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Implementation of the Covenant on Economic, Social and Cultural Rights

**Fifth periodic report submitted by States parties
under articles 16 and 17 of the Covenant**

Germany * **

[16 September 2008]

* In accordance with the information given to States Parties on the preparation of their reports, this document has not been reviewed by the Editing Section before transmission to the translation services of the United Nations.

** The annexes may be consulted at the secretariat.

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I. Introduction

1. The fourth periodic report of the Federal Republic of Germany was submitted in 1999. The Committee on Economic, Social and Cultural Rights considered the report on 24 August 2001 and summarized the results of its review in its concluding observations adopted on 31 August 2001 (E/C.12/1/Add.68). This fifth periodic report provides the following responses to the Committee's observations.

2. The complex procedures for coordination between the parties involved in the process led to a series of delays, with the result that it was, unfortunately, impossible to submit the report earlier. To compensate for that time-lag, the report also contains statistics and other information detailing developments during 2006, 2007 and 2008.

II. Application of the Covenant in German domestic law

1. Powers and responsibilities of the German national institute for human rights (*Deutsches Institut für Menschenrechte* - DIMR) (paras. 12 and 30)

3. The Federal Government would point out that the DIMR is based on the Paris Principles relating to the status and functioning of national institutions for the protection and promotion of human rights. Its role is not, however, to review complaints or undertake investigations. In Germany, it is the courts that have prime responsibility for looking into complaints alleging human rights violations. Pursuant to article 19, paragraph 4, of the Basic Law, any person whose rights have been violated by a public authority may have recourse to the courts. Furthermore, given that Germany is a party to the European Convention on Human Rights, applications may be made to the European Court of Human Rights. Against that background, Germany is not planning to extend the powers of the DIMR, as suggested by the Committee.

4. Moreover, the Federal Government would point out that the DIMR already carries out projects in relation to rights deriving from the Covenant; it states specifically on its website that the rights deriving from the Covenant and civil and political rights form an indivisible unit. That principle also guides the work of the DIMR which, therefore, gives the same consideration to economic, social and cultural rights as it does to civil and political rights.

2. References to the provisions of the Covenant in case-law (paras. 13 and 32)

5. The Federal Government wishes to point out that pursuant to article 5a, paragraph 2, of the German Judiciary Act (*Deutsches Richtergesetz*, DRiG), the bases of public law, including the relevant aspects of European and international law, are a compulsory component of legal studies, ensuring that future judges and prosecutors receive early and comprehensive training in human rights.

6. In addition, the German Judicial Academy (*Deutsche Richterkademie*) provides in-service training for judges in all jurisdictions and for prosecutors in their specialist fields, more particularly through the interregional in-service training workshops. Judges and prosecutors are thus able to be informed about and provided with empirical data on social, political, societal and economic developments: the May 2005 workshop on "Human rights and their significance for the justice system" is just one example here.

3. Taking the provisions of the Covenant into account in the formation of legislation and policy (paras. 14 and 32)

7. The Federal Government would point out in that connection that, in Germany, draft legislation and regulations are automatically reviewed in full before being passed, and their review includes consideration of the obligations under the International Covenant on Economic, Social and Cultural Rights, as well as other international commitments. The main guidelines applicable to the Federal Government are contained in the Federal Ministries' Joint Rules of Procedure (*Gemeinsame Geschäftsordnung der Bundesministerien*).

8. In accordance with article 46 of the Joint Rules of Procedure, the Federal Government's proposals are subject to legal scrutiny by the Federal Ministry of Justice. This includes, inter alia, a review of compatibility with higher-ranking law, that is to say constitutional law, European Union law and international law. If issues relating to human rights arise in the course of the review, they must be referred to the specialist unit dealing with human rights. All issues must have been resolved and all reservations set aside before the proposal is discussed in the Council of Ministers. The new, revised edition of the Handbook of Legal Drafting Conventions (*Handbuch der Rechtsförmlichkeit*), is currently being prepared, and particular attention will, for instance, be paid to the obligations arising from the United Nations covenants or from the European Convention on Human Rights.

9. However, other legal procedures also guarantee that human rights' obligations under international law are respected. For example, according to the Federal Ministries' Joint Rules of Procedure, a proposal must be the subject of general consultation within the Federal Government and with the Länder and municipalities affected. The economic, cultural and social aspects of proposals are reviewed by each of the relevant ministries which also take account, as part of the review process, of the Federal Republic's obligations under international law and of any human rights' implications. The relevant civil-society organizations and other interested parties have also to be consulted.

10. In addition to the system for generally reviewing draft legislation, there is also an arrangement for evaluating the consequences of a piece of legislation (art. 44 of the Federal Ministries' Joint Rules of Procedure). This requires the federal ministry responsible for the draft legislation to assess the main consequences of the legislation, in concert with the various ministries responsible for the substance, thus evaluating both the desired effects of the legislation and any unintended incidental effects, and to detail those effects in the statement of reasons for the draft legislation. This will also include discussion of the consequences for the population in terms of economic, social and cultural rights, as well as any international repercussions.

11. A comprehensive and institutional "human rights impact assessment" is therefore de facto guaranteed.

4. Official development assistance - ODA (paras. 15, 31 and 33)

12. The Federal Government would point out that, since 2004, it has applied a policy based on human *rights* in the context of its development cooperation. That means that development cooperation is guided both by human rights and the principles that go hand in hand with human rights, namely participation, accountability, transparency, empowerment, equality and non-discrimination.

13. In addition, the Federal Government is using the 2004-2007 action plan for a development policy that promotes human rights, published, in 2004, by the Federal Ministry for Economic Cooperation and Development, to link more closely its development policies founded on the implementation of human rights. Basic aspects of the action plan

have been incorporated into the 2005 National action plan for human rights. The action plan for a development policy that promotes human rights was extended for three years, in 2008, and tackles major current issues such as climate change, and its consequences for human rights, and women's sexual and reproductive rights.

14. The Federal Government is also actively involved in certain international processes for the development and promotion of all human rights, and takes part in international development policy fora such as the Network on Governance (GOVNET) of the OECD's Development Assistance Committee (DAC) and various working groups of the United Nations Commission on Human Rights or of the Human Rights Council. It was within the DAC's Network on Governance that the Action-oriented Policy Paper on Human Rights and Development, adopted by the DAC in February 2007, was drawn up with Germany playing an active role; it is the DAC's first systematic policy document on human rights in international cooperation.

15. Measured in terms of what is called the ODA/GNI ratio (= the amount of public expenditure allocated to development cooperation as a proportion of gross national income, German development assistance has markedly increased since 1998. Whereas the German ODA/GNI ratio was 0.28 per cent in 2003 and 2004, it rose to 0.36 per cent in 2005. As part of the European Union's phased programme, Germany has pledged to reach the United Nations target of 0.7 per cent by 2015. The phased programme provides for levels of 0.33 per cent in 2006 and 0.51 per cent in 2010. To reach those targets, the Federal Government is relying on additional budgetary resources, the cancellation of debt and the use of innovative financial instruments. An increase of €3 billion in the budgetary resources earmarked for German development cooperation is planned for the period 2008 to 2011 (€750 million annually).

16. During the period covered by the report, the Federal Government used its influence with the World Bank to ensure that its decisions and commitments were in tune with the undertakings entered into by the States Parties. The central concept was to make combating poverty the guiding principle of World Bank policy. The starting-point was the 1999 Cologne HIPC (Heavily Indebted Poor Countries) Debt Initiative, which also made it possible to establish fresh bases for World Bank policy. Under the initiative, the HIPCs pledge to make poverty-reduction their political priority. The International Monetary Fund (IMF) and the World Bank have since been required to frame their programmes in the light of poverty-reduction strategies in the developing countries.

17. Moreover, the September 2004 revision of policy on the so-called structural adjustment loans, in the form of the new "development policy loans", was very important. In relation to "development policy loans", just as much importance is attached to taking account of the specific national poverty-reduction strategy as to the partner countries' assumption of responsibility ("appropriation"). Another new aspect is the fundamental consideration given, in the social field, to analyses by country and by sector, reviewing the possible repercussions of the reform policies backed by the World Bank, on the basis, for instance, of the Poverty and Social Impact Assessment (PSIA). The PSIA analyses the impact of the reform policies on the well-being of the different population groups, particularly the poor and vulnerable. Within the World Bank, the Federal Government has set up a special trust fund to support PSIAs with the aim, among other things, of encouraging the systematic and transparent use of PSIAs in the process of according World Bank loans, as well as of developing new approaches to policy impact assessment.

18. Spring 2005 saw the successful conclusion of the negotiations on further increasing the resources of the World Bank's International Development Association (IDA) (IDA-14): average sums were increased by 25 per cent compared with IDA-13. The Federal

Government was able significantly to influence the strategic thrust of IDA policy during the IDA-14 negotiations to secure support for poverty reduction through investment in social infrastructure, particularly in the health and education sectors.

19. With reference to the Copenhagen World Summit for Social Development, in January 2005, the World Bank adopted a social development strategy that is reflected in its programmes.

20. The guarantee of high social standards (safeguards) within the World Bank Group is another important issue as far as the Federal Government is concerned. The “safeguards” are designed to guarantee that any negative social consequences are prevented or contained. The World Bank currently applies ten “safeguards” in the social and environmental fields. The significant new developments in the period covered by the report include, for example, the safeguard adopted in May 2005 concerning indigenous peoples, which gives indigenous peoples greater protection by integrating them into the development process. The Federal Government is also committed to seeing the recommendations of the World Commission on Dams adopted by the World Bank, including, for example, the recommendation concerning the recognition of traditional or informal rights to land and resources. The International Finance Corporation (IFC) and Multilateral Guarantee Agency (MIGA), which form part of the World Bank Group, have their own system of “safeguards” which is comparable to that of the World Bank, albeit with some variations concerning the private sector. The IFC’s safeguards are also accepted by a range of private banks (the so-called Equator banks), thereby exerting an influence that extends beyond the World Bank.

21. During the period covered by the report, the Federal Government insisted that the basic labour standards of the International Labour Organization (ILO) should be more firmly embedded in the World Bank’s national strategies, and that there should be closer cooperation with the ILO; it also set up a special trust fund within the World Bank for that purpose. The World Bank now recognizes the importance of the four basic labour standards for its poverty-reduction mandate. The Bank’s national strategies include an analysis of the employment market and basic labour standards; meantime the CPIA (Country Policy and Institutional Assessment) index, which applies to the allocation of IDA resources to countries, also takes account of compliance with the basic labour standards, among other things. At an operational level, the World Bank focuses on three of the four basic standards (child labour, forced labour and discrimination).

22. Through its contributions to international debt relief initiatives, the Federal Government is pursuing the objective of securing the long-term sustainability of the poorest countries’ debt. In that context, in addition to adequate levels of economic growth, it is vital that multilateral lenders should accord loans in the light of the capacity of the relevant countries to maintain a sustainable debt level, and that they should be accorded further subsidies, depending on different countries’ needs. It is equally important to take account of the particular fragility of the economies of the poorest countries and to develop flexible risk-limitation instruments for debt-payment crises, particularly in external crises.

23. As part of the debt relief initiative for the Heavily Indebted Poor Countries (HIPC), and during the period covered by the report, Germany cancelled €2.75 billion of a total of approximately €6.5 billion in bilateral debt. The German Government also makes a contribution, to the level of some €10 million, in the form of various German contributions to funding the multilateral aspects of the HIPC Initiative.

24. In addition, the Federal Bank supports IMF funding through an interest-free loan of more than €300 million, and the KfW banking group has contributed to funding the IMF’s Poverty Reduction and Growth Facility by way of a loan guaranteed by the Federal Government of about €1.9 billion.

25. In an endeavour to tackle also debt problems of the poorest countries that might arise following debt relief under the HIPC Initiative, it was decided, at the G8 Gleneagles Summit, in autumn 2005, to extend multilateral debt cancellation so as to guarantee the long-term sustainability of those countries' debts. At the September 2005 annual conference of the IMF and the World Bank, agreement was reached on cancelling 100 per cent of the debts to the IMF, the World Bank subsidiary, the IDA (International Development Association) and the African Development Fund (ADF). Whereas, under the Cologne debt-relief initiative, the rate of multilateral debt relief was in the region of 50 per cent, international participation in debt cancellation rose significantly as a result, and 100 per cent of debt to the IMF, IDA and ADF was cancelled. The beneficiary countries' level of indebtedness is thus further reduced to a level significantly below the earlier HIPC Initiative. To finance the German contribution to funding the Multilateral Debt Relief Initiative, Germany will have to put together a total of some €3.5 billion to offset the anticipated losses of the World Bank/IDA and the African Development Fund.

5. Time taken to process applications for asylum (paras. 16 and 34)

26. The time taken to process applications for asylum does not result in any discrimination against asylum-seekers or their dependants, as they are guaranteed substantial State benefits however long the asylum procedure lasts. Nor is there any justification for the concern voiced by the Committee to the effect that the length of time taken to consider applications for asylum is generally unwarranted. Quite the reverse, successful efforts have in fact been made to speed up the asylum procedure even more, and almost 30 per cent of applications for asylum are decided upon within a month by the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF). Overall, more than 67 per cent of applications are decided in fewer than three months and some 83 per cent in fewer than six months. The Federal Government will also endeavour to speed up the procedure in future.

6. Victims of trafficking in persons and in women (paras. 25 and 43)

27. As far as training programmes are concerned, the Federal Government would point out that, during many in-service training sessions, both German judges and prosecutors are advised on how to deal sensitively with the victims of trafficking in persons.

28. The German Judicial Academy (*Deutsche Richterakademie*) organizes interregional in-service training workshops for judges from all jurisdictions, as well as for prosecutors, and, annually, offers sessions lasting several days on issues of victim protection, including in relation to trafficking in persons. These subjects were discussed, among other things, at the sessions on "International cooperation in criminal matters", "Organized crime" and "Combating trafficking in persons, the sexual exploitation of children and child pornography".

29. In addition, German judges and prosecutors attend international in-service training on such issues, at, for example, the Trier Academy of International Law (ERA), or at relevant seminars and sessions held in neighbouring European countries, where places are reserved for German participants through the European Judicial Training Network (EJTN).

30. Other training opportunities are also offered at the level of the Länder.

31. As regards the Committee's recommendations in relation to the Federal Republic of Germany's fourth periodic report regarding police measures, the Federal Government points out that Germany has adopted extensive measures to combat trafficking in persons and in women, deploying the police services at both federal level and the level of the Länder, and also intends to adopt tougher measures in this area in the future.

32. A new version of the strategy - developed at federal level, from 1999, by the interministerial group on “trafficking in women” - to secure cooperation between the specialized counselling centres and the police services to protect witnesses who have been the victims of trafficking in persons, was adopted in November 2007, following extensive revision by the working group (*annex I*). The aim of the strategy is to formalize poorest countries the cooperation between the police and specialized counselling centres that is essential in cases where trafficking in persons for the purpose of sexual exploitation is the subject of criminal prosecution, in order to coordinate the activities of all of the services involved. Under the strategy, the victims will benefit from effective support as a result of the close cooperation between the prosecution services of the Länder and the specialized counselling services. Under this cooperation strategy, the protection of victims, or victim witnesses, involves the following measures more specifically:

- Counselling and supporting victims by the specialized counselling centres in the context of the criminal proceedings.
- Arranging for victims to be accommodated in the appropriate centres.
- Support in dealing with daily life.
- Individual assistance in conflict situations and other specific real-life situations provided by the specialized counselling centres.
- Help to recover from the experiences suffered.
- Support in relation to questions of the law on foreign nationals, managing residence rights and cooperating with the services dealing with foreign nationals.
- Cooperation with the social welfare offices, the declaration of residency offices, the employment offices and other services and institutions.
- Police protection measures for victims who have been threatened, in agreement with the specialized counselling centres.

33. The Act of 19 August 2007 transposing the directives of the European Union concerning the right of residence and asylum (*Gesetz zur Umsetzung aufenthalts-und asylrechtlicher Richtlinien der Europäischen Union*) entered into force on 28 August 2007. The Act transposed more particularly into national law Council Directive 2004/81/EC of 29 April on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (victim protection directive).

34. In addition, like very many of the police services of the Länder, the Federal Criminal Police Office (*Bundeskriminalamt*, BKA) has set up special units with specially trained officers. The work of the BKA plays an important role in training; it has in fact been involved for some years in the initial and in-service training of police officers from the Länder and regularly runs the specialist course on “Trafficking in persons for police case officers”.

