of a school-leaving qualification, but also secure the next generation of skilled workers for the economy.

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

With a view to ensuring the effective exercise of the right of migrant workers and their families to protection and assistance in the territory of any other Party, the Parties undertake:

1. to maintain or to satisfy themselves that there are maintained adequate and free services to assist such workers, particularly in obtaining accurate information, and to take all appropriate steps, so far as national laws and regulations permit, against misleading propaganda relating to emigration and immigration;

2. to adopt appropriate measures within their own jurisdiction to facilitate the departure, journey and reception of such workers and their families, and to provide, within their own jurisdiction, appropriate services for health, medical attention and good hygienic conditions during the journey;

3. to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries;

4. to secure for such workers lawfully within their territories, insofar as such matters are regulated by law or regulations or are subject to the control of administrative authorities, treatment not less favourable than that of their own nationals in respect of the following matters:

- a) remuneration and other employment and working conditions;**
- b) membership of trade unions and enjoyment of the benefits of collective bargaining;**
- c) accommodation;**

5. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals with regard to employment taxes, dues or contributions payable in respect of employed persons;

6. to facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory;

7. to secure for such workers lawfully within their territories treatment not less favourable than that of their own nationals in respect of legal proceedings relating to matters referred to in this article;

8. to secure that such workers lawfully residing within their territories are not expelled unless they endanger national security or offend against public interest or morality;

9. to permit, within legal limits, the transfer of such parts of the earnings and savings of such workers as they may desire;

10. to extend the protection and assistance provided for in this article to

self-employed migrants insofar as such measures apply;

11. to promote and facilitate the teaching of the national language of the receiving state or, if there are several, one of these languages, to migrant workers and members of their families;

12. to promote and facilitate, as far as practicable, the teaching of the migrant worker's mother tongue to the children of the migrant worker.

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

19§1

Germany:

Regarding the request for information on framework conditions for immigration and emigration as well as on new or continued initiatives.

Against the background of the high demand for skilled labour the legal requirements regarding labour migration to Germany are developed further on an ongoing basis. In the period under review, new labour migration regulations were set out in the Skilled Immigration Act which entered into force on 1 March 2020. They facilitate access of skilled labour with a degree in a training occupation and improves the prospects for skilled labour from other countries. The Skilled Immigration Act (Fachkräfteeinwanderungsgesetz) provides the legal framework for skilled labour the immigration to Germany and is meant to help meet the need for skilled labour that cannot be met by domestic or European labour.

According to the definition introduced through the Residence Act (Aufenthaltsgesetz - AufenthG) (Section 18 (3) of the Residence Act) skilled labour means persons with a university degree or a qualified vocational training degree. The minimum length of the vocational training course is two years. If the university degree was acquired abroad, it is necessary that the document proving the recognition of the degree by the German competent body is submitted and/or that the competent body has established that the foreign university degree is comparable to a degree awarded by a German university.

Skilled labour who have completed a vocational training course abroad can obtain a residence and work permit in Germany. The residence permit allows the person to take up any type of employment for which he/she is qualified (Section 18 of the Residence Act). In addition to having received an employment contract it is necessary that equality with a domestic vocational training degree has been determined and that the remuneration corresponds to the remuneration of comparable domestic workers. A fixed minimum remuneration does not apply. There is also no labour-market priority test. According to this

provision, even foreign nationals who have completed their vocational training in Germany, can stay in Germany after the successful completion of their vocational training in order to take up employment for which they are qualified.

The EU Blue Card pursuant to the applicable EU Directive continues to be the central residence permit for university graduates (Section 18b (2) of the Residence Act). It facilitates the arrival of people from third countries in a simple and non-bureaucratic manner. Here, too, a labour-market priority test is not carried out. Access via the EU Blue Card requires proof of a university degree and an employment contract providing for a certain minimum remuneration that is annually adjusted to the development of wages and salaries. For so-called shortage occupations, where there are a large number of vacancies in Germany, a lower salary limit applies. This applies for example to physicians and engineers. The working conditions (e.g. working time and salary) must be similar to those applicable to German nationals. This is checked by the Federal Employment Agency (Section 18 (2) sentence 2 in conjunction with Section 39 (2) of the Residence Act). The EU Blue Card provides for privileges for the immigrants and their families. Granting immigrants a permanent right to stay in Germany at an early point in time, makes it possible for applicants to make long-term plans: After a 33-month stay, immigrants may be granted a permanent settlement permit. Immigrants who can prove that they have a good command of the German language, can even obtain a permanent settlement permit after 21 months already (Section 18c (3) of the Residence Act).

Persons with academic degrees who do not comply with the prerequisites of the minimum remuneration for the EU Blue Card, may obtain a residence permit for the purpose of employment in Germany on the basis of the national regulation. However, they do not enjoy the advantages offered by the EU Blue Card.

IT specialists often have no formal or university degree comparable to a university degree acquired in Germany. That is why the Skilled Immigration Act introduced a regulation under which IT specialists can obtain a residence permit in the event of extensive professional experience, regardless of an official degree. In order to apply this regulation the IT specialists must be able to prove that they have at least three years of professional experience and are paid a defined minimum remuneration which is annually adjusted to the general development of wages and salaries.

The dual training system in Germany has special features and sets high standards that only exist in very few other countries. For this reason, the Skilled Immigration Act has improved the opportunities for new apprentices to obtain a residence permit for the purpose of taking part in qualification measures in Germany. This requires in general that

a recognition procedure is carried out by the competent body in Germany while the person is still abroad and in which the competent body has identified deficits regarding the foreign qualifications as compared to the German training. As a rule, the residence requires at least sufficient German language skills (Section 16d of the Residence Act).

Even before the Skilled Immigration Act was enacted, there was a regulation that skilled labour from third countries interested in coming to Germany could obtain a visa valid for six months for the purpose of finding a job in line with their skills. Another prerequisite is that they can prove that they have a university degree and can earn their own living. If an employer is found within the period of six months, the necessary residence permit or the EU Blue Card may be applied for directly in Germany (Section 20 (2) of the Residence Act).