35. Since April 2006, the BKA has been entering data on the offence of trafficking in persons into the “Extrapol” database, an internal communications facility shared by the federal police services and the police services of the Länder, enabling all German police officers to access relevant information relevant.

36. Working with other public institutions and specialized counselling centres, the BKA has also made various efforts to ameliorate the situation of the victims of trafficking in persons. One problem area faced by police investigators, witness protection services, services dealing with foreign nationals, social welfare services and judges and prosecutors, in their day-to-day work, concerns how they relate to the victims of trafficking in persons

and forced prostitution. Currently, neither the police nor the justice system has documentation on the kind of trauma involved. Consequently, in cooperation with the *Gesellschaft für technische Zusammenarbeit*, GTZ (German technical cooperation agency), the BKA has commissioned the preparation of central guidance, scheduled for 2008, on how to deal with victims traumatized as a result of trafficking in persons and forced prostitution.

7. Involving civil society in drafting the report (para. 48)

37. The Federal Government involved civil society at an early stage in the drafting process when the fifth periodic report was being prepared. Back in December 2005, wide-ranging discussions were held with the representatives of the *Forum Menschenrechte* (Human Rights' Forum), although they were not pursued by the umbrella organization of non-governmental organizations (*Deutsches Forum Weltsozialgipfel* - German Forum for the World Summit for Social Development) because of internal problems of coordination within the relevant non-governmental organizations.

38. The Federal Government indicated very clearly that it wished for a comprehensive and early dialogue with civil society and regrets that cooperation in the process did not prove possible for the reasons stated. It hopes that there will be constructive dialogue with civil society as the process moves forward, particularly when preparing for the presentation of the Federal Government's report to the United Nations Committee.

8. Optional Protocol to the Covenant

(a) General stance

39. Germany recognizes that human rights are indivisible and interdependent. As far as Germany is concerned, the attainment of economic, social and cultural human rights ranks as high, and is just as important as, the attainment of civil and political rights.

40. Germany has constantly striven for international recognition of the right to adequate accommodation, proper nutrition and water. Similarly, when it comes to Federal Government policy in the field of development cooperation, the promotion of and respect for economic, social and cultural rights continues to be central to the implementation of the development policy action plan for human rights, the activities of which are also specifically designed to safeguard that objective.

41. In a general statement of view on the issue of an optional protocol, set out in November 1998, Germany stated that the availability of individual options for action was, in principle, sufficient, to enhance the legal position of the persons concerned and their own awareness of that position, and to support the predisposition of the States party to give effect to their obligations, and that it was extremely important to clarify the exact rules and obligations deriving from those rights, if there was to be an efficiently complaints mechanism in relation to economic, social and cultural rights. In the Programme of Action 2015 for Poverty Reduction (April 2001), the Federal Government also pointed out the need for swift clarification of the questions that remained outstanding in relation to the operation of the complaints mechanism.

(b) Participation in the Working Group of the Commission on Human Rights tasked to consider options regarding the elaboration of an optional protocol to the International Covenant

42. Germany took part in three sessions of the Working Group (from 23 February to 5 March 2004, 10 to 21 January 2005 and 6 to 17 February 2006), and made a constructive contribution, within the Working Group, to clarifying the outstanding issues concerning the individual complaints procedure.

III. Developments affecting the individual rights guaranteed by the Covenant

A. General provisions of the Covenant

Article 1

[Right of peoples to self-determination]

43. Please refer to the information in the previous report.

Article 2

[Non-discrimination in the exercise of rights (para. 2)]

1. Anti-discrimination Directives

44. To respond effectively to discrimination in Europe, the Council of the European Union has adopted the following four anti-discrimination Directives.

- Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (the anti-racism Directive).
- Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (the framework Directive).
- Directive 2002/73/EC amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.
- Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

45. These directives were transposed into German domestic law by the Act of 14 August 2006 transposing European directives implementing the principle of equal treatment (*Gesetz zur Umsetzung europäischer Richtlinien zur Verwirklichung des Grundsatzes der Gleichbehandlung*).

46. The first article of this Act comprises the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*, AGG), which came into force on 18 August 2006 and, by virtue of its extensive scope (encompassing employment law, civil law and public law), creates, for the first time, general anti-discrimination legislation in Germany.

47. The first article of the AGG states, in accordance with the European directives, that there should be no discrimination whatsoever on grounds of race, ethnic origin, gender, religion or beliefs, disability, age or sexual identity. "Discrimination" is also understood to mean harassment and sexual harassment. The AGG also regulates measures prohibiting discrimination and the sanctions incurred in cases where these prohibitions are breached. It also provides for simplified procedures for the taking of evidence from those affected by discrimination, and contains provisions for the creation and tasking of an anti-discrimination centre to act as an initial contact point for all who believe that they have been discriminated against on one of the grounds set out above.

2. The protection of minorities, especially Sinti and Roma

48. Please see the information relating to article 2 in the third and fourth reports on compliance with the Covenant in domestic law.

3. Policy on migration and integration

49. Now, as in the past, migration and migratory flows are central issues. The successful integration of individuals who come to Germany to stay indefinitely is of paramount importance for the composition of our national society. The integration of migrants living in Germany is a cross-cutting task common to many policy areas. For the Federal Government, integration is one of the key tasks of our time.

50. The first national integration summit was therefore held, at the invitation of Chancellor Angela Merkel, on 14 July 2006, and, during the summit, participants agreed on the preparation of a national integration plan. The plan was presented to the second integration summit on 12 July 2007. In this way, the Federal Government is pursuing an integration policy which is based on sustainability and mobilization of resources, recognizes and strengthens the potential of immigrants and avoids an exclusive focus on negative factors. The integration plan has been prepared in cooperation with representatives of the federal authorities, the Länder and the local authorities, and with a broad spectrum of players in civil society. Migrants and migrants' associations have been directly involved at every stage in the plan's preparation.

51. The national integration plan involves promoting and strengthening equal participation by migrants, in sectors including education, training and the labour market. Social participation and enhancing citizens' engagement are also key points. Other measures include consolidating the rights of women and children, promoting gender equality and, in particular, protecting women from forced marriages and domestic violence.

52. The national integration plan is currently at the implementation stage, with a progress report due to be presented in autumn 2008.

53. Following in the wake of the 1999 Act to Reform Nationality Law, the Immigration Act of 30 July 2004 (*Zuwanderungsgesetz*) lays down the basis for a legal framework that makes it possible to reconcile social realities with a new understanding of those same realities. In a single legal instrument, it deals with different aspects of migration, ranging from work-based migration and residence rights on humanitarian grounds to questions of security, via integration. The Act transposing the European Union directives on the right of residence and the right to asylum, which came into force on 28 August 2007, extensively amended chapter 3 of the German Residence Act (*Aufenthaltsgesetz*), entitled "Integration". The amendments are founded on the introduction of the principle of "support with expectations" (*soutenir et exiger*).

54. An equally important theme in this Act is full participation in social and political life through the acquisition of German nationality. Naturalization has been greatly simplified by the Act to Reform Nationality Law of 15 July 1999 (*Gesetz zur Reform des Staatsangehörigkeitsrechts*). For more details, see the information on article 10 in the Federal Republic of Germany's fourth report on compliance with the Covenant in domestic law. Other amendments adopted in 2007 adapted nationality law to the stricter requirements in relation to the integration of immigrants.

55. The measures taken by the Federal Government for the linguistic, professional and social integration of immigrants are continuing. About €250 million has been made available for promoting integration in the 2006 budget of the Federal Ministry of the

Interior and the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*, BAMF), covering, at federal level, measures for linguistic and social integration.

56. The studies carried out by the Federal Office for Migration and Refugees additionally in connection with migration, on the basis of article 75, paragraph 4, point 4, of the German Residence Act, are also concerned with examining the processes of integration and scientific support for integration policies and measures.

4. Combating racism and xenophobia

57. The Federal Government attaches the requisite importance - which remains as high as ever - to the debate on and to combating racism, xenophobia and anti-Semitism. Racism, xenophobia and anti-Semitism, and the intolerance that goes with them, significantly disrupt peaceful co-existence within a democratic society. In combating them, the Federal Government is taking a multi-dimensional approach, based on a strategy developed in 2002 - the "fourfold strategy" - which is composed of the following strands.

- Continuing to pursue a policy on human rights and educational initiatives about human rights.
- Strengthening civil society and promoting civic courage.
- Promoting the integration of foreigners.
- Taking measures which target those who commit offences and their associates.

(See *Bundestag* document No 14/9519 of 14 May 2002 at annex 2.)

58. Preventive action against xenophobic or anti-Semitic offences by the extreme right is a key element here. Accordingly, organizations on the extreme right are subject to early monitoring and, if necessary, banned. Monitoring carried by the police authorities also extends to the Internet, where, in addition to xenophobic texts from the extreme right, racist video clips and music are becoming more and more common.

59. As a result of the 2005 Assembly Act (*Versammlungsgesetz*) and the broadening of the offence of incitement to hatred, much-improved legal capabilities now exist for banning gatherings by the extreme right propagating xenophobic and racist messages. Under article 130, paragraph 4, of the Criminal Code (*Strafgesetzbuch*, StGB), for example, any person disturbing the peace by supporting, glorifying or justifying the despotism and tyranny of national socialism now faces a criminal penalty. Depending on the circumstances of the case, the establishment of this criminal offence, for instance, opens up the possibility of banning gatherings intended to glorify senior national socialist personalities. The events that used to take place each year in mid-August at Wunsiedel, on the anniversary of the death of Hitler's deputy, Hess, have been banned on this legal basis since 2005.

60. In addition, under the new article 15, paragraph 2, of the Assembly Act, gatherings can be more easily banned when they are held at a commemorative site of special historic significance for the country as a whole and dedicated to the memory of the victims of inhuman treatment under the yoke and the tyranny of National Socialism. The Berlin memorial to the murdered Jews of Europe, along with other sites (including concentration camp memorials), are thus under special protection.

61. Nor should the struggle against extremism and violence overlook the contribution civil society can make. The "Alliance for Democracy and Tolerance - and against Extremism and the Violence which Goes with It", launched in 2000 by the Federal Government, is a means of strengthening civil society. Its mission is to bring together initiatives which stand as examples of ways to prevent and combat xenophobic and anti-Semitic violence by the extreme right, to bring them to public attention and to create

networks between them. To date, more than 1,300 individuals and initiatives have been brought under the aegis of the Alliance, including the Federal Government's action programme, "Young People for Tolerance and Democracy: Against the Extreme Right, Xenophobia and anti-Semitism". More than 4,000 projects, initiatives and measures have been supported to the tune of more than €163 million under the framework provided by this programme, which began in 2001 and currently has planned activity extending to the end of 2006. At the end of 2006, a total of some €92 million in funding had been made available by the Federal authorities.

62. Combating right-wing extremism, xenophobia and anti-Semitism is also the subject of international cooperation. In this connection, close cooperation is maintained with the European Union's European Monitoring Centre on Racism and Xenophobia and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE. In 2004, for example, Germany hosted the OSCE Conference on anti-Semitism. The decision to hold the Conference, and the thrust of its programme, were both very largely based on a German initiative. One of the direct results of the Berlin Conference was the adoption by the OSCE of the Berlin Declaration on the intensification of efforts to combat anti-Semitism in all its forms within the OSCE area. The implementation of the basic requirements of the "Berlin Declaration", now addressed to the 55 OSCE Member States, is being monitored by the Tolerance and Non-discrimination Unit, a specially-created OSCE unit located within the ODIHR. Germany supports the work of the Unit not only in terms of the substance, but also by providing human and financial resources.

5. Re-employment of members of the civil service of the former German Democratic Republic (GDR)

63. According to the decisions of the Federal Administrative Court and the Federal Constitutional Court, the specific factors leading to termination of employment or to dismissal under the Unification Treaty (*Einigungsvertrag*) for employees of the public services of the former GDR are compatible with the Constitution and, in particular, with article 12, paragraph 1, and article 33, paragraphs 2 and 5 of the Basic Law (see: *Entscheidungen des Bundesverwaltungsgerichts* (judgements of the Federal Administrative Court, vol. 106, 1, p. 153; *Bundesverwaltungsgericht, Neue Juristische Wochenschrift* 1999, p. 2536; *Entscheidungen des Bundesverfassungsgerichts* (judgements of the Federal Constitutional Court), vol. 92, p. 140; vol. 96, p. 152; vol. 96, p. 171; vol. 96, p. 189; vol. 96, p. 205).

64. The view reached by the legislature - and on which the specific factors leading to termination of employment or dismissal are based - is that it can be assumed that an employee who has worked for the GDR's Ministry for State Security does not in principle meet the conditions referred to in article 33, paragraph 2, of the Basic Law, which are regarded as requisites for employment in the public services of the Federal Republic of Germany, and that view is not open to challenge in terms of constitutional compatibility.

65. The Ministry for State Security was a central component of the apparatus of totalitarian power put in place by the GDR and acted as an instrument of political control and oppression of the population. In particular, it served as a means for the surveillance, dissuasion and marginalization of people holding dissenting political opinions and those wishing to leave the GDR. This activity was designed to infringe the individual liberties which are an essential part of a democracy. The fact of having actively supported the apparatus of repression, the purpose of which was to secure the authority of the one-party system, appears to establish ineligibility within the meaning of article 33, paragraph 2, of the Basic Law, as there is a permanent question mark over that employee's reliability and personal inclination to respect civic rights and to regard the principle of the rule of law as binding.

66. The fact of having worked for the Ministry for State Security does not automatically trigger termination of employment or dismissal (see annex I, paragraph 5, point 1, of the Unification Treaty). It is also necessary to establish that the continuation of the working relationship with the person concerned, whether an employee or an established office-holder, appears unacceptable for this reason. The critical issue is whether, fully respecting the principle of proportionality, the former activity has such serious implications for the working or service relationship that it cannot be continued, for objective reasons. In those circumstances, it is necessary to consider the eligibility of the staff member on a case-by-case basis, and to take account, not only of the practical constraints applicable to the relevant service, but also of the extent of the involvement of the individual concerned (BVerwG (Federal Administrative Court), *Neue Juristische Wochenschrift* 1999, p. 2536, 2537; *Entscheidungen des Bundesverfassungsgerichts* (judgements of the Federal Constitutional Court), vol. 96, p. 189, 198 et seq.).

67. Consequently, the Federal Constitutional Court held that it was, in principle, lawful, provided that all of the circumstances of the individual case were taken into account when taking a decision, to terminate the contracts of officials who had represented the former system of injustice either because of their principal professional activity or because they held a senior official position within the former Socialist Unity Party (SED), a mass organization or a social organization (*Entscheidungen des Bundesverfassungsgerichts* (judgements of the Federal Constitutional Court), vol. 92, p. 140, 152 et seq.; vol. 96, p. 152, 165 et seq.).

6. Access for foreign workers to the labour market

68. Foreign workers do not have a right to work in Germany unless their residence permits allow it (art. 4, para. 3, of the German Residence Act, *Aufenthaltsgesetz*, *AufenthG*). In principle, anyone originating from a third country always needs a work permit, whether on a self-employed or salaried basis. The German Residence Act has amended conditions for access to the labour market for certain categories of people. In this context, the level of qualifications necessary for the employment sought is an essential assessment criterion. Assessment is based partly on the requirements of the post, and partly on requirements applying to the foreign job-seeker.

69. Access to the labour market is much easier for the highly qualified (within the meaning of article 19 of the German Residence Act). Long-term access to the labour market can be conferred on the highly-qualified in the form of a long-term residence permit (art. 9, *AufenthG*). This is an indefinite residence permit allowing the pursuit of any kind of employment; it is not subject to temporal or geographical restriction and no further provisions may be attached to it.

70. For those seeking low-skilled or skilled work, a freeze on recruitment continues to apply in principle (subject to precisely defined exceptions). However, the legislature and the competent regulatory authorities have also simplified the opportunities for access to the German labour market for this category of worker in certain circumstances. So, for example, under article 16 of the Residence Act, foreign students' residence permits can be extended for a maximum of one year after they obtain their qualification so that they can look for an appropriate job, and then be given access to employment.

71. The legal guidelines set out in the German Residence Act have been put into effect by two regulations of the Federal Ministry of Labour and Social Affairs (BMAS): the Regulation on Employment (*Beschäftigungsverordnung*) and the Regulation on Employment Procedures (*Beschäftigungsverfahrensordnung*).

72. In principle, foreigners living legally in Germany can always have access to the labour market. However, this arrangement may sometimes be subject to the proviso that no worker with a privileged claim (Germans and citizens of longer-standing Member States of the European Union, for example) is available for the job concerned.

Article 3
[Equality between men and women]

Shortage of child day-care institutions constituting an obstacle to equality (paras. 26 and 44)

73. The development of education and childcare arrangements which match needs and are quality-based ranks as a number one priority for the Federal Government.

74. The federal authorities, the Länder and the local authorities reached agreement in 2007 that, by 2013, it should be possible, on average, at federal level, for a place to be offered to 35 per cent of children under three years old, either in a day care institution or with a childminder. A common funding arrangement has also been developed to bring the supply of childcare up to this level. The federal authorities are contributing to the development costs to the tune of €4 billion, or about one third of the total.

75. However, Germany does not only need more childcare: in some instances, it also needs better quality childcare, so that children can gain optimal benefit from education and development in day-care institutions and with childminders. This is why the Federal Government, together with the Länder and municipalities, wants to ensure that the expansion of services is accompanied by qualitative measures. Among the objectives of the action programme “Care by Childminders” is to define the professional skills of childminders, to expand childminding qualifications more widely and to secure greater transparency on all questions relating to care of this type, ranging from the role that the Office for the Protection of Young People (*Jugendamt*) should play as an intermediary, to the conditions for obtaining a licence to work as a childminder. This reinforces the role of parents. In addition, the intention is that modular qualifications will be developed for educational workers in day-care institutions as part of a joint initiative being taken by the Federal Ministry of Education and Research and the Federal Ministry for the Family, the Elderly, Women and Young People.

76. Based on an educational approach to training, education and care in relation to the care provided by both childminders and care institutions, these two programmes make an important contribution to the Federal Government's training initiative *Aufstieg durch Bildung* (Getting on through training).

B. Individual rights guaranteed by the provisions of the Covenant

Article 6
[Right to work]

1. Unemployment rate, particularly among young people (paras. 18 and 36)

(a) Situation on the labour market

77. Years after reunification, the situation on the labour market remains difficult in Germany. For some years now, the process of economic catch-up in the new Länder has stagnated. Although society is slowly but surely knitting together, the economic situation in eastern Germany remains distinctly more problematic than in the territory of the former Federal Republic of Germany. In parallel, however, centres of growth are emerging before

our very eyes in eastern Germany, while, in the West, there are regions that are experiencing increasing difficulties, with unemployment rates almost as high as the average for eastern Germany.

78. Given these developments and the time that has elapsed since reunification, there is limited value in continuing to differentiate between the old and new Länder. It should further be added that, since 2003, the western part of Berlin has been included in the unemployment figures, not for the old, but for the new Länder, marking a break with the process of separately monitoring unemployment patterns in the old and new Länder on a chronological basis.

79. In addition, the figure for the number of unemployed since January 2005 is not strictly comparable with the figures applicable until late 2004 because the effect of introducing the statutory individual minimum income for all unemployed persons in early 2005 has been to include as many as 500,000 additional unemployed persons in the national unemployment statistics. Since January 2005, all recipients of the individual statutory minimum income who are capable of working are, in principle, obliged to declare themselves unemployed. However, until late 2004, some recipients of social welfare benefit who were capable of working were not included in the national unemployment statistics.

(b) *Working population in employment*

80. The working population in employment fell by 298,000 (0.8 per cent) between 2000 and 2005, from 39,144,000 to 38,846,000. This was the result of relatively weak economic growth, particularly in 2002 (real GDP: +0.1 per cent) and 2003 (-0.2 per cent). During the first half of 2006, however, the numbers of the working population in employment rose slightly by 0.3 per cent compared with the first half of 2005.

81. Between 2000 and 2005, the employment rate remained constant at 65.4 per cent (*source*: national microcensus).

(c) *Unemployment*

82. The number of registered unemployed rose by 971,000 between 2000 and 2005, increasing from 3,890,000 to 4,861,000 unemployed. However, of that increase, as many as 500,000 persons were registered as newly unemployed as a result of the 2005 merger of unemployment assistance and social assistance arrangements. Those 500,000 individuals were already without work in 2004 but were not registered as unemployed until early 2005. Thereafter, the numbers fell leaving 4,399,000 persons registered unemployed in June 2006.

83. In 2000, the unemployment rate (as a proportion of the civilian working population in paid employment) was 10.7 per cent, rising to 13 per cent in 2005. In 2005, women were slightly less affected by unemployment than men. Their unemployment rate was 12.7 per cent in 2005, compared with 13.4 per cent for men.

84. In 2005, the unemployment rate for foreigners was 25.2 per cent. The rate for the under-25s was 12.5 per cent.

85. In 2005, of 4,681,000 unemployed persons, 2,606,000 were men (53.6 per cent) and 2,255,000 women (46.4 per cent). 1,210,000 persons (24.9 per cent) were at least 50 years old and 619,000 (12.6 per cent) under 25. 673,000 unemployed persons (13.8 per cent) were foreigners.

86. There were marked regional differences in terms of unemployment. In January 2006, the German unemployment rate (as a proportion of whole of the civilian working population in paid employment) was 12.1 per cent. In the old Länder it was

10.2 per cent and in the new Länder 19.2 per cent. The highest unemployment rates were in Sangershausen (25.3 per cent), Neubrandenburg (24.2 per cent) and Stralsund (23.9 per cent). Those three employment agency sectors are all in the new Länder. However, the old Länder also include regions with high unemployment rates. In the Ruhr basin, the unemployment rate in some employment agency sectors is in excess of 15 per cent (Gelsenkirchen 18.9 per cent, Duisbourg 17.6 per cent, Dortmund 17.5 per cent, Essen 16.5 per cent and Bochum 15.8 per cent). The lowest unemployment rates for the new Länder are lower than in the Ruhr basin (Potsdam 14.7 per cent, Dresden 15.4 per cent and Suhl 15.8 per cent). The employment agency sectors with the lowest unemployment rates are in southern Germany (Freising 4.7 per cent and Ludwigsburg 5.9 per cent). Overall, the situation on the labour market is, therefore, far worse in the new than in the old Länder. However, the latter also contain regions with high unemployment rates. It has so far proved impossible to reduce these marked regional differences.

(d) *Young people*

87. The Federal Government's emergency programme for reducing unemployment among young people (JUMP) has significantly helped reduce youth unemployment. For example: the unemployment rate for young people under 25 fell to 9.9 per cent in 2004, with eastern Germany seeing its rate fall from a peak of 17.4 per cent in 1998 to 16.2 per cent in 2004, while, in western Germany, it fell from a peak of 10.9 per cent in 1997 to 8.1 per cent in 2004.

88. Compared with other European countries, unemployment among young people remains at relatively low levels in Germany. By way of illustration: the average annual unemployment rate among young people under 25, calculated using the International Labour Organization (ILO) method, was 13.9 per cent in 2005, whereas the average for the 25 European Union Member States was 18.2 per cent.

89. In the coalition agreement of 18 November 2005, the new Federal Government set itself the target of continuing to improve training and employment opportunities for all young people and to reduce youth unemployment on a lasting basis. In future, no young person should remain unemployed for more than three months. The Federal Government has achieved great success in this area: in February 2008, young people were unemployed for an average of no more than 14.7 weeks, compared with 17.6 weeks during the same period in 2007.

90. Improving young people's opportunities to access the labour market and training is the number one priority for the Federal Government. As a result, since the introduction, in 2005, of the statutory individual minimum income for job-seekers, young people under 25, who are in need of assistance and without work or qualifications, have received the help of a personal adviser who provides intensive support to help them access training or employment, as well as comprehensive assistance, including, among other things, finding accommodation and providing counselling if the young person is heavily in debt or addicted to drugs. The effect of introducing, at this juncture, a new support ratio of one adviser for every 75 job-seekers has been that 23.6 per cent fewer young people under 25 were registered unemployed in December 2006 than in December 2004.

91. Moreover, in June 2004, the Federal Government and the main employers' federations adopted the National Pact for training and young skilled staff in Germany. The training pact has been hugely successful and so was extended for three years in 2007. As a result of post-training placement - jointly guaranteed by the partners in the pact - the number of rejected applicants has been significantly reduced. The local chambers of commerce and federations point out that, between 2004 and 2006, they have been able to provide more than 60,000 new apprentice posts annually, totalling as many as some 89,000 places in 2007.

92. The commitment of businesses to make 25,000 internships available for entry-level qualification has also been achieved. The initial qualifications give young people, whose placement opportunities are limited, prospects for access to vocational training. Under the Federal Government's Special programme for entry-level qualification for young people (EQJ programme), employers may, on application, recover, in addition to the cost of standard social security contribution, up to €192 of the monthly wages for entry-level qualifications by way of federal contribution to the young person's upkeep. 17,624 young people embarked on entry-level qualifications during the first year of the pact (2004/2005). During the 2005/2006 financial year (1 October 2005 to 30 September 2006), 19,643 young people embarked on entry-level qualification before the end of December 2005. In 2004, (the year in which the pact was launched), €2.1 million were disbursed, compared with €0.3 million in 2005.

93. Initial results of the process of monitoring outcomes have shown that the programme may act as a bridge towards vocational training for young people with limited opportunities for in-company placement. 61.1 per cent of young people embarking on entry-level qualifications within companies subsequently completed a full course of vocational training. Ninety per cent did their training within the company, and 9.6 per cent % did their training outside the company.

94. The Federal Government expects that the training pact will continue to push this process strongly forward.

95. Together with the Federal Employment Agency, the competition "German prize for young people at work" was launched at federal level to recognize projects, ideas and approaches that facilitate access to working life for young people in receipt of the "Alg II" unemployment benefit.

96. The implementation of the European Youth Pact in the Member States is also bound to give fresh impetus to stepping up measures to help young people in Germany.

97. Approximately 60 per cent of young people in Germany obtain their qualifications within the dual-track vocational training system. The system is described as dual-track because vocational training takes place both within the company and in a vocational training establishment. Within the company, the apprentice receives largely practically-based training, with theoretical training being additionally provided in the vocational training establishment. Training is currently based on 350 regulations on training in skilled professions recognized by the State. Those regulations form the legal basis for the practical implementation of vocational training within the company. Training lasts for between two and three-and-a-half years depending on the particular skill. The majority of young people (60 per cent) are hired permanently after being trained within the company.

98. For the immediate future, however, it will not be possible for all young people to take up employment or access training because, for example, of a lack of preparation through the education system, the failure adequately to meet specific job requirements or the lack of social skills. Some 20 per cent of young people leaving school are deemed not to be suitable for apprenticeships, with 9 per cent leaving school with no qualification. It is in those circumstances that the offers of the employment services designed for young people who are disadvantaged or have a disability come into play. If such young people simply lack an appropriate apprenticeship post, they must be supported by targeted offers of counselling, offers in the context of the training pact, entry-level qualification, coaching in the submission of applications or similar measures. The employment services offer the following:

- Training measures paving the way to employment

99. These measures, which generally last between 10 and 12 months, give young people who have problems with apprenticeships or are socially disadvantaged, but also applicants who are experiencing difficulties in finding an apprenticeship (described as disadvantaged by the market), an idea of the different kinds of job possibilities, and provide teaching during the first year of apprenticeship. Measures to enable young people to catch up with the general secondary school (*Hauptschule*) leaving qualification may also be encouraged. Training bodies are awarded responsibility for these measures on completion of an invitation to tender.

- Aid in support of vocational training

100. To support vocational training within the company, disadvantaged young people may obtain training assistance, if they need additional support, without which their training would be jeopardized. This encompasses measures extending beyond those with the usual job- and training-related content, such as measure to help bridge the language and cultural gap, support for practical and theoretical vocational skills and socio-pedagogical support.

- Training outside the company for disadvantaged young people

101. The Federal Employment Agency supports some 60,000 to 70,000 young people taking part in vocational training for disadvantaged young people in establishments outside their company. More than 3,000 places are also supported by the approved municipal bodies.

- Help with vocational training

102. The right to support for training takes the form, on the one hand, of training within or outside the company under the Vocational Training Act (*Berufsbildungsgesetz*, BBiG), which may be supported by vocational training assistance (*Berufsausbildungsbeihilfe*, BAB) under the legislation on employment support (Social Code Book III), and, on the other, training at a school or a higher education establishment, which may give entitlement to support under the Federal Training Assistance Act (*Bundesausbildungsförderungsgesetz*, BAFöG). On average, during 2005, some 1,000,000 young people benefited from BAB training support, and some €541 million were disbursed for that purpose. About 98,000 young people took part in training to pave the way to employment, with €14 million being spent on this.

- Special services for young persons with a disability

103. A large range of training opportunities exists for young persons with a disability. Firstly, there is in-company training, in the same way as for young people without a disability. The State supports employers who train young people with a disability, by ensuring that apprenticeships are adjusted to allow for the disability, for example. Individuals who cannot be trained within the company because of their disability are offered training outside the company that is tailor-made for them, including in vocational rehabilitation establishments and vocational training centres. According to the statistics of the Federal Employment Agency, as a result of this broad range of possibilities, 67.1 per cent of applicants with a disability began training during the 2006/2007 academic year, and 30.1 per cent accepted an alternative solution, such as, for example, a training measure paving the way to employment. And so, as in past years, this 97.2 per cent response rate for applications from persons with a disability is at a very high level. The conditions are therefore propitious for setting out on working life with proper training and achieving equality of opportunity in terms of the participation of persons with a disability in working life and in society.

2. Vocational guidance

104. The provision of vocation guidance is a standing and crucial responsibility of the Federal Employment Agency and is offered free of charge throughout the country by its network of 178 employment agencies and some 650 offices. Vocational guidance may also be offered by private-sector providers, as well as by municipal institutions approved in the context of the statutory individual minimum income for job-seekers (Social Code Book II).

105. In 2005/2006, more than two million young people benefited from the provision of information and vocational guidance services. Of that number, as applicants for an apprenticeship, 763,100 also took advantage of placement in apprenticeships by the Federal Agency and, by the same token, benefited from the close contacts between vocational guidance and the bodies engaged in training on the ground. The Federal Agency provides targeted support for young people who need extra support. Given that one young person in 12 leaves school without a qualification, young people who have failed to obtain the *Hauptschule* leaving certificate, as well as young people who have problems with apprenticeships or are disadvantaged may benefit from individual support. As a result, and despite all of the obstacles, the conditions for a better start in working life may be created: by bridging gaps in knowledge and acquiring significant skills, by succeeding, despite everything, in obtaining an internship in a company that provides training or by successfully completing a course of vocational training as a result of being given extra support.

106. In 2006, the Federal Employment Agency invested more than €3.3 billion in its programme for the vocational guidance and professional support of young people, which is a responsibility of society as a whole. Targeted support has made it possible to improve the prospects for training and access to the labour market of young people who leave school without adequate qualifications. This form of support also has a preventive role in relation to the lack of skilled labour that Germany is facing as a result of demographic changes, by making it possible for vocational training within companies to be completed by providing the support needed to consolidate that training.

107. In order to render still more transparent transnational developments and opportunities for initial and ongoing vocational training, for the European labour market and for the development of occupations and professions, the Federal Employment Agency's vocational guidance service has set up a European vocational guidance service (EBZ) for each European Union Member State and for the applicant countries. The centres are tasked with maintaining intensive cooperation with the partner vocational guidance services, exchanging information with them and running joint projects, as well as implementing transnational placement in training establishments and identifying the different opportunities for study and training.

3. Persons with a severe disability

108. The number of persons with a severe disability in employment increased by 1.2 per cent between 2003 and 2005, and, in the case of women, by 4 per cent. In 2005, some 914,000 persons with a severe disability and disabled persons with equivalent status were employed on the general labour market. That development shows that there are increasing numbers of employers prepared to recruit persons with a severe disability. As a result, the number of employers failing to meet their quota obligation and not employing a single person with a severe handicap has fallen from 38 per cent of employers with a quota obligation in 2003 to about 27 per cent in 2005.