Since the enactment of the Skilled Immigration Act, it is now also possible for immigrants to come to Germany if they have completed vocational training in a vocational occupation abroad. This requires that the foreign qualification has been recognized by the competent body in Germany, that the immigrants can earn their own living during their residence in Germany and that their German language skills are sufficient for the job they applied for (Section 20 (1) of the Residence Act).

The awarding of a permanent right of residence offers a secure prospect for their future in Germany. Therefore, skilled labour with a foreign degree can obtain a permanent settlement permit in Germany after four years. If the vocational training or the university studies have been completed in Germany, a permanent settlement permit may already be granted after two years (Section 18c (1) of the Residence Act).

National Action Plan against Racism

Against the background of the UN World Conference Against Racism in Durban in 2001 and the National Action Plan issued in 2008 for the first time, the National Action Plan against Racism (NAP-R) was expanded and relaunched in 2017. The National Action Plan Against Racism focuses on positions and measures regarding human rights policy, protection against discrimination and prosecution of crimes, education and political education, societal and political commitment for democracy and equivalence, diversity in working life, training and further training as well as the strengthening of intercultural and social competences at work, racism and hatred on the internet. The drafting of the National Action Plan Against Racism of the Federal Government was the result of interministerial cooperation with the Federal Ministry of the Interior and Community (Bundesministerium des Innern und für Heimat, BMI) and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ) in the lead.

Cooperation with the civil society played an equally important role in the drafting of the National Action Plan against Racism in 2017. Civil society was involved through a consultation process. In the framework of a participatory format, proposals, experiences and ideas were addressed from the perspective of civil society initiatives. Position papers from numerous civil society initiatives and NGOs were integrated into the drafting of the National Action Plan Against Racism. The NAP-R is not to be understood as a static programme, but – within the framework of federal competence – as a framework set by the Federal Government, open to further discourse. The coalition agreement for the 20th legislature states for example that the NAP-R has to be adjusted and further developed. This will be implemented by the Federal Government Anti-Racism Commissioner within the meaning of a participatory approach.

For a complete update on measures taken to target trafficking in human beings reference is being made to the Federal Governments reports prepared for the monitoring of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Group of Experts on Action against Trafficking in Human Beings (GRETA) accessible under: <https://www.coe.int/en/web/anti-human-trafficking/germany>

19§2

Germany:

Regarding placement agreements of the Federal Employment Agency (Bundesagentur für Arbeit - BA) regulating seasonal agricultural work:

The total number of seasonal agricultural workers from third countries is small. The main group of seasonal workers comes from EU countries. Placement agreements concluded by the Federal Employment Agency on seasonal agricultural work provide a new type of access to seasonal agricultural work. Workers from so-called positive states are allowed to enter the country without a visa on the basis of a work permit issued by the Federal Employment Agency for a period of 90 days within 180 days. In January 2020, the Federal Employment Agency concluded a placement agreement regulating the administrative and selection procedures for the purpose of seasonal work with the public employment services of Georgia (for 5,000 workers) and in July 2021 with the Republic of Moldova (for 500 workers).

Regarding counselling and protection of foreign workers:

In line with the concept of "fair mobility", employers are made aware of, informed and counselled through the employer service and the EURES advisors in the employment agencies on the need to ensure that they provide the correct framework conditions for successful labour migration - including the protection of the rights of foreign workers.

Agreements concluded with the Federal Employment Agency always include clear responsibilities for employers and also information on the social insurance system. Moreover, the examination of the comparability of working conditions is part of the process of granting access to the German labour market - regardless of whether workers are recruited by a private recruiter or by the state.

By taking up employment subject to mandatory social insurance contributions in Germany, workers are subject to compulsory coverage in the statutory health insurance, as stipulated in Section 5 (1) of Book V of the Social Code (Sozialgesetzbuch Fünftes Buch, SGB V). In this case, the employer is obliged to register the worker with a statutory health insurance fund. Family members of the worker can be covered without extra contributions if they fulfil the eligibility criteria. Special rules apply to short-term employment. If a legal dispute arises with the health insurance funds, action may be brought before the Social Court. Insured persons may also contact the responsible regulatory agency.

19§4

Germany:

The Office for the Equal Treatment of EU Workers (EU Equal Treatment Office) took up its work in 2016 and is based at the office of the Federal Government Commissioner for Migration, Refugees and Integration. The EU Equal Treatment Office has four work priorities to ensure equal treatment of migrant workers from EU countries in Germany: Information, advice and support for EU citizens as well as stakeholders (e.g. counselling services) regarding the free movement of workers (e.g. multilingual websites, counselling and information activities on the social media); identification and improvement of structural deficits; national and international networking, research on specific sectors, work models and target groups.

The EU Equal Treatment Office presents easy-to-understand information on its website for workers subject to compulsory social insurance, for seasonal workers as well as workers posted to another EU country in 12 European languages. This information is shared on social media and through multipliers with the support of specific projects. The EU Equal Treatment Office has its own citizens' service to answer important questions asked by guidance-seekers. It also offers a search engine which can be used to find the counselling and information services available in Germany.

It cooperates closely with the Federal Employment Agency to facilitate and improve the long-term integration of EU citizens into the German labour market. The EU Equal Treatment Office supports and shares projects with international players such as the

European Labour Authority or the European commission to improve working conditions of migrant workers.