109. The labour market situation for persons with a severe disability has improved since 2006. As a result, the number of persons with a severe disability ceasing to be unemployed and taking up a trade or profession or embarking on training was above the average

between 2006 and 2007: the number embarking on a trade or profession rose by 14 per cent and the number embarking on training by 33 per cent. That development is also reflected in the unemployment statistics. For example, the number of unemployed persons with a severe disability has fallen consistently since January 2007, and that trend continues unabated. In December 2007, for instance, some 156,200 persons with a severe disability were, unemployed, that is to say more than 28,000 fewer than at the beginning of the year.

4. Foreign workers

110. In June 2006, the number of foreign workers in employment subject to social security contributions was in the region of 1.8 million, 1.9 per cent fewer than in the previous year. They accounted for 6.8 per cent of all employees.

111. In 2006, the number of unemployed foreigners stood at around 644,000 persons as an annual average and was 4.3 per cent lower than in the previous year (2005 annual average: 673,000 approximately). In 2006, the unemployment rate among such workers was 23.6 per cent (2005: 25.2 per cent). As a result of the positive trends on the German labour market, unemployment among foreigners has fallen but, as in the past, remains significantly higher than among Germans.

112. Basically, unemployment among foreigners is only of secondary importance in the new Länder because of the small number of foreigners residing there. Since 2003, however, Berlin has been considered, for statistical purposes, as forming part of the new Länder, and the total number of unemployed persons has increased as a result of this statistical shift. In 2007, as an annual average, some 82,000 foreigners were registered as unemployed, representing 14.6 per cent of all unemployed persons. The unemployment rate was 37.7 per cent - a slight reduction compared with the previous year (2006: 42.4 per cent).

113. Only 38.6 per cent of foreigners registered as unemployed in June 2007 had completed vocational training resulting in a diploma.

114. Given the high proportion of unqualified unemployed foreigners, who are frequently in need of specific guidance and information before they can even be brought into the general employment promotion scheme, the Federal Ministry of Employment and Social Affairs has set up an information and counselling network at federal level for the integration of migrant workers into the labour market ("IQ - integration through qualification"). The project is co-financed from European Union resources; it is designed to create a network of as many as possible of the institutions involved in migration issues and to provide migrants with access to the general structures of labour market policy by optimizing the advice given to the target groups, having personal advisers deal with the situations of individuals in local employment offices and within the framework of the general vocational qualification arrangements. This includes encouraging the learning of languages specific to different occupations, the provision of in-service training, ongoing training or training for additional qualifications, and skills-assessment and profiling procedures appropriate to the target groups, as well as special staff management, diversity management, business start-up advice, raising awareness of existing promotional offers and cooperation with businesses, craft organizations, industry and the trade unions. Since 2005, the operation of this network has provided a model in six regions. The project is coordinated and evaluated by the Federal Employment Agency with the support of the Central Union of German Craft Trades (*Zentralverband des deutschen Handwerk*) and the Central Service for in-service training in the craft trades. The medium-term objective is to move on to a sustainable structure established throughout Germany as part of the employment promotion process.

Article 7**[Right to just and favourable conditions of work]****1. Differences between the new and old Länder in terms of the general standard of living and of pay (paras. 17 et 35)***(a) Differences between civil servants' pay in the old and new Länder*

115. Continuing to adjust civil service pay in the new Länder in line with the rate in western Germany remains a major political objective of the Federal Government. Consequently, during the period covered by the report, civil servants in the new Länder have gradually been brought into line with pay rates in the old Länder. As of 1 January 2008, "western pay rates" were achieved for contract civil servants and established civil servants in the lower and middle income and pay groups. For the higher income groups, full adjustment of income was the subject of an agreement with the parties to the pay agreements for late 2009. The outcomes of those agreements were incorporated, without change to either substance or time-scales, by the legislator responsible for their pay.

(b) Current pension value (eastern Germany)

116. Compared with the original 1990 level, the fact that current pension value (in eastern Germany) has now reached about 88 per cent of the value in western Germany represents a huge step forward in social policy, particularly against the background of the enormous costs that contributors have to meet. The pension adjustment in the new *Länder* is dependent on the actual adjustment of wages and income of employed earners. When income ratios are adjusted in the old and new *Länder*, current and differential pension values will also be adjusted. The cost of living rate, however, has no influence on pension rises.

2. Equality for women on the labour market (paras. 19 and 37)

117. Equal participation of women on the labour market is a high political priority of the Federal Government. The promotion of equal opportunities for women and men on the labour market is a responsibility incumbent upon the whole of society. In addition to the political element, companies and parties to wage agreements have a part to play. The employment rate for women is constantly rising in Germany and reached an annual average of 64 per cent in 2007 (Eurostat). The objectives set are to increase the proportion of women as a whole within the working population and, more particularly, to increase their numbers in the careers of the future, as well as in skilled and managerial posts. The Federal Government has adopted a variety of measure to attain those objectives:

- In July 2001, the Federal Government and the main German business federations entered into an agreement to promote equality of opportunity in the private sector, which is subject to regular review. The reviews published so far show that the formal training of women and young women is now at a high level, but that gender-related differences regarding the choice of occupation or acquisition of a profession persist. Constructive cooperation between the Federal Government and the private sector is therefore ongoing in this regard.
- Extending the range of choice of occupation for girls and young women has long been a central element of the commitment of both the Federal Government and business. Since 2001, for example, 800,000 girls have taken part in events organized for the day of action *Girls' Day*. Since 2005, the "New paths for boys" project has been providing new guidance for boys in selecting their occupation and design for life.

- One of the central measures adopted under the Federal Government's qualification programme *Aufstieg durch Bildung* (Getting on through training), is the national pact to attract more girls to mathematics, engineering, the natural sciences and technical occupations, the so-called "MINT" professions. At the initiative of the Federal Government, a broad alliance of economic, scientific and political groups has been established with the aim of attracting significantly more young women to the "MINT" professions.
- An internet portal financed from federal funds, www.frauenmachenkarriere.de, offers targeted and detailed information on profession and career, as well as improved professional networking for women.
- A job-creation agency operating at federal level and supported from federal funds which is designed to increase the number of businesses set up by women. The agency provides information and offers its services in the field of self-employment for women, throughout Germany. It advises women in all sectors and at all stages in the process of setting up a business (www.gruenderinnenagentur.de).

118. Moreover, in its labour market policy, the Federal Government is specifically committed, in accordance with the European Union's Employment policy guidelines, to equality for men and women in all fields, as well as to providing women with specific support to obviate gender-related disadvantages. The guidelines have also been incorporated into the new individual minimum income for job-seekers under Social Code Book II (SGB II), whereby unemployment assistance and social assistance arrangements were merged as of 1 January 2005. The core innovation is that persons who are capable of working now have access to various facilitation allowances and the support of the bodies responsible for the individual minimum income, to enable them to be integrated as swiftly as possible into the labour market (for further details, please see the information regarding article (9)). These arrangements are of particular benefit to women who are single parents who are generally very keen to work.

119. In addition, when allowances for the active promotion of employment are being accorded under Books II and III of the Social Code, account must be taken of the particular family situations of people who are bringing up children or caring for dependent relatives.

120. In Germany, women earn about 22 per cent less than men. However, as the legal position is unambiguous, this is rarely the result of direct wage discrimination but must, in fact, be attributed to a variety of reasons. Compliance with the principle of equal pay is an important task that is incumbent upon the whole of society and requires efforts on the part of the Federal Government, but also on the part of both sides of industry, as well as all employers and male and female employees. If progress is to be achieved, all of the special measures designed to improve pay for women must be founded on a strategic alliance. As the causes vary and structural and cultural factors are mutually reinforcing in this context, an integrated approach is required.

121. The Federal Government must, therefore:

- Improve opportunities for women in terms of their occupation and career.
- Improve the framework conditions for reconciling family and job (including, for example, measures such as parental pay and improving child care, as well as the action programme *Perspektive Wiedereinstieg* (Re-employment prospects)).
- Improve understanding of the substance and causes of unequal pay. Several studies and projects are under way on that issue. The guidance published in 2007 and entitled *Fair P(l)ay* provides all players with support in the process of wage and salary formation.

122. In order to boost the measures of the other strategic partners, the Federal Government has stepped up cooperation on the issue of equal pay with both sides of industry and women's organizations, for example by supporting Germany's first *Equal Pay Day* as well as the campaign by the German Trade Union Federation (DGB) called *Ich bin mehr wert* (I'm worth more than that). A joint workshop with employers is scheduled on this issue.

123. The **Federal Equality Act for the Federal Administration and the Courts of the Federation** (*Bundesgleichstellungsgesetz für die Bundesverwaltung und die Gerichte des Bundes*), which came into force on 5 December 2001 (*Bundesgesetzblatt* [Federal Official Journal], Part I, p. 3234), is designed to secure crucial progress in real equality between men and women in the German civil service. This meets the constitutional requirement of the Basic Law (art. 3, para. 2, second sentence of the Basic Law), the provisions of the EC Treaty (art. 2, art. 3, para. 2, art. 141, para. 4, of the EC Treaty), as well the Federal Republic of Germany's international legal commitments (including art. 11 of the Convention on the Elimination of all Forms of Discrimination against Women). Under the Act, the State, as employer, must act as an example in regard to matters of equality. The scope of the Act encompasses the federal administration subject to public law, the courts of the Federation and the institutions of the federal administration that are subject to private law. Institutions in receipt of Federal Government benefits must be required under contract, on the basis of the Act, to apply the broad lines of the Act.

124. The Federal Equality Act stipulates the following in particular:

- Where they have the same level of qualification, women will, if under-represented in the sector concerned and taking account of the particular situation, be accorded priority in relation to training, recruitment, appointment and promotion (the so-called special case quota).
- Discrimination, including indirect discrimination, is prohibited during interviews or selection procedures.
- The current provisions on reconciling family and working life have been improved for women and men, and services are obliged to offer working hours and framework conditions appropriate to families' needs.
- Plans relating to equal opportunities, effective management instruments and the modern development of human resources are compulsory for all services.
- The equality delegates in the federal authorities have wide-ranging powers and specific rights and duties enabling them to act to promote equality of opportunity in regard to all measures taken by the service in relation to staffing, organization and social issues.
- The international instrument for equal opportunity policies known as *Gender mainstreaming*, i.e. inclusion of the gender factor in all policy fields, is enshrined in the Act as the cross-cutting, basic civil service principle.
- All federal legal provisions, as well all official correspondence, must be drafted in language that takes account of the gender factor.

125. In December 2006, the Federal Government tabled an empirical and comprehensive report on the initial impact of the Act in the German *Bundestag* (Federal Parliament, lower house) (*Bundestag* document No 16/3776). It found that now, as in the past, there are shortcomings of implementation: although the proportion of women in the various sectors has definitely continued to increase, women remain substantially under-represented, particularly in managerial posts.

126. The Act on the Appointment and Secondment of Women and Men to Bodies within the Remit of the Federation (*Bundesgremienbesetzungsgesetz - BGremBG*) is a significant instrument for promoting equality between men and women - a constitutional objective - at the level of the major decision-taking bodies within the sphere of influence of the Federal Government. Thus, the purpose of the BGremBG is to promote equality of opportunity for men and women in the major decision-taking bodies. The Federal Government presents a report to the *Bundestag* on this subject in every parliament.

127. According to the Federal Government's fourth report on the Act on the Appointment and Secondment of Women and Men to Bodies within the Remit of the Federation (*Bundestag* document No 16/4385), in June 2005, the proportion of women in the influential bodies of the Federal Government was about 19.7 per cent. The percentage of women had again increased, but women are far from enjoying equal representation in many areas.

3. Rights of workers in the "shadow economy" (paras. 20 and 38)

(a) Provisions pertaining to employment legislation in the "shadow economy"

128. The general provisions of employment legislation apply in principle to illegal workers. Illegal workers are also entitled to the minimum statutory leave, to receive sick pay and holiday pay and to be paid the wages agreed, just like other employees. In addition, this category of worker also benefits from protection under the statutory accident insurance scheme. Consequently, it is not the legal situation, in terms of employment legislation, that causes these illegal workers problems, but the fact that the individuals concerned often fail to assert their rights. The problem would not, there, be resolved by strengthening the rights of workers in the shadow economy.

129. The Federal Government attaches great importance to combating illegal working and employment. The many measures which it has adopted in recent years illustrate that concern. For example, to combat illegal working and employment effectively, responsibilities for control and prosecution have been brought together at federal level and assigned to the customs authorities.

130. The new provisions of the **Second Act on the provision of modern services on the labour market** (*Zweites Gesetz für moderne Dienstleistungen am Arbeitsmarkt*), which entered into force on 1 April 2003, provide financial support for hostels for individuals through the system of "mini-jobs", in an effort to combat illegal work. For the first time, Book IV of the Social Code (SGB IV) introduces specific rules on low-pay work for individuals. In the case of persons employed exclusively by an individual, the employer pays flat-rate contributions of 12 per cent, 5 per cent of which covers statutory pension insurance and 5 per cent statutory sickness insurance.

131. Moreover, the **Act stepping up the prevention of illegal work and associated tax fraud** (*Gesetz zur Intensivierung der Bekämpfung der Schwarzarbeit und damit zusammenhängender Steuerhinterziehung*), which entered into force on 1 August 2004, established new and much improved bases by providing a detailed definition of illegal work, enhancing the powers of the customs authorities in relation to monitoring and investigation, closing legal loopholes in relation to the criminal law and extending cooperation with the authorities responsible for combating illegal working and employment. As a result of their checks and investigations, the customs authorities have already brought to light serious harm resulting from illegal working and employment.

(b) *Right to social security and medical care*

132. Under article 28 of Book IV of the Social Code, all employers are under an obligation to make the required declaration to the sickness insurance fund which covers their employees, which acts as the repayment centre. The institutions of the benefit insurance system conduct checks on employers concerning whether the statutory declarations have been made and the right contributions paid at least every four years, pursuant to article 28(p) of Book IV of the Social Code. If the employer fails to fulfil that obligation, the offence is punishable by a fine of up to €25, 000.

4. Rights of workers in detention (paras. 21 and 39)

133. The Act on the enforcement of sentences (*Strafvollzugsgesetz*) does not allow a prisoner to be placed under the exclusive authority of a private party (art. 149, para. 4, of the Act). Prisoners employed in private undertakings are, therefore, working subject to the public-law authority of the penal institution.

134. Although prisoners in the Federal Republic of Germany are, in principle, required to work, the penal institutions report a high unemployment rate. In 2004, for example, only 55.65 per cent of prisoners on average were employed. The centralized organizations responsible for providing work in place of serving sentences are experiencing a job shortage. Given how important it is for prisoners to work, to enable them to become reintegrated into society and, in particular, to resume working life when they are freed, this low employment rate is a serious problem.

135. The proportion of prisoners in employment varies greatly from one Land to another. On average, in 2004, only 10.89 per cent of prisoners had been employed in companies at federal level (the statistics for the individual Länder range between 2.7 per cent and 19 per cent). Consequently, compulsory work for private undertakings is not, nor has it been, the usual practice in regard to the serving of sentences in the Federal Republic of Germany.

Article 8

[Right to take part in trade union activities]

136. The trade union system in the Federal Republic of Germany is largely based around the eight trade unions that form the German Trade Union Federation (DGB) and the German Civil Service Association (DBB). In addition, there are the Christian trade unions that form the Federation of Christian Unions (CGB).

137. At the end of 2006, the trade unions forming the DGB had 6,585,774 members. The trade unions that make up the DBB have 1.2 million members, and the CGB has more than 300,000 members.

Prohibition of strikes by civil servants (paras. 22 and 40)

138. The fact that public servants do not have the right to strike in Germany is compatible with article 8 of the Covenant, since article 8, paragraph 2, specifically permits the imposition of legal restrictions on the right of public servants to strike. Had this not been the case, the Federal Government would have entered a reservation when it ratified the Covenant, as it did when it ratified the Council of Europe's European Social Charter.

139. It is entirely clear, under the provisions of article 8, paragraph 2, of the Covenant, that the prohibition on striking that applies to German public servants does not constitute a violation of the Covenant. However, the Federal Government will once again set out the reasons why German public servants are not permitted to exercise the right to strike.

140. The German public service is made up of two groups with different status: established civil servants (*Beamte*) and employees working under contract (*Angestellte*). Public service workers are not subject to any form of restriction when it comes to organizing and jointly defending their interests. It is only in the event of industrial action in trade disputes that the following distinction must be made: employees working under contract in the public service have the right to strike, unlike established civil servants who do not.