Insofar as the Committee asks for comprehensive information on all possibilities to object to or review decisions in respect of all aspects covered by this provision of the Charter (Article 19 (4)), reference is made to the following points:

Federal Anti-Discrimination Agency:

*In 2006, the **General Act on Equal Treatment** (Allgemeines Gleichbehandlungsgesetz - AGG) entered into force, which protects against discrimination in private law relationships. It is an essential part of anti-discrimination law in Germany and an important intervention and prevention instrument to fight discrimination and foster equal treatment. The objective of the Act is to prevent or eliminate discrimination on grounds of race or on grounds of ethnic origin, gender, religion or belief, disability, age or sexual identity. Workers are protected against the discriminations referred to above if they are in employment. The material scope of the General Act on Equal Treatment extends i.a. to the employment and working conditions including work remuneration and conditions of dismissal.*

Moreover, the General Act on Equal Treatment regulates the rights of disadvantaged persons. This includes in particular the right of workers to bring a complaint before the competent bodies of the establishment, company or public authorities (Section 13 of the General Act on Equal Treatment) if they think they are discriminated on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation in connection with their employment relationship.

The complaint must be investigated and the result communicated to the person concerned. Furthermore, persons concerned may claim damages or compensation from the employer with the labour courts (see Section 15 of the General Act on Equal Treatment in conjunction with Section 61 b of the Labour Courts Act (Arbeitsgerichtsgesetz, ArbGG).

*The **Federal Anti-Discrimination Agency** (Antidiskriminierungsstelle des Bundes, ADS) provides discrimination victims with independent support and advice regarding the options available under the General Act on Equal Treatment. It can in particular provide information about the rights set out in the General Act on Equal Treatment, it can explain what actions are possible in the framework of legal regulations governing protection against discrimination, it can procure counselling provided by other agencies and it can help to facilitate an amicable settlement between the parties (see Section 27 (2) of the General Act on Equal Treatment). The Independent Federal Anti-Discrimination Commissioner is the head of the Federal Anti-Discrimination Agency (see Section 25 (3) of the General Act on Equal Treatment). The Independent Federal Anti-Discrimination Commissioner is independent in the exercise of their duties and only subject to the law (see Section 26 (1) sentence 2 of the General Act on Equal Treatment).*

In 2017, the “**Fair Integration**” service was established in the framework of the ESF support programme “Integration through Qualification”. **The Fair Integration counselling centres will continue to operate in all 16 Länder until the end of 2022. Counselling includes labour and social law issues directly linked with the employment relationship, e.g. wages, working time, paid annual leave, dismissal, health insurance and other topics.** The counselling structure can be used by all third-country nationals residing in Germany free of charge, anonymously and in different languages if they so wish. The service will be continued under the next ESF Directive from 2023 onwards.

For workers from other EU Member States, there is a comparable information and counselling service “**Fair Mobility**” in Germany, which can also be used free of charge and in different languages. The counselling network “Fair Mobility” operates 13 counselling centres across Germany. In addition, telephone hotlines have been set up providing counselling in five languages. The project that has been co-funded by the Federal Ministry of Labour and Social Affairs since 2011 will now be able to continue its work permanently as it was included in the Act which transposes the Posted Workers Directive. Since 1 January 2021, the counselling service is provided according to Section 23a of the Act on the Posting of Workers (Arbeitnehmer-Entsendegesetz, AEntG).

In its conclusions from 2019 regarding the implementation of Article 19 (4), the Committee reminds Germany that it is not sufficient to prohibit discrimination by law. The Committee rather asks which practical steps have been taken to stop actual discrimination regarding remuneration and other employment and working conditions including in-house further training and promotion.

As to the support of non-discriminatory access to employment and vocational training by the Federal Employment Agency, the latter pools different practical activities in the areas of counselling, information and continuing training of Agency staff to implement this recommendation.

Employers may get in touch with the employer service of the employment agency regarding topics such as working conditions and employment of workers from abroad. In addition, the employer service has the task to issue a labour market statement in the context of granting labour market access. To this end, the working conditions are reviewed (e.g. regarding remuneration or working time). The Federal Employment Agency supports remuneration transparency by, for example, the so-called remuneration atlas, which can also be consulted by interested parties to this Convention.

For the counselling of jobseekers and those looking for a training place at the employment agencies, the Federal Employment Agency developed a special counselling concept which has been used since 2010. This concept was further developed in 2021 and also includes a special focus on staff members' attitude ("Taking clients and their diversity seriously"). Employment agency staff must learn to reflect their own prejudice and sensibilities and to reduce stereotypes related to gender, roles of family members, (country of) origin and other features. In difficult and new counselling situations the action principles provide orientation for possible approaches and next steps in the integration process. The counselling concept also includes numerous ideas, guides, methods and techniques enabling the counsellors to react to complex problems in connection with the statutory framework conditions.

Employment agency staff are regularly qualified/trained in qualification programmes on communication and counselling, including discrimination risks, protection against discrimination, diversity, intercultural qualifications or equal opportunities and gender mainstreaming. In doing so, the Federal Employment Agency also raises awareness among its employees on the subject of the unconscious bias, including through internal media and tools. Staff and managers are supported in becoming aware of their unconscious bias and to adapt their conduct accordingly. This was also published as a best-practice example by the Diversity Charter.

Dual vocational training courses, degree programmes and trainee programmes of the Federal Employment Agency have enshrined the promotion of intercultural competences. In the framework of its integration counselling and case management, the Federal Employment Agency has also carried out training programmes and certification courses (according to the German Association for Care and Case Management) for many years to help their staff in dealing with clients who are rather far from the labour market. The curricula contain general placement and counselling aspects but also classes on topics such as discrimination, diversity and equal opportunity. Since the end of 2020, career and rehabilitation advisers of the Federal Employment Agency have participated in the module "Extended Counselling Competence" in the framework of the certificate programme "Professional Counselling" at the University of Applied Labour Studies of the Federal Employment Agency. Job placement officers working for the Federal Employment Agency's employer service attend classes on thematic areas such as working conditions and employment of foreigners (EU, third countries, refugees) in the framework of professionalising labour market counselling. The aim of these courses is to provide staff with knowledge on how to provide competent advice to employer clients regarding these topics. Management-level staff practice work shadowing at their employees' workplaces and are thus directly involved in client support and the counselling process. In this context

they make sure that the staff provides correct information and works in a non-discriminatory manner.

19§6

Germany:

Reference is made to previous reports.

19§8

Germany:

The requirement from Article 19 (8) is fulfilled. In Section 53 et seq. of the Residence Act (Aufenthaltsgesetz - AufenthG), expulsion law provides for the expulsion of persons only if the interest in expulsion (Section 54 of the Residence Act) outweighs the person's wish to remain (Section 55 of the Residence Act). A case-by-case assessment is therefore always required. Facts backing up the interest of the state to expel a foreigner are set out in the list in Section 54 of the Residence Act. This list complies with the requirement of Article 19 (8) as it only includes facts that may be subsumed under the term that "they endanger national security or offend against public interest or morality".

19§9

Germany:

Reference is made to previous reports.

19§10

Germany:

No information available.

Additionally, as Articles 19§11 and 19§12 are newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

19§11

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Germany:

Good knowledge of the German language is an important key to social and occupational integration in Germany. In Germany, the integrated language programme has proved to be the most important building block to acquire and improve the necessary language proficiency. It comprises modules for different target groups including the integration courses already introduced in 2005; (Section 43 et seq. of the Residence Act) and the courses building on them, i.e. job-related language courses (Section 45a of the Residence Act) established in mid-2016 also in the framework of the regular support structures. This is not only an offer for new immigrants from the European Union and third countries, but also for persons with a need for special language training who have lived in Germany for some time already.

Details on the integration courses or job-related German language courses, in particular their basic structure, target groups, course duration, content, implementation of the courses, requirements regarding the selection and certification of course providers, on requirements and framework conditions governing access to and orderly and successful participation, are all regulated in the Ordinance on Integration Courses for Foreigners and Ethnic German Immigrants (*Verordnung über die Durchführung von Integrationskursen für Ausländer und Spätaussiedler - IntV*) as well as in the Ordinance regulating Job-related German Language Courses (*Verordnung über die berufsbezogene Deutschsprachförderung - DeuFöV*)

Integration courses (Sections 43, 44, 44a of the Residence Act):

Integration courses and their final module, the orientation course, aim to teach language skills at level B1 of the Common European Framework of Reference for Languages (CEFR) as well as information about the legal system, culture and history of the Federal Republic of Germany. These skills are intended to enable course participants to live an independent life. In addition to the general integration courses, there are special integration courses for illiterate persons, persons learning a second alphabet, youth, parents, women and participants with a disability.

New immigrants who reside lawfully and permanently in Germany are entitled to participation in these courses as provided for in Section 44 (1) of the Residence Act. The same applies to ethnic Germans according to Section 9 of the Federal Expellees Act

(Bundesvertriebenengesetz). The Federal Office for Migration and Refugees may also take a discretionary decision to admit participants (see Section 44 (4) of the Residence Act) provided that places on the course have not been filled. This is how, for instance, EU citizens may participate in integration courses in accordance with Section 11 (1) sentence 1 of the Free Movement Act (Freizügigkeitsgesetz) in conjunction with Section 44 (4) sentence 1 of the Residence Act provided that places on the course have not been filled. As there is enough course capacity, all interested EU citizens were and are able to attend an integration course. In accordance with Section 9 (1) sentence 1 of the Integration Course Ordinance, eligible participants have to make a co-payment to the Federal Office for Migration and Refugees. The co-payment was 2.20 euros per teaching unit in the period under review. It is possible to exempt persons from the obligation to make co-payments if they draw benefits under Book II of the Social Code and under the Asylum Seekers Benefits Act (Asylbewerberleistungsgesetz) and persons receiving cost-of-living assistance under Book XII of the Social Code (Sozialgesetzbuch Zwölftes Buch, SGB XII). Furthermore, the Federal Office for Migration and Refugees may exempt participants from having to make co-payments insofar as the full coverage of the costs would amount to undue hardship because of the personal circumstances and the economic situation. The Federal Government is constantly examining whether and how the existing co-payment exemptions can be adjusted. In addition, all participants who have not been exempted from making co-payments, can get a refund of half of the co-payment if they successfully complete the integration course within two years of having received the eligibility document.

Job-related German language courses (Section 45a Residence Act):

In general, job-related language courses aim to provide German language skills for the work environment from level B2 to level C2 of the CEFR and they aim to prepare foreign nationals for long-term integration into training and work. In addition there are special job-related German language courses of level A2 and B1 of the CEFR that also provide social pedagogical coaching. There are also special job-related German language courses with specific lessons for defined groups of occupations or courses offered in the framework of procedures aiming at the recognition of occupational qualifications.

In principle, German citizens with a migration background, EU citizens and many immigrants from third countries may participate in job-related language courses. Access to the courses was restricted for asylum seekers and persons with temporary suspension of deportation status in the period under review. Access to job-related language training is free of charge up to a taxable annual income of 20,000 euros (40,000 euros if two persons are taxed together). The co-payment of eligible participants was 2.32 euros per teaching unit during the period under review, provided the job-related language course was completed successfully within two years after the eligibility document was issued. In that

case half of the co-payment may be reclaimed by the participant. Unless a person can prove that he or she already possesses language skills at B1 level of the CEFR, prior completion of the integration course is required.

Under Section 4 of the Ordinance regulating Job-related German Language Courses, an eligibility document can be issued to an individual if the job-related language course is suitable

- to improve his or her opportunities on the labour or training market,*
- to support persons in employment or vocational training, or*
- to help him or her have their foreign qualifications recognised and/or to get access to a particular occupation.*

A special rule was created for persons from border regions in the Federal Republic of Germany: Under certain conditions they may participate in a vocational language course if they do not reside in Germany or have their ordinary residence in Germany if the neighbouring state also offers persons from Germany participation in comparable language courses in the framework of a joint project.