141. The reason for this is that the wages and salaries of employees working under contract, as well as their other conditions of work, are laid down in collective employment agreements that are negotiated and concluded between the trade unions and public employers. If no agreement can be reached, then employees working under contract have the right to strike.

142. The rights and duties of established civil servants, including their salaries and pensions, are governed by statute. There is no negotiation, with the result that the right to strike, as a means of exerting pressure, would not succeed. In addition, industrial action by established civil servants in trade disputes would be directed against the legislature and, consequently, Parliament's freedom of decision. The fact that established civil servants are prohibited from striking is not, therefore, indicative of a lack of democracy but actually guarantees the functioning of democracy.

143. However, established civil servants in Germany are not in any event "deprived of their rights" as a result of being banned from striking:

(a) The traditional principles of the professional civil service, constitutionally guaranteed under article 33, paragraph 5, of the Basic Law, require the legislature to ensure that public servants are properly treated. The income paid to public servants, during both their working life and their retirement, must guarantee them appropriate means of subsistence in accordance with developments in the general economic and financial situation and the general standard of living.

(b) What is described as "flexible harmony" exists between the collective agreements for employees working under contract and the legislation governing the civil service. This means that the terms of the collective agreements negotiated between the trade unions and the public employers are transposed to established civil servants subject to adjustment in order to meet the specific requirements of the rules governing public servants. If established civil servants were accorded a right to strike in this process, they could de facto benefit twice over from the weapon formed by the right to strike in the context of trade disputes.

(c) The major affiliated trade unions are involved in drawing up the provisions of legislation governing the civil service. To compensate in a way for the lack of influence in relation to the negotiation of agreements, this right to participate involves more than mere consultation. At a very early stage, it provides trade unions with the opportunity to take part, on the basis of their responses and own proposals, in the preparation of laws, regulations, administrative provisions and orders.

144. The Committee's recommendation to the effect that public servants who do not provide essential services should be guaranteed the right to strike cannot be put into effect by the Federal Government for the reasons set out below.

145. In accordance with constitutional requirements, the legal status of public servants must be framed in a uniform manner. For that reason, as far as the right to strike is concerned, it is similarly not possible to make a distinction according to specific posts. The mobility required within the public administration would be disrupted if the status of public servants differed according to the posts they occupied. This would complicate transfers,

appointments to posts and secondments. The call for a right to strike to be accorded to public servants, depending on their particular activity, is, therefore, incompatible with the fundamental principles of the German civil service and would make it difficult for the public administration to do its work effectively and responsibly in the general interest.

Article 9

[Right to social security]

1. Unemployment benefits

146. We would refer the Committee here to the Federal Government's reports on the implementation of the European Code of Social Security, as well as ILO Convention No 102 on Social Security (Minimum Standards) and ILO Convention No 128 on Invalidity, Old-Age and Survivors' Benefits, *annex 3*; the points set out below update those reports and provide further detail:

(a) *Calculating unemployment benefit*

147. Unemployment benefit is calculated on the basis of gross pay from which statutory deductions have been made. Unemployment benefit consists of 67 per cent of that gross pay set more precisely, under the legislation, as applicable to unemployed persons with children, while other unemployed persons receive 60 per cent.

(b) *Expenditure on unemployment benefit*

148. Expenditure on unemployment benefit amounted to about €29.1 billion in 2004, about €27 billion in 2005 and about €23 billion in 2006.

149. The average net rate for recipients of the benefit was in the region of €760 per month in 2005, €763 per month in 2006 and €762 per month in 2007, with social security contributions on top.

(c) *Funding unemployment insurance*

150. In 2005, employees and employers both paid a contribution amounting to 3.25 per cent of salary or wages (art. 341 of Book III of the Social Code). In 2007, this was reduced to 2.1 per cent for both employees and employers.

(d) *Ceiling for unemployment insurance contributions*

151. The ceiling for unemployment insurance contributions is set at €5,250 per month (in the old Länder) and €4,400 per month (in the new Länder) under the 2006 technical regulation for the calculation of social insurance (*Sozialversicherungs-Rechengrößenverordnung*).

(e) *Combining unemployment assistance and social welfare assistance*

152. For persons capable of working, unemployment assistance and social assistance were combined, with effect from 1 January 2005, to establish an **individual minimum income for job-seekers** (Book II of the Social Code). On the basis of this new individual minimum income for job-seekers, the Federal Republic of Germany has a sound special welfare system that takes effect where unemployed persons need assistance. Combining the two benefits enables individuals who are capable of working and need assistance, and previously received social welfare benefits only, to access all of the benefits promoting work under employment policy. It also has the effect of simplifying the administrative process.

153. The individual minimum income for job-seekers is a benefit that is based on an assessment of the level of assistance required and applicants' needs. It is funded from taxation. All persons between the ages of 15 and 65 who are capable of working and in need of assistance, and are habitually resident in the Federal Republic of Germany, as well as their family members living with them in an interdependent community, are entitled to it. In addition to the person who is capable of working and in need of assistance, this community comprises parents living in the household, unmarried children, cohabitants and partners in a registered life partnership.

154. Persons capable of working and in need of assistance receive unemployment benefit II; persons in need who are not capable of working but live in an interdependent community with a person who is capable of working but in need of assistance receive the social welfare benefit. The benefits designed to secure subsistence are generally equivalent to social welfare benefits. As far as possible, unemployment benefit II and the social welfare benefits are paid at a flat-rate, albeit taking account of the principle of meeting needs.

155. As of 1 July 2007, the standard monthly benefit designed to secure living costs and paid to recipients within the meaning of Book II of the Social Code was increased to €347 throughout Germany. Standard benefits cover current needs and one-off needs, provided the latter can be covered at a fixed rate. Benefits for additional needs (for pregnant women, for persons solely responsible for their children's education, persons with a disability or to cover the cost of an expensive foodstuff, for example) are provided at a flat-rate and as a percentage of the standard benefit accorded. Housing and fuel costs are covered on the basis of actual costs incurred, provided that they are appropriate. In addition to the standard benefit, one-off allowances may be accorded for initially furnishing accommodation, for example, for initial clothing, including for pregnancy and birth, as well as for school trips lasting several days.

156. The new system also guarantees social welfare cover. All persons who are capable of working and in need of assistance are automatically affiliated to the statutory sickness insurance and dependency insurance if they are not already covered under a family policy. They are also automatically affiliated to the statutory disability and pension schemes. Members of an interdependent community generally benefit from sickness insurance and dependency insurance under a family insurance policy.

157. An allowance limited to two years is provided to secure the financial move from unemployment benefit to the individual minimum income for job-seekers. The allowance amounts to two-thirds of the difference between the last unemployment benefit received plus housing benefit and unemployment benefit II (with no supplement). The allowance is subject to a ceiling of €160 for persons living alone, €320 for couples who are married (or not) living at the same address and €60 for a child who is a minor and is living with a person entitled to the allowance. The allowance is reduced by 50 per cent at the end of the second year after payment of the unemployment benefit ceases.

158. On average in 2006, some 7.3 million people living in nearly 4 million interdependent communities received benefits by way of the individual minimum income for job-seekers, that is to say almost 9 per cent of Germany's total population. The Federal Government allocated a total of €35.2 billion to the individual minimum income for job-seekers in 2005 and €38.7 billion in 2006. In 2005, €3.5 billion of these funds were allocated for vocational integration allowances, and €4.5 billion in 2006.

159. The individual minimum income for job-seekers is designed to make persons who are capable of working and in need of assistance more aware of their own responsibility and help them to support themselves using their own resources and endeavours. It is based on encouraging work and one of its objectives is to place greater emphasis on the principle of

“support with expectations”. The reform takes a targeted approach to encouraging taking up employment for the award of benefits. For example, the ceilings on additional earnings have been raised compared to those for social welfare. The measure benefits families above all. Recipients of the benefits are in principle required to accept any acceptable job.

160. Responsibilities for combating long-term unemployment have thus been brought together and open up real opportunities for the long-term unemployed to participate and realize their potential. A monitoring template tailored to the recipient’s individual situation is the essential element of the individual minimum income for job-seekers. Individuals who are capable of working and in need of assistance have a personal adviser who monitors them, advises them and concludes individual integration agreements with them. They are in principle entitled to all benefits for integration into the labour market (training and qualification measures, for instance). Allowances geared to integration into the labour market may also include child care allowances, counselling individuals who are in debt or drug-dependent or, indeed, psychological assistance. The prime objective of the individual minimum income for job-seekers is to enable them to secure a job that attracts social insurance, is permanent and makes it possible to cover needs.

161. The long-term unemployed who are not able to be reintegrated immediately may be assigned community service work (work opportunities) and are reimbursed any additional costs which they incur.

2. Old-age cover

(a) *Statutory old-age insurance* (old-age, invalidity and survivors’ benefits)

- 2001 reform of disability and old-age pensions, as well as the Supplementary Act Promoting Private Pension Plans (*Altersvermögensergänzungsgesetz*) and the Retirement Savings Act (*Altersvermögensgesetz*)

162. Once the demographic factor had been taken out of the equation under the 1999 legislation reforming disability and old-age pensions, a reform of the structure of disability and old-age pensions was launched in 2000. The key aim of the reform was to secure, for the future, a high and adequate level of pensions paid under the statutory disability and old-age pension insurance scheme, but without placing too much strain in terms of contributions on the generation still at work. As a result, it was as crucial to the reform to slow down sustainably the increase in the contribution rate, as it was to secure an adequate overall level of income from the statutory disability and old-age pension insurance scheme and the supplementary old-age insurance encouraged by the State. Since 2001, the law has explicitly provided that the contribution rate should not rise above 20 per cent by 2020 and 22 per cent by 2030.

163. The revision of the formula used to adjust pensions is a key element of the Supplementary Act Promoting Private Pension Plans. The change to the “net adjustment” that had previously applied consists in the fact that only the cost changes included in the calculation of disability and old-age pension insurance contributions are taken into account in addition to the increase in gross salary or wages for each employee. Changes to the rate of the other social insurance contributions and to the income tax burden for people at work are not therefore taken into account in the adjustment formula. In addition, a supplementary factor, the “portion allocated to old-age insurance” has been added to the adjustment formula. This factor takes account of the fact that an increase in workers’ emoluments does not automatically result in an increase in disposable income but is put towards saving for individual pensions (encouraged by the State) under the Riester reform.

164. The **Act reforming pensions on the ground of reduced earning capacity** (*Gesetz zur Reform der Renten wegen verminderter Erwerbsfähigkeit*) entered into force on 1 January 2001 and abolished the previous subdivision of pensions on the ground of reduced earning capacity into pensions for disablement on the one hand and pensions for incapacity to earn a living on the other, in favour of a pension for reduced earning capacity at two levels. Moreover, the age-limit triggering entitlement to the old-age pension for severely disabled persons was increased between 2001 and 2003 to rise gradually from 60 to 63.

- Other reforms carried out in 2004, 2005 and 2007
- **Act on the sustainability of disability and old-age insurance** (*Rentenversicherungs (RV)-Nachhaltigkeitsgesetz*)

165. The Act on the sustainability of disability and old-age insurance sets statutory objectives for pension rates to ensure that the pension system can be adjusted sustainably and fairly between the generations. Pursuant to those objectives, the rate of pensions pre-tax must not fall below the threshold of 46 per cent by 2020 and 43 per cent by 2030. In addition, the Federal Government is required to justify the need to raise the age limit in order to mitigate the increase in contributions and to respect the guaranteed minimum amounts as well as the measures designed to maintain the 46 per cent guaranteed rate.

166. The Act also introduced a sustainability factor into the pension adjustment formula, which basically takes account of the quantitative ratio between the number of pensioners and the number of contributors. If there is a rise in the number of contributors, there may be a higher pension adjustment; however, a fall in the number of contributors will result in a lower adjustment. Overall, the sustainability factor tends to result in lower pension adjustment because of demographic trends.

167. Since 2006, the rise in emoluments that is so important to the adjustment of pensions is no longer based solely on the increase in emoluments of all employees but also takes account of the sums paid into the general disability and old-age pension scheme.

168. Since 2006, the age-limits allowing individuals to receive an early old-age pension because of unemployment or on completion of gradual early retirement have been in the process of being gradually increased from 60 to 63.

- **The Act on old-age income** (*Alterseinkünftegesetz*)

169. Since 1 January 2005, new rules have applied to the taxation of pensions and the tax-exemption of sums allocated to pension savings.

170. The aim of this legislation is to achieve equal treatment for old-age and retirement pensions in terms of income tax. Moving to differential taxation of old-age income and largely sparing the “old cases” and the groups near to retirement age makes this possible. For example, old-age income is not taxable until it is paid to the tax-payer, that is to say when the tax-payer reaches a certain age. However, the sums allocated to old-age savings at the additional payments stage are not taxable provided they remain below a certain annual ceiling. Younger insured persons are thus able to have a higher net amount which they can use to establish company-based retirement savings or additional individual retirement savings.

- **Taxation of pensions**

171. Since 2005, pensions disbursed by the statutory disability and old-age insurance scheme, the farmers’ old-age insurance scheme, the old-age insurance schemes for the liberal professions and the “proposed Rürup scheme” are 50 per cent subject to taxation. The measure applies to everyone who retired before the end of 2005. To maintain confidence in the earlier legislation and avoid double taxation, the taxable portion of pensions for everyone retiring, as of 2006, is raised to 80 percent in two per cent stages

between now and 2020 and then to 100 per cent in 1 per cent stages by 2040. Consequently, for persons retiring in 2040 or later, the whole of their pension will be taxable. Retirement and other pensions are thus treated equally in terms of income tax.

- **Tax exemption for sums paid into retirement savings**

172. The shift to differential taxation results in an improvement in the way in which spending on retirement savings is treated for tax purposes on the basis of gradual tax exemption. For those still at work, the tax burden falls and net income increases. Before 2004, retirement savings were tax deductible to a limit extent only. As differential taxation is introduced, the possibilities of deduction gradually increase, initially to 60 per cent of the contributions paid up to a certain ceiling, including employers' social security contributions (€12,000) as of 2005. Thereafter, that rate rises by 2 per cent annually (reaching 62 per cent in 2006, that is to say a maximum of €12,400), sums paid into [retirement] savings being fully deductible to a ceiling of €20,000 as of 2025.

173. A separate ceiling applies to the other savings-related social insurance contributions and spending (such as civil liability insurance and private risk insurance, for example) over and above the deductible portion of expenditure on basic old-age insurance.

174. A "comparative review" of the available deductions under the old and new systems ensures that, under the new rules, taxpayers are able to set off just as much as they could under the old legislation. The review has been under way since 2005 and will continue until 2019.

- **Changes in the rules covering survivors in the statutory disability and old-age scheme, particularly in relation to old-age insurance for women**

175. Since Germany's fourth periodic report, independent old-age insurance for women has been improved, particularly on the basis of the 2001 Act reforming disability and old-age pensions. However, on average, female insurees acquire fewer periods giving pension entitlement and fewer pension rights than men, because they earn less.

176. In order to mitigate the impact of lower pay on retirement, pension rights for bringing up children are taken into consideration for the purpose of calculating pension as of 1992. Individual pay following a period spent raising a child, from the age of three to the age of 10, is increased by 50 per cent, up to a level of 100 per cent of average income. That recognition of the period of compulsory contributions also applies to the raising of children who are in need of care until the age of 18.

177. Persons who are unable to pursue an occupation during the period credited for child-raising, specifically because they are raising children simultaneously, are accorded, for pension calculation purposes, a credit of 0.33 percentage points of emoluments every year for each year spent bringing up at least two children under the age of 10.

178. The law governing survivors' pensions has also changed. The main widow's or widower's pension is now equivalent to 55 per cent of the insured person's pension of the deceased spouse, plus an increase for child-raising. The lower widow's or widower's pension for persons under the age of 45 who are capable of working and do not have children, amounting to 25 per cent of the deceased spouse's pension as an insured person pension, is restricted to two years.

179. The new rules apply to couples where both spouses were under the age of 40 when it entered into force (1 January 2002) or couples who were or will be getting married after 1 January 2002. Older couples continue to benefit from the general rate of cover of 60 per cent without increase in respect of children that used to form the basis for the main widow's or widower's pension and the unlimited award of the lower widow's or widower's pension.

180. The income taken into account for the purposes of widow's or widower's pensions is no longer solely restricted to income from employment and earnings replacement; the new legislation now takes account also of other income such as rent received, interest payments and also company retirement pensions.