After the entry into force of the Skilled Immigration Act on 1 March 2020, persons who do not yet reside in Germany or have their ordinary residence in the Federal Republic of Germany, may also be eligible for job-related language training to prepare for participation in vocational training provided they have concluded a training contract in Germany. This allows them to enter Germany even before the start of their training and to prepare themselves better so that they can complete their training successfully.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Germany:

The Federal Ministry of the Interior and Community is responsible for the integration courses whereas the responsibility for vocational language courses lies with the Federal Ministry of Labour and Social Affairs. Both language training programmes are administered by the Federal Office for Migration and Refugees. The Federal Ministry of the Interior and Community, the Federal Ministry of Labour and Social Affairs and the Federal Office for Migration and Refugees regularly share their views on how to develop the integrated language programme further. Also, in 2018, a joint steering committee was set up which advances the harmonisation of services and deals with quality and steering aspects of the integrated language programme.

Pilot projects in the framework of vocational language courses:

In the beginning of 2020, special vocational language courses for apprentices were conceived in the framework of a pilot project. Contrary to previous practice, these courses do not aim to enable the holder to obtain a language certificate, but are instead geared to the individual language requirements of subject-specific education at vocational schools during dual vocational training. They aim to support apprentices in their preparation for the respective intermediate and final exams at the chamber of industry or the chamber of crafts and to prevent them from dropping out of the training course. The courses were launched particularly in the fields of trade/technology and care. Special language courses with practical language instruction are also piloted at an exemplary workplace. They are aimed in particular at those eligible to take part who have exhausted all the teaching units in an integration course but have not passed the German Test for Immigrants (Deutsch-Test für Zuwanderer). Here, the special vocational language course takes place at an exemplary workplace.

In order to minimise the particular burdens imposed by the Covid-19 pandemic in 2020 on course providers, teachers and participants in the German language courses of the Federal Government and to support the desired learning success in the integrated language programme as effectively as possible, it was possible in the short term to maintain or consolidate participants' learning status by using web-based services (online tutorials or learning management systems). In addition, opportunities were created for full or partial language instruction (in combination with face-to-face instruction) in the virtual classroom.

3) Please provide pertinent figures, statistics or factual information, in particular on how migrants are being taught the national language of the receiving State.

Germany:

For statistical information, please refer to the integration course statistics published annually by the Federal Office for Migration and Refugees (<https://www.bamf.de/DE/Themen/Statistik/Integrationskurszahlen/integrationskurszahlen-node.html>)

as well as to the annual statistical reports regarding vocational language courses which can also be found at the website of the Federal Office for Migration and Refugees.

(2018/2019: https://www.bamf.de/SharedDocs/Anlagen/DE/Integration/Berufsbezsprachf-ESF-BAMF/BSK-Jahresberichte/bsk-jahresbericht-2019.pdf?__blob=publicationFile&v=9;

2020: https://www.bamf.de/SharedDocs/Anlagen/DE/Integration/Berufsbezsprachf-ESF-BAMF/BSK-Jahresberichte/bsk-jahresbericht-2020.pdf?__blob=publicationFile&v=4;

2021: https://www.bamf.de/SharedDocs/Anlagen/DE/Integration/Berufsbezsprachf-ESF-BAMF/BSK-Jahresberichte/bsk-jahresbericht-2021.pdf?__blob=publicationFile&v=4).

The website of the Federal Office for Migration and Refugees (www.bamf.de) also provides general information on integration and vocational language courses. The flyer „Berufssprachkurse“ (vocational language courses) provides information on vocational language courses, eligibility criteria, co-payments etc. in 14 languages (<https://www.bamf.de/SharedDocs/Anlagen/DE/Integration/Berufsbezsprachf-ESF-BAMF/berufssprachkurse.html?nn=282656>).

19§12

- 1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.
- 2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.
- 3) Please provide pertinent figures, statistics or factual information, in particular on how migrants are being taught the mother tongue of their parents.

Germany:

No information available.

Article 27 – The right of workers with family responsibilities to equal opportunities and equal treatment

Excerpts from the ECSR’s case law

The need to reconcile family life with teleworking from home, home-schooling of children and childcare during the Covid-19 pandemic combined with the stresses of potential Covid-19 health concerns, has led to serious pressures and challenges for many families, frequently with a disproportionate impact on women.

Faced with this situation, States Parties must take all necessary measures to apply and reinforce inter alia Article 27 notably through non-discrimination of workers with family responsibilities, childcare provision and the granting of parental leave arrangements).

With a view to ensuring the exercise of the right to equality of opportunity and treatment for men and women workers with family responsibilities and between such workers and other workers, the Parties undertake:

1. to take appropriate measures:

- a) to enable workers with family responsibilities to enter and remain in employment, as well as to re-enter employment after an absence due to those responsibilities, including measures in the field of vocational guidance and training;**
- b) to take account of their needs in terms of conditions of employment and social security;**
- c) to develop or promote services, public or private, in particular child day care services and other childcare arrangements;**

a) *Please provide information on whether the Covid-19 crisis had an impact in particular on the possibilities for and the consequences of remote work on the right of workers with family responsibilities to equal opportunities and treatment.*

Germany:

The original intention being to reduce person-to-person contacts at work, the crisis increased the role of working from home. In total, 41 percent of companies expanded or introduced working from home during the pandemic. Although this was implemented out of necessity, the majority of companies want to continue doing so. In particular, there has been a change of attitude among companies that were sceptical about work-from-home policies. They now see the benefits in terms of managing family life and career that working from home can offer when childcare is also taken care of. From a business perspective, working from home allows more mothers to work more hours by eliminating commuting time. (Source: Aus der Corona-Krise lernen: Erfahrungen und Impulse für die betriebliche Vereinbarkeitspolitik, Prognose 2021).

Additionally, as Article 27§1 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

Article 27§1

1) Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.

Germany:

In order to foster the pension entitlements of persons raising children, it is necessary to promote the labour force participation rate of parents by improving the reconciliation of work and family life and family-friendly working conditions. The Federal Government aims to increase the labour force participation rate of women. The Federal Government’s labour market, gender equality and family policies serve this objective.

On the statutory pension insurance:

The statutory pension insurance is an insurance system based on wages and contributions. It includes elements of social equity. Pension law contains several provisions for the recognition of parents’ child-raising periods in the statutory pension insurance. For the raising of children born from 1992 onwards, the parent who actually raises the child is entitled to a child-raising period of three years per child (two and a half years for children born before 1992). These periods are credited on the basis of 100% of the average income (i.e. one earnings point per year) and, as the case may be, in addition to contribution periods up to the contribution assessment ceiling. The contributions for child-raising periods are borne by the Federation. In addition, parents are credited “parental periods” up to a child’s 10th birthday. These periods are accounted for in the qualifying period of 35 years.

For a person raising a child, the monthly pension amount earned from one year of child-raising is currently around 36 euros. Having raised a child born from 1992 onwards thus results in a total pension income of around 108 euros per child. Other options of support are available during the parental periods.

For these periods, the pension entitlements of gainfully employed child-raising persons performing an activity mainly in the form of part-time work because they are raising children and therefore earn below average, are upvalued in the pension calculation if they have completed a total of 25 years to be accounted for under pension law. This applies to periods from 1992 onwards.

In these cases, the individually earned income is increased by 50 % to a maximum of 100 % of the average income, i.e. to a maximum of one third of an earnings point per year. This support is possible up to the amount of one third of an earnings point per year. When

raising children in need of long-term care, the period which is taken into account is even upvalued to include the time until the child's 18th birthday.

People who simultaneously raise two or more children under the age of 10 and are thus unable to take up even part-time employment, do not benefit from an upvaluation of their contribution periods. As compensation, they are granted a credit of earning points after the child-raising period to be taken into account under pension law has expired. This includes parental periods and applies to periods from 1992 onwards. The credit corresponds to the highest possible child-related upvaluation of contribution periods of gainfully employed child-raising persons (i.e. one third of an earnings point per year).

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Germany:

On child day-care:

Increasing the number of child day-care facilities and improving their quality is a central concern of the Federal Government. The Federation, Länder and municipalities share the aim of establishing a demand-oriented and good quality supply of childcare places throughout Germany. With the entry into force of the Child Day-Care Promotion Act, the legal entitlement to a childcare place from the child's first birthday was enshrined in law. The Länder and municipalities are responsible for implementing the legal entitlement to a day-care place at local level. In the federal system of the Federal Republic of Germany, the municipalities are responsible for the provision and financing of childcare places, either in all-day nurseries or by private childcare providers. The basis for this is Book VIII of the Social Code and the childcare laws of the Länder. The districts and cities act within the framework of local self-government and are subject to the legal supervision of the competent Land authorities. The Federal Government has no possibility to issue instructions to them or influence their decisions in any other way. As a rule, the Länder are responsible for financing according to Section 74a of Book VIII of the Social Code.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Additionally on the situation of the expansion of child day-care in Germany:

*„Kindertagesbetreuung Kompakt. Ausbaustand und Bedarf 2021.“
(<https://www.bmfsfj.de/resource/blob/198582/91782a04c2b2f916dae909998bf38208/kinde rtagesbetreuung-kompakt-ausbaustand-und-bedarf-2021-data.pdf>)*

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

2. to provide a possibility for either parent to obtain, during a period after maternity leave, parental leave to take care of a child, the duration and conditions of which should be determined by national legislation, collective agreements or practice;

a) *Please provide information on whether the Covid-19 crisis had an impact on the right to parental leave.*

Germany:

As a result of the Covid-19 pandemic, an increasing number of parents were no longer able to meet the requirements for parental allowance. Parents were affected by short-time work or unpaid leave and fell into economic hardship. Expectant parents feared disadvantages in the subsequent calculation of parental allowance if they had to enter short-time work or were released from work due to the Covid-19 pandemic. The aim was to further effectively support the families concerned with parental allowance. To this end, the following measures were taken:

- *Parents working in essential occupations were needed during the pandemic. If they were unable to take their parental allowance months between March 1 and December 31, 2020, they could defer them until June 2021. The months taken later did not have a negative impact on the amount of parental allowance if they had another child.*
- *These months could be excluded from the calculation of parental allowance. This regulation expired on 31 December 2020. Parents do not lose their partnership bonus - an additional benefit for mothers and fathers simultaneously working part-time to share their child-raising responsibilities - if they work more or less than planned due to the Covid-19 pandemic. The information provided at the time of application for the partnership bonus were applicable if all or part of the bonus was received between 1 March 2020 and 23 September 2022.*
- *Expectant parents who had pandemic-related losses of income between 1 March 2020 and 23 September 2022 could exclude these losses from the calculation of parental allowance if they wanted so. This means: These months are skipped, and instead the income from the previous months is taken into account for the calculation of parental allowance.*
- *Income replacement benefits, for example short-time work allowance or child sickness benefit, do not reduce the parental allowance of parents who work part-time while receiving parental allowance. This is ensured by the parental allowance regulations which say that the amount of parental allowance for parents working*

part-time does not change if they receive income replacement benefits. The Covid-19-related special regulation for the receipt of income replacement benefits has in the meantime been put on permanent footing for all parents.

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

Additionally, as Article 27§2 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

Article 27§2

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Germany:

Parental allowance is paid according to the Federal Parental Allowance and Parental Leave Act (Bundeselterngeld- und Elternzeitgesetz, BEEG). The Act entered into force on 1 January 2007 and supersedes the previous Federal Child-Raising Allowances Act (Bundeserziehungsgeldgesetz, BErzGG).

Parental allowance is paid to mothers and/or fathers who live together with their children in a common household, who care for and raise their children themselves and who do not work at all or in part-time jobs (up to 32 hours per week) during this period of time.