181. The 2001 disability and old-age pensions' reform also gave spouses the option of sharing pension rights. In order, more particularly, to enable women to set up their own old-age pension, young couples can now share the pension rights acquired during the marriage.

182. At 1 January 2005, the inclusion of survivors in the statutory disability and old-age insurance scheme was extended to bring in registered life partnerships (same-sex couples).

(b) *Developments in retirement savings for individuals*

• **Riester retirement reform**

183. As part of the 2001 reform of disability and old-age pensions, the Federal Government is widely encouraging capital-funded supplementary retirement saving by individuals (encouraged under the Riester retirement proposals). Since 2002, approved retirement savings products have been promoted by way of subsidies and tax advantages. Retirement savings at company level have also been boosted on the basis of a wide range of measures. The aim of the reform is to expand retirement savings at both company and individual level as far as possible.

184. Under the Riester retirement proposal, retirement savings products for individuals are encouraged through a combination of subsidies and tax advantages to enable people on low incomes and families to obtain supplementary old-age pensions. That encouragement is directed towards all employees automatically affiliated to the statutory social insurance scheme, civil servants, judges and soldiers, and is made up of four levels gradually set in place since 2002. Once the maximum has been reached as of 2008, 4 per cent of the previous year's income will be able to be put into savings annually.

Overview of incentives under the Riester retirement proposals

	2002/2003	2004/2005	2006/2007	From 2008
Deduction for exceptional expenditure (in addition to the amounts used for savings)	Up to €25	Up to €1 050	Up to €1 575	Up to €2 100
Basic allowance	€8	€76	€14	€154
Child subsidy, per child	€46	€2	€138	€85 ³
Saver's minimum contribution	1 % ¹ less subsidies ²	2 % ¹ less subsidies ²	3 % ¹ less subsidies ²	4 % ¹ less subsidies ²
Upper limited	€525 less subsidies	€1 050 less subsidies	€1 575 less subsidies	€2 100 less subsidies

¹ Of the previous year's gross income.

² But with a minimum contribution of €30/38/45 (depending on the number of children for the period 2002 to 2004); since 2005, at a standard rate of €60 (contributory basis).

³ For children born as of 1 January 2008, the subsidy is €300.

185. Contributions to old-age pensions may be invested in three ways: in private retirement insurance, bank savings plans and savings plans based on a mutual investment fund. The products must, however, satisfy legal requirements in order to be approved.

186. All old-age insurance contracts entered into since 1 January 2006 must offer gender-neutral rates (so-called unisex rates). In future, women who have entered into private retirement insurance contracts will receive the same benefits as men, if they have paid the same monthly contributions. That rule does not apply to the old contracts.

- **Capital-funded company old-age insurance encouraged by the State**

187. Company retirement savings were the source of a benefit that every employer was free to provide. Since 2002, it has also been the subject of special State incentives (under the Riester retirement proposals). Substantial relief from taxation and social charges has also been introduced. The obstacles to the transfer of acquired rights when changing employer were removed as of 1 January 2005 (improved transferability).

188. Since 2002, employees have in principle had the right to convert a proportion of their salary to establish company retirement savings (conversion of a proportion of pay). Conversion is subject to collective agreements, which means that trade union members or employees covered by a compulsory collective agreement may only convert a proportion of their agreed wages, if this is specifically provided for under the collective agreement.

- **Private basic retirement (Rürup retirement proposals)**

189. The Rürup retirement scheme consists in a private life annuity modelled on the statutory retirement scheme. It guarantees the provision of a monthly pension for life. Beneficiaries may not draw their pension before the age of 60. That measure makes it possible to guarantee that these are old-age insurance products, in the same way as rights acquired under the statutory disability and old-age insurance scheme, and that contributions are actually used for old-age insurance. Old-age insurance may be supplemented by additional insurance (disablement, reduced earning capacity or survivor's insurance).

190. In 2005, contributions could be deducted up to 60 per cent of the taxable amount to an upper limit of €2,000 for single persons and €4,000 for married couples. For employees, that upper limit also extends to contributions paid to the statutory disability and old-age insurance scheme on the basis of 20 per cent at the outset. Up until 2025, the rate of deduction increases by 2 per cent annually, with an upper limit of €400 for single persons and €800 for married couples.

3. **Sickness insurance**

191. Statutory sickness insurance provides all insurees with the same access to the necessary medical benefits regardless of age, gender or income. A social balance is achieved on the basis of provisions regarding exemptions for and an upper limit on the amount insured persons are required to pay. Among other things, the 2004 Act modernizing the statutory sickness insurance scheme (*Gesetz zur Modernisierung der gesetzlichen Krankenversicherung*) took account of the needs of the chronically sick, who are largely elderly, by stipulating an upper limit of 1 per cent of gross income.

192. The system of sharing the burden of sickness insurance, whereby each pays contributions according to his means but receives the necessary medical care regardless of contribution will continue, in the future, to form the basis for the reorganization of the sickness insurance system in Germany.

193. Since 1998, the Federal Government's health policy has been based on three main approaches: placing the focus on the patient, quality assurance and viable operation. A whole raft of reforms has since made it possible to improve the quality of medical care, reinforce the inclusive system and make it more economically viable. With the adoption of

the “Act reforming the statutory sickness insurance scheme as of 2000” (*Gesetz zur Reform der gesetzlichen Krankenversicherung ab dem Jahr 2000, GKV-Gesundheitsreform 2000*), the Government is moving closer to those objectives as a result of the following measures in particular:

- (i) Bring out-patient and in-patient care closer together.
- (ii) Expanding the role of the family doctor in treatment.
- (iii) Placing a greater focus on prevention, need and quality assurance in relation to dental care.
- (iv) Improving the quality and cost effectiveness of medicinal products.
- (v) Promoting investment geared to the demand for care in establishments.
- (vi) Further encouraging the promotion of health and encouraging insured persons’ to take greater responsibility for their own health.
- (vii) Encouraging rehabilitation.
- (viii) Taking account of the special needs of the mentally ill.
- (ix) Expanding patients’ rights and protection.
- (x) Introducing greater fairness, in terms of contributions, in relation to patients on low pensions.

194. A system of reimbursing hospitals according to the individual treatments provided has been introduced for in-patient care. The system has made it possible to distribute resources between hospitals in a way that is more transparent and above all more closely performance-related. It also provides every hospital with clear guidelines on operating viably. The system was introduced some years ago, and a reduction in the time spent in hospital, as well as positive changes - including more cost-effective hospital care - have already resulted. Overall, the financial framework conditions within hospitals have undergone far-reaching change as a result of the new system of performance-based remuneration. The introduction of the system of payment based on individual treatments has been an important step in modernizing the structures of the health system.

195. During the period 2001 to 2003, the disproportionate increase in spending on some services, particularly drugs, led to deficits. The sickness insurance funds had to increase contributions as a result. Structural reforms were therefore adopted by way of the “**Act modernizing the statutory sickness insurance scheme**” (*GKV-Modernisierungsgesetz, GMG*). They resulted in an improvement in the quality and economic viability of care, greater efficiency and the creation of more efficient structures. Patients’ own responsibility and rights to participate were enhanced. The Act enabled the statutory sickness insurance scheme to be in net surplus once more as of 2004.

196. The process of caring for and the quality of the treatment given to the chronically sick has improved as a result of the introduction of disease management programmes for six illnesses (type 2 and type 1 diabetes *Mellitus*, breast cancer, coronary heart disease, asthma and chronic obstructive pulmonary disease). More than 3.9 million insured persons are currently taking part in one of these disease management programmes (figure recorded at the end of 2007).

4. Long-term care insurance

197. Long-term care insurance has been in existence for more than 10 years: it works very well and helps some 2.1 million individuals needing long-term care and their family members. It has been possible to improve the care infrastructure on a sustainable basis.

For example, there are now some 1,800 day-care establishments, some 1,500 short-term care establishments and about 11,000 services providing care in the home. There are also about 9,000 establishments providing permanent care.

198. Since 1994, about 300,000 new jobs have been created in the care sector. The introduction of long-term care insurance has also made it possible to provide social cover for third parties: they are automatically affiliated to the statutory disability and old-age insurance scheme and have statutory accident insurance. About 450,000 individuals are currently covered by this measure. Given that more than 90 per cent of third parties compulsorily affiliated to the disability and old-age insurance scheme are women, long-term care insurance makes a major contribution to providing them with independent social protect and old-age cover.

199. Demographic trends have seen the number of persons in need of long-term care increase by between 1 per cent and 2 per cent annually in recent years.

200. The benefits provided through long-term care insurance have made it possible substantially to reduce the number of dependent people in receipt of social welfare assistance. Currently, fewer than 5 per cent of individuals in need of long-term care and receiving care in the home need social welfare assistance. As far as residential treatment is concerned, the number of persons in receipt of social welfare assistance has fallen by about 20 per cent (late 2006 compared with 2005) as a result of the introduction of long-term care insurance, even though the number of people in residential care increased by about 42 per cent between late 1997 and late 2006. Currently, only about 25 per cent of persons in long-term residential care are in receipt of supplementary social welfare benefits.

201. Since the long-term care insurance scheme came into effect, new legislation has been passed for the particular purpose of improving the situation, in terms of care, of persons suffering from mental illness as a result of old age, but also the situation of persons with a mental disability and the mentally ill who are substantially in need of general assistance. Child-raising occupies a special place in relation to the opening of entitlement to social long-term care insurance contributions. For example, since 1 January 2005, people without children are required to pay a contribution increased by 0.25 per cent to secure fairness between the generations.

202. Expenditure on social and private long-term care insurance, as well as on social assistance for long-term care amounts to some €2 billion, that is to say about 1 per cent of gross domestic product.

Discrimination against certain categories of person as a result of the reform of the social security systems (paras. 23 and 41)

203. Long-term care insurance is very well received in Germany. Citizens know that they will receive benefits provided under long-term care insurance if they are in need of care and that, as a rule, these benefits mean that they do not need to resort to social welfare assistance. This form of insurance does not, however, constitute universal cover, and it is therefore up to individuals to make their own arrangements, if the need for long-term care arises. The system of long-term care insurance has evolved since it was introduced for the benefit of persons in need of care but also of the relatives who care for them.

204. As a result of the pension policy reforms undertaken in recent years, Germany now has a stable, solid and flexible system of pensions and old-age provision that is ready to cope with the future. The system is based on the three pillars comprising the statutory disability and old-age insurance scheme, company pension schemes and private old-age insurance. The introduction of the basic minimum income guaranteed to the elderly or those who unable to work offers a new way of combating poverty among the elderly. The basic minimum, which forms part of the social welfare system, is designed to prevent

hidden poverty among the elderly and enable them to cover their own needs. That kind of poverty exists because the elderly, in particular, often fail to exercise their rights to social welfare benefits (assistance to help cover living costs), and one of the main reasons for this is that they want to avoid asking their children for financial support, as required under the social assistance scheme. The basic minimum precludes the need for that. The approach taken in the most recent reforms was to guarantee the financial stability of the disability and old-age insurance scheme by sharing fairly among the generations the costs resulting from demographic factors, and by reinforcing the principle of equivalence of contributions - the principle on which the system is founded.

205. The old-age protection policy works well, particularly where it is designed to prevent poverty among the elderly. According to the Federal Statistical Office, barely 2.3 per cent of persons aged 65 and over were in receipt, at the end of 2006, of benefits accorded by way of the basic minimum guaranteed income for the elderly or those unfit to work. Statistics also show that there are more elderly people (2.4 per cent) in the old Länder in receipt of benefits in the form of the basic minimum income than in the new Länder (1.1 per cent), and more women (2.6 per cent) than men (1.8 per cent). About 35 per cent of recipients of the basic minimum income aged 65 and over are not entitled to an old-age pension under the statutory disability and old-age insurance scheme. The average gross monthly requirement under the basic minimum income was €627 for beneficiaries over the age of 65, whereas the average monthly sum paid to those same beneficiaries was €342, after disposable income had been taken into account.

206. The new data collected following the EU-SILC survey covering the whole of Europe also confirms that the elderly are relatively little affected by poverty. The survey records a poverty risk level of 13 per cent for the population as a whole. It is at the same level for persons aged 65 and over. By comparison, at 19 per cent, the poverty risk level for the elderly in Germany is distinctly lower than the European average of 25 per cent.

207. A modest old-age pension provided under the statutory scheme is not synonymous with poverty. People with a "micro-pension" are often former public servants or self-employed workers who were affiliated to the statutory insurance scheme for a short time only and have relied on other systems to build up sufficient cover - the public servants' retirement scheme or private insurance, for example. Will the number of elderly persons in need of assistance from the State be greater in the future? It is difficult to make reliable forecasts on that point. What happens will depend above all on:

- Developments in the economy and employment.
- The level of future need under the basic minimum income system (which depends, among other things, on the statistically established consumption expenditure of persons on low incomes and on rent increases, which are subject to regional variations) in relation to the trend in old-age income;
- The existence of individual assets and other sources of income, as well as income from emoluments and old-age income, and the assets of a spouse or partner.

208. The system in force includes many provisions designed to ensure the financial security of the elderly and prevent them falling into poverty, and in particular:

(a) Caring for children and child-raising: periods spent caring for or raising children no longer constitute a risk factor. The legislature has taken measures specifically to avoid that risk by providing for such periods to be taken into account in the statutory disability and old-age insurance scheme (third party contribution to the statutory disability and old-age insurance scheme on behalf of those bringing up children; period spent raising

children deemed equivalent to a period of compulsory contribution as an employee at the rate of 100 per cent of average income until the child is three years old; part-time work taken into account until the child is 10 or 18 if in need of care; credit of 0.33 percentage points of remuneration where several children are being brought up at the same time);

(b) *Military and civil protection* service: persons engaged in military service or in the civil protection service benefit from the State paying contributions to the statutory disability and old-age insurance scheme based on 60 per cent of the reference value and amounting to current gross pay of €1,491 in the old Länder and €1,260 in the new Länder.

(c) *Sickness, unemployment*: during periods when earnings replacement benefits, such as statutory sick pay or unemployment benefit, are being accorded, contributions to the statutory disability and old-age insurance scheme are paid by the institution responsible for disbursing the benefit.

(d) *Education*: periods of training in specialist establishments and attendance at vocational courses increase pension rights as they are taken into account for up to three years.

(e) *Part-time working for gradual early retirement*: the fact that contributions to the statutory disability and old-age insurance scheme are compulsorily increased means that reduced pay for part-time work with a view to gradual early retirement has no great effect on the level of pension subsequently received;

(f) *Reduction in earning capacity*: any insured person whose earning capacity is reduced while he or she is still young is regarded as having been in employment subject to insurance until the age of 60.

(g) *Persons with a disability*: persons with a disability employed in workshops for persons with a disability benefit from improved conditions for the payment of contributions.

(h) *Divorce*: in the event of divorce, the old-age pension rights acquired during the marriage are shared.

(i) *Widows/widowers and orphans*: on the death of the insured person, his or her survivors are covered by old-age and disability provision.

(j) *Promoting supplementary individual retirement savings*: the legislature has introduced a raft of instruments to encourage company retirement savings and individual retirement savings to offset the decline, over the long term, in the level of benefits guaranteed under the statutory disability and old-age insurance scheme.

(k) *Basic minimum income guaranteed to the elderly or persons unfit to work*: The basic minimum income was established in 2003; it guarantees the minimum necessary to meet socio-cultural needs and prevents social exclusion.

209. The fact that poverty among the elderly is not a current issue is the result of a policy that has produced real results. Someone with an average income who takes full advantage of the incentives under the Riester retirement scheme will need just 20 years to benefit, in future, from old-age income under the statutory disability and old-age insurance scheme and the Riester retirement scheme and beyond the threshold of need in the sense of the minimum guaranteed income. However, preventing poverty among the elderly remains a major objective of social policy.

Article 10**[Right of families, mothers, children and young people to protection and assistance]****1. Nationality legislation**

210. Please refer to the information given on article 10 in the fourth periodic report of the Federal Republic of Germany on the transposition into domestic law of the International Covenant on Economic, Social and Cultural Rights.

2. Child labour and the protection of young workers

211. Again, please refer to the information given in the fourth periodic report of the Federal Republic of Germany.

212. During the periodic covered by this report, the Federal Republic of Germany ratified (on 18 April 2002) International Labour Organization (ILO) Convention 182 on the worst forms of child labour and the immediate action required to eliminate them. No amendment was necessary to the legislation on the protection of young people at work, as it already met the standards laid down in the Convention.

213. The last report on Convention 182 presented by the Federal Government to the ILO dates from 2006. It drew attention to the fact that the authorities responsible for health and safety at work in the Länder, or for implementing legislation on the protection of young people at work and supervising compliance with it, carry out both special and routine checks in the enterprises which come within their competence. These show that the worst kinds of child labour, in the sense of article 3d of the Convention, are not a social phenomenon that occurs in Germany.

214. In addition, in June 2000, the Federal Government submitted a report to the *Bundestag* on child labour in Germany. As work-related protection for children cannot be guaranteed by State monitoring alone, the Länder take a range of measures to familiarize parents, children and employers with the provisions in force. (These take the form, for example, of educational measures in schools, briefing sessions designed for professional associations and chambers of trade and the distribution of information leaflets.) The Federal Government favours a sustained public relations effort to provide information on the legal provisions governing the employment of children and young people.

3. The concept of family and the importance of the family in society

215. In Germany, the family is very important, and is becoming more and more important as time goes on. The family offers material protection, help, support and security. It offers guarantees of cohesion and quality of life. The family is a mode of life which owes its vitality to its flexibility. Never have so many age groups lived together at the same time in families, sometimes in different locations, but still staying in close contact. Relations between the generations have rarely been so good. The family offers reliable, mutual help and guarantees cohesion between the generations. At the same time, it guarantees the growth of social capital and the economic well-being of our society.

216. Consequently, increasing the number of children in families and guaranteeing a greater place for the family in society are policy aims of the Federal Government. It has modified its approach so as to guarantee the durability of family policy, and the new aims of that policy are also founded on demographic and economic considerations. Families need three things above all: an infrastructure which offers them support, an income and time.

4. Good infrastructure for families

(a) *Child care for the under-threes*

217. The Federal Government places particular importance on the development of childcare along lines which are well-adapted to need and offer children aged under three specific good-quality services, along with flexible timing, reasonable cost and a range of provision. It thus shares the Committee's view that high-quality child care, well-adapted to need, makes a decisive contribution to improving families' conditions of life, and particularly to better reconciling family and working life. Moreover, early encouragement allows for greater equality of opportunity between children. The Encouragement and Care of Children Aged under Three Bill (*Kinderförderungsgesetz*), which is currently being debated in Parliament, has been designed to complement the Day-care Expansion Act (*Tagesbetreuungsausbaugesetz*, TAG) which is now in force, and will allow the encouragement of day care provision for the under-threes in line with needs.

218. The intention is that, in 2013, one third of children under three will be able to benefit from a day-care place. The Federal authorities, the Länder and the municipalities have agreed on this objective, and on arrangements for financing it, with each paying one third.

219. The Federal Government regards increasing the number of childminders as a good way of developing the day-care infrastructure for children under three. The Day-care Expansion Act provides for the qualification for childminders to include a quality-assurance arrangement, on the model of that for qualified staff in day nurseries.

(b) *Multi-generational centres*

220. Families have become smaller, more mobile and more diverse. For some, interaction between the generations takes place increasingly outside traditional family structures. Consequently, the Federal Government is planning to create multi-generational centres, serving as focal points for family support. These multi-generational centres allow for citizen engagement, give a real sense of family solidarity, provide a means by which day-to-day skills and educational knowledge can be passed on from one generation to another, and provide answers to questions about how the generations can help each other in a society in which people live to a great age.

5. Effective financial encouragement for families

221. The aim of the Federal Government's policy is to make it easier for young people to decide to have children and to reinforce the economic stability of the family. With this in view, financial support arrangements for families have been reframed and made more effective.

(a) *Maternity benefit (Mutterschaftsgeld)*

222. Germany has ratified the international treaties of the United Nations and ILO referred to in the directives: ILO Convention No 183, the Maternity Protection Convention, is in the process of ratification. We would refer here to the reports on the implementation of these instruments which are regularly presented to the United Nations and ILO.

223. The Maternity Protection Act (*Mutterschutzgesetz*) applies to all mothers-to-be in employment. Statutory maternity leave begins six weeks before the birth of a child and generally ends eight weeks after childbirth. During this period, working mothers receive maternity benefit. Mothers who are members of the statutory health insurance scheme

receive a maximum of €3 a day. The employer is liable to pay the difference between this sum and the mother's average net daily pay. Women who are not members of the statutory health insurance scheme are also paid this difference; they receive an additional lump-sum maternity-benefit payment of €10.

(b) *Child-raising allowance (Erziehungsgeld)*

224. Where mothers or fathers look after a child themselves, they receive a child-raising allowance of a maximum of €300 a month until the child reaches two years of age. Child-raising allowance can also be taken in the form of a budget, with a ceiling set at €450 a month and paid until the child is a year old. It is possible to work for up to 30 hours a week while continuing to receive child-raising allowance. The amount of the allowance depends on income. During the first six months after the birth of the child, a total amount of €300, or €450 where the budget option has been chosen, is paid each month where the combined annual income of the parents does not exceed €30,000 and where the total income of an individual raising a child on their own does not exceed €23,000. Parents with incomes above these levels do not receive child-raising allowance. The allowance gradually reduces once the child has reached the age of six months

(c) *Parental leave (Elternzeit)*

225. New regulations on parental leave which came into force on 1 January 2001 make it easier for parents to share the burden within the family while the child is still little. Working mothers and fathers are entitled to parental leave to look after a new child until it reaches the age of three. This arrangement has also been extended to full-time foster parents. Parents are allowed to take some or all of the leave at the same time as one another. Provided the employer agrees, it is also possible to defer a maximum of one year of leave and take it between the child's third and eighth birthdays. Each parent opting for child-raising leave can continue to work at a maximum rate of 30 hours a week.

(d) *Parental allowance (Elterngeld), an allowance to replace income*

226. Until now, the Federal Government had two main methods of ensuring a better balance between family and working life: child-raising allowance and parental leave. While the federal child-raising allowance can offer financial support, it cannot compensate for the loss of an income from employment.

227. A major project of the Federal Government is to convert the child-raising allowance into a one-year parental allowance to replace income, on the model of Sweden and other countries where this system is working well. This parental allowance, first dating from 2007, replaces 67 per cent of the previous income (up to €1,800 a month) of the parent who is looking after the child. According to their preference, the parents can choose to receive the total amount of the parental allowance within one year, or to spread it over a maximum of two years. A minimum amount based on joint income is provided for in the case of parents who either do not work, or who work only short hours. The 12 months for which parental allowance is paid can be shared between the parents, subject to two months being reserved for the father and two for the mother. There continues to be a right to child-raising leave for up to three years with part-time arrangements and a guarantee of employment.

(e) *Tax deductions for child care*

228. Parents who have their children cared for by others must receive improved support. Provision has been made for greater account to be taken of child-care costs in establishing tax liability, making it possible to take account of the reduced ability of working couples with children to pay tax. Under arrangements backdated to 1 January 2006, parents can now deduct up to €4,000 a year from their taxes in addition to the figure of €1,000 taken

into account for children aged six. For children aged from six to fourteen, up to €4,000 a year, starting from the first euro, can be taken into account as professional expenses in calculating tax liability.

(f) *Child benefit (Kindergeld)*

229. There is a right to child benefit in respect of all children up to the age 18. The payment of child benefit is extended to the age of 27 if children are receiving training and to the age of 21 if they are unemployed. If civil protection or military service is undertaken during this period, the age limit is extended by the length of the service. There is no age limit in the case of children who are unable to support themselves owing to a disability. Entitlement to child benefit payable for a child aged over 18 lapses if the child has an annual income of more than €7,680.

230. Child benefit is not income-related. Since 1 January 2002, the monthly amount is €154 for the first three children and €179 for the fourth and subsequent children.

(g) *Child supplement (Kinderzuschlag)*

231. Child supplement, which was introduced by the Federal Government on 1 January 2005, is a payment which forms part of its family policy. The monthly amount is a maximum of €40 per child and is paid to parents whose income is enough for their own subsistence, but not for that of their child or children. Parents lose entitlement to child supplement once their income covers the needs of the whole family or if, even after a child supplement payment, the family needed an additional type II unemployment benefit payment. Child supplement covers the average needs of a child when child benefit of €54 is being paid, plus housing benefit in appropriate cases. The realistic aim at present is to prevent some 150,000 children and their families needing to have recourse to welfare benefits.

(h) *Maintenance advance (Unterhaltsvorschuss)*

232. The fund which provides maintenance advance helps mothers and fathers who are bringing up children on their own when the other parent fails to make due maintenance payments. Since 1 July 2005, maintenance advance payments have been €127 a month (in the old Länder) and €111 a month (in the new Länder) for children under the age of six. They are €170 and €151 respectively for children between the ages of six and twelve. The advance is paid for a maximum of 72 months, and never after the child has reached the age of twelve. If possible, the State recovers maintenance advance payments from the parent responsible for paying maintenance.

(i) *The obligation of parents to maintain their children*

233. Parents are obliged to provide for the maintenance of their children. Maintenance for children who live in the household of their married parents is mainly provided by services in kind. In addition, the following rules apply: in principle, the parent caring for a child who is unmarried and a minor meets his or her obligation by looking after and raising the child, while the other parent should meet the child's material needs.

234. Until 30 June 2007, the standard rates under child maintenance law which serve as reference figures for the calculation of the amounts to be paid for children who are minors - calculated case-by-case basis and by age-group (0 to 5 years, 6 to 11 years and 12 to 17 years) - were €204, €247 and €291 respectively. On 1 July of every second year, the basic are adjusted in accordance with developments in net incomes.

6. Making the world of work family-friendly: reconciling family and working life

235. For many workers, having more time for their families is the main incentive when they are considering a reduction in their hours of work. The Part-time and Fixed-term Employment Act (*Teilzeit- und Befristungsgesetz*, TzBfG), which came into force on 1 January 2001, makes it easier for both men and women to reconcile their family and working lives. Essentially, it provides for better protection against discrimination for people working part time, increased transparency about opportunities for part-time working, and encouragement of part-time working by broadening workers' rights. The right to work part-time in businesses which regularly employ more than 15 workers (excluding apprentices) deserves special mention. This right to part-time working is not confined to cases where special reasons exist, such as childcare needs and other family obligations, and thus takes into account workers' different lifestyles and personal histories.

236. The Leave for Care of Dependants Bill, (*Pflegezeitgesetz*), which is going through the legislative process and will come into force on 1 July 2008, also makes a contribution to reconciling personal and working life. Its aim is to allow employees to give care at home to close relatives who have become dependent.

237. In the light of demographic change and growing demand for staff with specialist capabilities, reconciling family and working life is increasingly perceived in Germany as a challenge affecting the whole of society and the whole economy. More and more businesses are recognizing the advantages of human resources policies which take account of the family, in order to safeguard their competitiveness and, above all, to allow them tap to potential offered by very highly qualified women.

238. Promoting a world of work which takes account of the family is one of the principal themes of permanent policy for the family. With the "Alliance for the Family", the Federal Government has launched a broadly-based movement which enjoys the support of leading business personalities, the unions, the media and society. The Alliance brings together a portfolio of medium-term initiatives which share the aims of better reconciliation between working and family life and a family-friendly business culture. The actions planned by the Alliance are directed towards businesses and rely above all on information and the persuasive power of best-practice examples.

239. "The Family - a Factor for Success", a programme launched in January 2006 under the auspices of the Alliance, seeks to convince many more businesses to apply, as a strategic management tool, a human resources policy that is well-adapted to the family, and of make it a trademark of the German economy. The major themes of the programme include developing an extensive range of childcare provision with the support of businesses, encouraging the prompt resumption of work after child-raising leave and establishing the position of businesses in relation to parental pay.

7. Making the environment in which they live family-friendly

240. It is at the local level, where families live and develop, that the success of measures to support and encourage the family is decided. This is therefore the level at which family- and child-friendly policies are most needed. The Federal Government is backing local strategic partnerships, and providing support for their creation. This was the aim of the initiative it launched in 2004 on "Local Alliances for the Family". As an operational structure working under the Alliance for the Family, the initiative is achieving great success. To date, more than 100 local alliances have been or are being created.

241. Within these local alliances, local players who represent different areas of society are working together on projects and measures which are grounded in local needs. The alliances bring together the decision-makers from the local authorities and, alongside the local authorities, influential partners representing churches and charitable organizations, who are willing and able to do more for families. Some 1,200 businesses, more than half of the chambers of commerce and industry and a wide range of chambers of trade are taking part as of now in local alliances. Local alliances can make a heavyweight contribution to policies for a family-friendly community infrastructure.

Article 11

[Right to an adequate standard of living]

1. Right to adequate housing

242. In Germany, the “right to housing” is enshrined in the constitutions of some the Länder. At federal level, the principle of the social State set out in article 20, paragraph 1, of the Basic Law, also requires that the State should create the conditions necessary to ensure that the population has access to an adequate housing stock. Currently, housing for the majority of the population may be described as adequate and, indeed, to some extent good. In the new Länder that emerged from reunification in 1990, as well as in other regions, the supply of housing actually outstrips demand.

243. In past years, Germany has applied a broad policy of encouraging house-building by means of both direct aid (financial assistance in the context of promoting social housing, assistance for individual home ownership and encouraging home ownership savings schemes) and indirect aid (tax concessions). This assistance is ongoing, although the range is different. Beneficiaries were and still are families seeking accommodation, landlords renting accommodation and social welfare institutions tasked with helping those in need.

244. The Federal Government has provided a detailed report on the housing situation and related housing policy and town-planning measures, which are designed to guarantee an adequate housing stock, notably in its second report on poverty and prosperity (*Bundestag* document No 15/5015). The report describes developments in the general situation since 1998 (structure of the housing stock, volume and standard of housing, housing costs), trends in housing for high-income and low-income households, as well as the programme for urban encouragement and development and renovation “Neighbourhoods requiring particular forms of development - the social town”. The 2005 social report (*Bundestag* document No 15/5955) also contains a survey of the main policy measures relating to the housing available to the population. The 2006 report on housing allowances and rents of 26 June 2007 (*Bundestag* document No 16/5853) describes trends in the housing and rental markets.

The problem of the homeless (paras. 28 and 46)

245. The continuing improvement in the available housing stock, as well as the targeted measures taken to help particularly vulnerable people, have been successful and made it possible, in recent years, to reduce further the number of homeless families. North-Rhine Westphalia, the largest of the Länder, takes stock, at 30 June annually, of the number of people in emergency temporary accommodation. The number fell from 36,063 at 30 June 1998 (see fourth periodic report of 1999) to 13,807 at 30 June 2007. Moreover, housing in emergency accommodation is generally on a temporary basis only, as accommodation can, in most cases, be provided for the persons concerned.

246. The Federal Association for Aid to the Homeless (*Bundesarbeitsgemeinschaft Wohnungslosenhilfe*) regularly provides estimates of the total number of persons who, for some period of a year at least, are without accommodation of their own for which they hold the lease. Those estimates are definitely not compatible with other statistics in so far as they are based on the whole year, do not refer to a given date and cover a broad range of persons; nonetheless, they too confirm that the number of homeless is falling year on year. While the estimated total number of homeless in 1998 was 530,000 (680,000 including immigrants of German descent) (see fourth periodic report of 1999), at 254,000 people (265,000 including immigrants of German descent), the figure had fallen considerably by the time of the last available estimate.

247. The housing allowance under the Housing Allowance Act (*Wohngeldgesetz*), as well as the housing benefits accorded under the various books of the Social Code, are dependent on the household's income and ensure that housing-related costs are at a viable level. These benefits are based on an enforceable right.²

248. In Germany, more than 90 per cent of families are able to find adequate housing on the - free - general housing market. Families whose own resources are insufficient to pay for adequate housing on the market, and who do not receive transfer allowances that take account of housing costs, are provided with assistance in the form of housing benefit (governed by the Housing Benefit Act and the Housing Benefit Regulation) and inexpensive rented accommodation, as a result of the promotion of social housing. Since the end of the war, a total of some 9.3 million housing units (to buy and to rent, taking account of all incentives) have been encouraged on the basis of the construction and promotion of social housing. The legal basis for the promotion of social housing is the Act Promoting Social Housing (*Wohnraumförderungsgesetz*, WoFG) which, on 1 January 2002, replaced the Second House-Building Act (*Zweites Wohnungsbaugesetz*) which governed the building of social housing at the time. The groups targeted are, in particular, low-income families, as well as families with children, single people, pregnant women, the elderly, people with a disability, the homeless and people in need (art. 1 of the Act Promoting Social Housing).