Basic parental allowance:

Basic parental allowance is paid for a maximum of 12 months of the child's life. Both parents can divide this time between them. A parent may receive basic parental allowance for a minimum of two and a maximum of twelve months. An additional two months can be paid if both parents apply for parental allowance and if one of the parents has less income after the child's birth than before ("partner months"). Single parents who have less income after the birth of their child can receive all of the partner months alone.

Parental allowance "Plus":

Parents can choose between basic parental allowance and parental allowance "Plus". Parental allowance "Plus" was introduced on 1 July 2015. With parental allowance "Plus", parents can extend the period of receipt: One parental allowance month becomes two parental allowance "Plus" months. That is why the amount of parental allowance "Plus" is only half the amount of the basic allowance. If parents work part-time after their child's birth, the monthly parental allowance "Plus" may reach the same amount as the monthly basic parental allowance plus their own income.

Partnership bonus:

If mothers and fathers decide to work part-time at the same time - two, three or four months in parallel and between 24 and 32 hours per week - they will both receive four additional parental allowance "Plus" months.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Germany:

The Federal Parental Allowance and Parental Leave Act is implemented on behalf of the Federal Government in accordance with Article 104a (3) sentence 2 of the Basic Law. The federal supervision covers the lawfulness and appropriateness of execution (see Article 85 (3) and (4) of the Basic Law). In order to ensure uniform administrative practice throughout the country, the Federal Government and the Länder agreed to implement the Act in such a way that the guidelines are observed in administrative practice, that the Federal Government and the Länder are to be equally involved in the event of a change in practice, and that the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is to be involved in appeal proceedings.

The guidelines related to the Federal Parental Allowance and Parental Leave Act are continuously updated.

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Germany:

2019 annual statistics on parental allowance (source: Destatis):

Participation of mothers: 98.1 %

Participation of fathers: 43.5 %

2021 annual statistics on parental allowance (source: Destatis):

Average expected period of receipt of parental allowance

Fathers: 3.7 months

Average expected period of receipt of parental allowance

Mothers: 14.6 months

3. to ensure that family responsibilities shall not, as such, constitute a valid reason for termination of employment.

a) Please provide information on whether the Covid-19 crisis had an impact on the prohibition of dismissal on the ground of family responsibilities and whether there

were any exceptions to the prohibition of dismissal on the ground of family responsibilities during the pandemic.

Germany:

The Covid-19 pandemic did not have an impact on the prohibition of dismissal on the ground of family responsibilities. Nor were there any exceptions.

- b) *Please explain whether a ceiling on compensation for unlawful dismissals was applied on the ground of family responsibilities during the Covid-19 crisis.*

Germany:

There were no derogations or exceptions with regard to compensation for unlawful dismissals on the ground of family responsibilities due to the Covid-19 pandemic.

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

Additionally, as Article 27§3 is newly accepted by Germany:

Full report on this provision in accordance with “Form for Reports”:

Article 27§3

- 1) *Please describe the general legal framework. Please specify the nature of, reasons for and extent of any reforms.*

Germany:

As a general rule, an employer must not dismiss an employee because he or she lawfully exercises a right. Under Section 612a in conjunction with Section 134 of the Civil Code (Bürgerliches Gesetzbuch - BGB), such so-called disciplinary or retaliatory dismissal is prohibited and invalid. Furthermore, within the scope of the Protection against Dismissal Act (Kündigungsschutzgesetz - KSchG), dismissals must be socially justified by person-related, behavioural or operational reasons (cf. Sections 1 and 23 of the Protection Against Dismissal Act).

Employees may bring an action for protection against dismissal before the Labour Court to achieve a decision that the employment relationship was not terminated by the notice of termination (cf. Section 4 of the Protection against Dismissal Act). The employer's obligation to continue the employment relationship and to retroactively pay any unpaid salary or wages provides full compensation for the damage suffered by the employee as a

result of an invalid dismissal. In addition, employees may apply for the termination of the employment relationship in return for compensation if they cannot be expected to continue the employment relationship (cf. Section 9 (1) sentence 1 of the Protection against Dismissal Act) despite the fact that the dismissal has been declared invalid by the court. If there are reasons why further cooperation between the employer and the employee for the purposes of the employer's business cannot be expected, the employer may also apply for the termination of the employment relationship (cf. Section 9 (1) sentence 2 of the Protection against Dismissal Act). The severance pay to be determined by the court has the purpose of compensating employees for the socially unjustified loss of employment. The severance pay serves as an equivalent for the continuation of the employment relationship. The amount of the severance pay is to be determined by the court after due consideration of the circumstances of the individual case. The statutory maximum amount of severance pay is 12 monthly wages. For employees over 50 or 55 years of age and where the employment relationship lasted either 15 or 20 years, the severance pay equals 15 or 18 monthly wages. This is important for reasons of legal certainty and equality of rights (cf. Section 10 of the Protection against Dismissal Act). Because leaving the amount of severance pay entirely to the court's discretion would permit inequalities which would be difficult to justify. The courts already have a wide margin of discretion.

In addition, Sections 9 and 10 of the Protection Against Dismissal Act apply only to the severance pay to be determined by the court and individual agreements. Court settlements or out-of-court termination agreements may exceed the maximum limit set out in Section 10 of the Protection against Dismissal Act.

2) Please indicate the measures taken (administrative arrangements, programmes, action plans, projects, etc.) to implement the legal framework.

Germany:

Cf. under no. 1

3) Please provide pertinent figures, statistics or any other relevant information, if appropriate.

Germany:

No data available.

Article 31 – The right to housing

Excerpts from the ECSR's case law

The rights guaranteed by Article 31 of the Charter, have become even more crucial to right-holders during the pandemic. The crisis has highlighted the importance of the requirements of Article 31§1, notably that dwellings must be safe from a sanitary and health point of view (i.e. have all basic amenities, such as water, heating, waste disposal, sanitation facilities, electricity), and that they must not be overcrowded (i.e. the size of dwellings must be suitable in light of the number of persons and the composition of the household). These requirements are essential to prevention of, and protecting from, transmission of virus.

The ECSR notes that many States Parties have taken ad hoc measures to address homelessness providing emergency housing as required by Article 31§2 of the Charter and, in some cases, imposing moratoria on evictions. In this last respect, the ECSR recalls the key tenets of its interpretation of Article 31§2 of the Charter:

Evictions should be governed by rules of procedure sufficiently protective of the rights of the persons concerned and should be carried out according to these rules.

When evictions do take place, they must be carried out under conditions which respect the dignity of the persons concerned. Domestic law must prohibit evictions carried out at night or during the winter period. Domestic law must also provide for legal remedies and offer legal aid to those wishing to seek redress from the courts.

However, the COVID-related measures taken by States Parties to tackle homelessness have not always adequately reached or applied to all persons and families in need and they have generally been time-limited. The ECSR considers therefore that during a pandemic all evictions must be prohibited, except in the most exceptional and duly justified cases. If evictions must exceptionally be carried out, adequate alternative accommodation must be provided instantly.

The right to shelter should be adequately guaranteed for migrants, including unaccompanied migrant children, and asylum-seekers. States Parties are required to provide adequate shelter to children irregularly present in their territory for as long as they are within their jurisdiction.

The exceptional nature of the situation resulting from an increasing influx of migrants and refugees and the difficulties for a State in managing the situation at its borders cannot absolve that State of its obligations under Article 31§2 of the Charter to provide shelter to migrant and refugee children, in view of their specific needs and extreme vulnerability, or otherwise limit or dilute its responsibility under the Charter.

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard

- a) *Please provide full, up-to-date information on the percentage of the population living in inadequate housing including overcrowded housing, and the practical measures taken to improve the situation.*
- b) *Please provide relevant and updated figures relating to the adequacy of housing (e.g. number of substandard dwellings; overcrowding, water, heating, sanitary facilities, electricity).*
- c) *Please provide information on the measures taken, in particular also during the Covid-19 crisis, to ensure adequate housing for vulnerable groups, including refugees, asylum seekers, Roma and Travellers.*
- d) *If the previous conclusion was one of non-conformity, please explain whether and how the problem was remedied. If the previous conclusion was deferred or conformity pending receipt of information, please reply to all questions raised.*

2. to prevent and reduce homelessness with a view to its gradual elimination;

- a) *Please provide information on measures and actions, undertaken, in particular also during the Covid-19 crisis, to prevent categories of vulnerable people from becoming homeless.*

- b) *Please provide information whether the Covid-19 crisis had an impact on the prevention of homelessness. In particular address whether measures been taken:*
- i) *to provide safe accommodation for persons in situation of homelessness. If so, how many persons were housed, in what form, where and for how long?*
 - ii) *to ensure that persons provided with temporary accommodation will have access to housing after the crisis.*
- c) *Please provide:*
- i) *information on measures in place to reduce the number of homeless (e.g., measures aiming at raising the employment rate, increasing the stock of social and non-profit housing, allocating social benefits to those in urgent needs, developing social security programmes and supporting NGOs' activities) and*
 - ii) *figures on the overall number/rate of homeless persons.*
- d) *Has your country declared a moratorium/prohibition on evictions during the pandemic?*
- i) *If so, indicate its legal basis and how long it will last.*
 - ii) *Please specify if it is a general prohibition. Is the prohibition of evictions restricted to tenants or mortgage payers who have been unable to pay their rent or serve their mortgages, or broader?*
 - iii) *If no general prohibition on evictions was declared, please provide information on procedures in place to limit the risk of evictions and to ensure that when these do take place, they are carried out under conditions which respect the dignity of the persons concerned.*
 - iv) *Have any measures been taken to ensure that households are not cut-off from water, heat or other utility provision when they are unable to pay their bills? Please provide figures on the number of evictions carried out (tenant evictions, evictions from illegal camps or shanty towns, including those affecting camps in which Roma or Travellers are installed) and the cases brought for lack of alternative accommodation offered or compensation awarded.*
- e) *Please provide any information about:*
- i) *legal or financial measures taken aimed to ensure that households do not lose their home if they cannot pay their rent or mortgage payments and*
 - ii) *other tenant protection measures that have been adopted in response to the pandemic.*
- f) *Please provide any other information on whether the Covid-19 crisis had an impact on the right to shelter.*
- g) *Please explain whether emergency accommodation satisfied security requirements and health and hygiene standards and whether it was provided without the requirement for a residence permit and whether the applicable*

regulations provided for a prohibition on forced eviction. Does your country have sufficient quarantine facilities in place so that inadequate housing, such as overcrowding, does not increase the risk of infection?

h) Please provide detailed information:

- i) on how the right to shelter of unaccompanied foreign minors is guaranteed in law and in practice and*
- ii) whether adequate shelter is guaranteed to children irregularly present for as long as they are within the jurisdiction.*

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

3. to make the price of housing accessible to those without adequate resources.

a) Please provide information on measures taken to ensure that there is an adequate supply of affordable housing (e.g. through regulation of the property market).

b) Please provide information whether and to what extent the Covid-19 crisis had an impact on adequate supply of affordable housing for persons with limited resources.

c) With regard to social housing, please provide:

i) information on the number of applications for social housing introduced, granted and refused, as well as the main reasons for refusals.

ii) data on the average waiting time for the attribution of social housing. In this context, also explain whether judicial or other remedies were available in case of excessive waiting periods for the allocation of social housing.

iii) information concerning remedies where there was a failure to provide social housing at an affordable price for the poorest people and in the event of an excessively long waiting time before being allocated housing.

d) Please provide data concerning the housing benefits, whether in the framework of the housing benefit system or in the framework of social assistance (e.g., number and categories of beneficiaries, number of housing benefits requests granted, refused, appealed, impact of benefits on affordability of housing).

e) Please provide information on the measures taken throughout the country in relation to access for Roma and travellers to social housing.

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