249. Social welfare legislation also provides for different forms of assistance for the homeless or persons at risk of homelessness. In that context, the Federal Government basically favours preventive measures so as automatically to avert housing and social problems. Since the introduction of the individual minimum income for job-seekers (Book II of the Social Code), the majority of the homeless (about two-thirds according to the estimates of the Federal Association for Aid to the Homeless) are able to work and, therefore, fall within the scope of this social welfare benefit. The benefits under the minimum individual income for job-seekers ensure that individuals in need can meet their living costs. Helping then to find and retain accommodation is part and parcel of this. Consequently, housing and heating allowances equivalent to appropriate actual expenditure, are among other things, provided in the context of the minimum income for job-seekers and persons applying for social welfare assistance. In exceptional cases, the debts of individuals in need may or must be settled, if this is warranted to secure accommodation or avoid a similar emergency, or, indeed, if the person concerned is at risk of homelessness (art. 22, para. 5, of Book II of the Social Code and art. 34 of Book XII of the Social Code).

² Since 1 January 2005, only families who do not receive transfer allowances that take account of housing costs receive housing benefit. Allowances by way of housing benefit will be significantly improved as of 1 January 2009; the improved allowances will enable some 70,000 households including about 150,000 children to avoid relying on unemployment benefit and lead to an increase in the number of recipients of housing benefit.

250. In addition, the individuals concerned are frequently also entitled to the aid to help overcome serious social problems under articles 67 to 69 of Book XII of the Social Code. The measures designed to secure accommodation are also part of this. The legislature has laid down a vast range of measures, extending from identifying determining the source of social problems to the many forms of assistance that facilitate their resolution.

251. The regulation of rents is governed by articles 535 et seq of the German Civil Code. In principle, landlords may terminate a lease only if they state the reasons for this and give a period of notice. Eviction from rented accommodation may only take place if the lease has been terminated and the lessee is under a court order to leave the premises. In certain circumstances, the lessee may request an appropriate deferment of eviction or, indeed, protection from enforcement of the eviction order. In principle, however, the sale of a property has no effect on the tenancy relationship, with the new landlord assuming all of the rights and obligations of his predecessor.

252. The principle of equal treatment for which the constitution provides (art. 3 of the Basic Law) establishes that fundamental rights are effective in relation to third parties and thereby provides protection against discrimination which extends to private-law relationships, with the result that discriminatory treatment is not generally admissible in relation to the rental of accommodation either. That protection applies equally to all groups; there is no group in Germany that does not enjoy protection. We would refer here to the General Equal Treatment Act which transposes into domestic law the European Union's non-discrimination directives.

2. Definition of the concept of poverty, social benefits (paras. 27 and 45)

(a) Definition of the concept of poverty

253. A policy based on poverty prevention and the production of regular reports on poverty and prosperity: for Germany, these are two important tools for improving social cohesion and reducing the risks of poverty and exclusion. The Federal Government's reports on poverty and prosperity (2001 and 2005) and the national action plans to combat poverty and exclusion, drawn up for the European Community (2001, 2003 and 2004), have raised public awareness of the issue of "poverty and social exclusion". A solid database and a qualified analysis of poverty and prosperity are used to determine likely social developments and policy instruments designed to avoid and prevent poverty. The database and analysis also provide a basis for monitoring both political action and the impact and effectiveness of the measures taken.

254. Poverty has many faces in a modern society, and there can be no one definition of it. The Federal Government has already described, on many occasions and in detail, the conceptual and methodological problems that arise when attempting to define and measure poverty and to determine a poverty threshold, and would once again specifically reiterate that point. In the light of the reservations and difficulties set out in this reply, there is no officially adopted poverty threshold in Germany that would allow a figure to be put to the number of persons in poverty. Nor is there, in Germany, a legal definition of an "adequate standard of living". However, the clause on the principle of the social State contained in the Basic Law of the Federal Republic of Germany requires the organs of the State to contribute, within the framework of their responsibilities, to ensuring that everyone can live in dignity and to creating conditions of equality to ensure that everyone is able to find fulfilment. In Germany, that obligation is satisfied by Book XII of the Social Code (former Federal Social Assistance Act). Under Book XII of the Social Code, the Federal Republic of Germany has available to it a broad swathe of measures enabling everyone to live their life in dignity and avoid poverty and social exclusion.

255. Consequently, Germany applies the concept of relative poverty which has been agreed by the Member States of the European Union. That concept does not define poverty itself but the threshold below which it is possible to speak in terms of an increased risk of poverty. A risk of poverty is considered to exist where net income compared with needs is less than 60 per cent of median earnings. As far as Germany is concerned and in the light of the data in the Federal Government's second report on poverty and prosperity for 2003, that threshold is €38. People below that threshold are at an increased risk of being unable to participate, on a basis of equality, in the activities and living conditions of society. The weak growth and increased unemployment of recent years have led to a higher risk of poverty in Germany (1998: 12.1 per cent; 2003: 13.5 per cent). At the same time, the principle of the social State and the systems of social protection are clearly helping to reduce these inequalities and risks of poverty. Transfers in relation to encouraging families, fiscal policy, pensions and retirement pensions are bringing the risk of poverty in Germany down to a third (from 41.3 per cent to 13.5 per cent).

256. If the increased risk of poverty is construed as being founded on the concept of multifaceted, this is only in part a financial issue in Germany. It is also, and above all, a problem of inequality of opportunity in terms of education and lack of qualifications, which then makes it more difficult to access the labour market. The increased risk of poverty results above all from the fact that 10 per cent of young people leave school without obtaining any form of qualification; about 15 per cent of 20 to 29 year-olds have not completed any form of vocational training leading to a diploma (about 35 per cent in the case of young people of immigrant origin), and the fact that the poverty risk for people who have to raise children on their own is more than 35 per cent because of the difficulty of reconciling work and childcare.

257. Giving everyone the same opportunities for participation and development is, therefore, central to poverty prevention policy. Guaranteeing the essential minimum income to cover socio-cultural and basic needs is the absolute prerequisite for this and is secured, in Germany, by the minimum income systems, foremost among them the individual minimum income for job-seekers that has been in existence since 2005 (Book II of the Social Code) and social assistance (Book XII of the Social Code). But combating poverty and social exclusion involves more than compensating for economic inequalities. While purely passive compensation certainly guarantees material circumstances, long-term dependence on State assistance actually reinforces the very same risk of poverty that it was supposed to offset. And so the main challenges and strategies of the Federal Government to eliminate poverty and social exclusion in Germany may be summarized as follows: setting in place the political framework conditions to encourage participation, particularly for more growth and employment; the promotion and improvement of opportunities for participation; and reducing the risks of poverty, above all by providing better training opportunities, particularly for groups who are excluded and disadvantaged in that regard, namely migrants and the socially disadvantaged (childcare, full-time education, measures to help children and young people); better skills for the labour market through vocational training and measures to improve skills; life-long learning; better integration into the labour market, especially for lone parents, older workers, the long-term unemployed, migrants and persons with a disability; and securing a better balance between family and working life, particularly by expanding childcare and reforming the social protection systems.

(b) *Social assistance*

258. Where people's income and assets are inadequate, social assistance steps in to cover the minimum socio-cultural needs required to lead an acceptable life in society. Where people have to contend with problems such as a disability, dependence on care or other specific social difficulties, social assistance seeks to compensate for this, where necessary,

by providing the requisite benefits in order to enable those affected to participate in life in society with as few restrictions as possible. Entitlement to social assistance was the subject of comprehensive reform in 2003 and has been incorporated into the Social Code as Book XII. It entered into force on 1 January 2005 (with just a few exceptions concerning social assistance to Germans abroad, standard-rate settlement and the interinstitutional staff budget).

259. Solely persons under the age of 65 who are probably unfit to work only temporarily are entitled to current assistance to cover living costs. Anyone who is not capable of working at least three hours a day is deemed to be unfit for work. Persons aged 65 and above and those aged 18 and above, who are completely and permanently incapable of earning a living, receive the basic minimum income for the elderly or for persons incapable of earning a living.

260. The assistance is provided in the form of a very wide range of allowances. Assistance for subsistence and the basic minimum income for the elderly or those who are unfit to work covers the standard rate, as well as housing and heating costs, in addition to additional allowances for supplementary needs and one-off allowances in certain specific cases. There is also assistance in the event of illness, assistance for the integration of persons with a disability, assistance for long-term care, assistance to overcome serious social problems, assistance to ensure the upkeep of the household, assistance for the elderly, assistance for the blind, for funeral costs and, generally, assistance in other circumstances.

Article 12

[Right to health]

1. The physical and mental health of the population

261. The 2006 telephone health survey carried out by the Robert Koch Institute provides current data on the state of health of the individuals surveyed as they themselves perceive it. Some 75 per cent of women questioned and about 80 per cent of men stated that they were in "good" or "very good" health. Compared with earlier surveys, including the 1998 federal health survey and the 2003 telephone health survey, the percentage of people who considered that they were in "good" or "very good" health has increased overall.

Table

Percentage of people questioned living in private households who considered themselves to be in "good" or "very good" health

	<i>Women</i>	<i>Men</i>
1998 (18 to 79 years of age)	64.0 %	68.3 %
West	64.0 %	68.1 %
East	63.8 %	69.3 %
2003 (aged 18 and over)	69.3 %	75.9 %
2006 (aged 18 and over)	74.9 %	79.8 %
West	75.9 %	80.9 %
East	69.6 %	73.6 %

Sources: Robert Koch Institute - 1998 federal health survey and 2003 and 2006 telephone health surveys.

262. Represented by the Federal Ministry of Health, the Federal Republic of Germany regularly reports to the World Health Organization (WHO). A comprehensive presentation of the German health system, including a presentation of trends in the major indicators, may be found in the excellent report by the European Observatory on Health Systems and Policies entitled *Health Care Systems in Transition*, Germany. We would refer the Committee to this very detailed and accurate report.

2. Incorporating the WHO strategy into State policy on health

263. The Federal Government is familiar with the WHO strategy. It is the responsibility of the Federal Ministry of Health to ensure that this strategy, a major source of guidance, is respected in all health-related areas, while taking account of the specific national features of the German statutory sickness insurance scheme.

3. Health spending

264. Health spending in Germany is largely borne by the statutory sickness insurance scheme (57 per cent in 2005). The statutory sickness insurance scheme is a public resource with a broad degree of autonomy. About 90 per cent of the population are affiliated to it.

265. Health spending account for 10.2 per cent of gross national product in 1998, rising to 10.7 per cent in 2005. Detailed statistics concerning trends in spending on the German health system since the mid-1990s are set out in the table below (the figures being taken as percentages). The recent revisions of the national health system accounts have made it possible largely to eliminate the differences of definition between the OECD data and health spending as calculated by the German Federal Statistical Office.

266. It should also be noted that the definition of spending on health by the OECD and that of the Federal Statistical Office do not tally with the way functions are defined in the social budget.

nationale Gesundheitsausgabenrechnung (Statistisches Bundesamt)

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Gesamtgesundheitsausgaben	163 087	168 002	180 137	193 878	202 953	204 220	208 673	214 527	219 359	227 788	234 967	239 703
davon:												
öffentliche Haushalte	21 151	22 594	23 196	23 469	21 780	17 646	17 042	17 060	17 357	18 315	18 837	18 786
gesetzliche Krankenversicherung (GKV)	98 972	99 210	107 665	112 893	116 598	115 632	118 191	121 636	124 393	128 865	133 403	136 031
soziale Pflegeversicherung				4 918	10 012	13 955	14 656	15 216	15 638	15 895	16 357	16 499
gesetzliche Rentenversicherung	3 735	4 122	4 396	4 727	4 872	3 542	3 490	3 592	3 950	4 087	4 270	4 344
gesetzliche Unfallversicherung	2 923	3 230	3 404	3 523	3 544	3 614	3 657	3 756	3 795	3 850	3 977	4 097
private Krankenversicherung 1)	11 946	12 875	13 758	14 518	14 792	16 231	16 313	17 206	17 868	18 677	19 726	20 612
Arbeitgeber	6 969	7 372	7 678	8 377	8 493	8 790	8 824	9 095	9 203	9 621	9 892	9 923
private Haushalte/private Org. o.E.	17 391	18 599	20 042	21 452	22 863	24 809	26 501	26 967	27 154	28 478	28 505	29 409
Summe öffentliche Gesundheitsausgaben	126 781	129 156	138 661	149 530	156 806	154 389	157 036	161 260	165 133	171 012	176 844	179 757
Summe private Gesundheitsausgaben	36 306	38 846	41 478	44 347	46 148	49 830	51 638	53 268	54 225	56 776	58 123	59 944
Anteil GKV an Gesamtgesundheitsausgaben	0,61	0,59	0,60	0,58	0,57	0,57	0,57	0,57	0,57	0,57	0,57	0,57
Anteil öffentliche Ausgaben an Gesamtgesundheitsausgaben	0,78	0,77	0,77	0,77	0,77	0,76	0,75	0,75	0,75	0,75	0,75	0,75
Anteil private Ausgaben an Gesamtgesundheitsausgaben	0,22	0,23	0,23	0,23	0,23	0,24	0,25	0,25	0,25	0,25	0,25	0,25

1) Ab 1995 einschl. privater Pflege-Pflichtversicherung.

Die erste Stufe der Pflegeversicherung mit Leistungen für ambulante Pflege trat am 1. April 1995, die zweite Stufe mit Leistungen für die stationäre Pflege

am 1. Juli 1996 in Kraft.

OECD Health Data 2005	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Gesamtgesundheitsausgaben	159 705	164 476	176 608	190 275	199 297	200 534	204 911	210 684	215 432	223 689	230 592	235 324
Anteil Gesamtgesundheitsausgaben an Bruttoinlandsprodukt	9,9	9,9	10,2	10,6	10,9	10,7	10,6	10,6	10,6	10,8	10,9	11,1
Anteil öff. Gesundheitsausg. an Gesamtgesundheitsausg.		80,2	80,2	80,5	80,6	79,0	78,6	78,5	78,6	78,4	78,6	78,2
Anteil öff. Gesundheitsausgaben an Bruttoinlandsprodukt		8,0	8,2	8,5	8,8	8,5	8,3	8,4	8,3	8,5	8,6	8,6
Anteil öff. Gesundheitsausgaben an Gesamtstaatsausgabe		16,2	16,7	15,2	17,4	17,1	17,1	17,1	18,2	17,5	17,6	17,7

Anteilswerte sind als Prozentsätze angegeben

4. Data concerning the WHO indicators

(a) *Infant mortality rate*

267. Between 1990 and 2006, the infant mortality rate fell consistently in the Federal Republic of Germany. In 2006, the infant mortality rate was 3.9 neonatal deaths per 1,000 live births in the old Länder, and 3.3 per 1,000 live births in the new Länder (see table). In 1990, the rates were 7 and 7.4 respectively.

268. During the period of the report, the infant mortality rate was consistently higher among newly-born boys than girls.

Table

Infant mortality rate (neonatal deaths per 1,000 live births)

<i>Year</i>		<i>Total</i>	<i>Female</i>		<i>Male</i>	
1990	7.0	7.4	6.0	6.2	7.9	8.5
1991	6.7	7.9	6.0	6.3	7.5	9.4
1992	6.0	7.4	5.3	6.6	6.7	8.1
1993	5.8	6.5	5.0	6.2	6.5	6.7
1994	5.5	6.3	4.9	5.3	6.1	7.3
1995	5.3	5.5	4.6	5.0	5.9	6.0
1996	4.9	5.5	4.3	5.1	5.5	5.8
1997	4.9	4.9	4.3	4.1	5.4	5.7
1998	4.6	4.9	4.1	4.4	5.1	5.4
1999	4.6	4.2	4.1	3.7	5.0	4.7
2000	4.4	4.0	3.9	3.4	4.9	4.5
2001	4.4	3.6	3.8	3.5	5.0	3.6
2002	4.3	4.0	3.9	3.8	4.6	4.3
2003	4.3	3.7	3.8	3.2	4.8	4.2
2004	4.2	4.0	3.8	3.6	4.5	4.4
2005	4.0	3.6	3.5	2.9	4.4	4.2
2006	3.9	3.3	3.6	3.2	4.3	3.4

(b) *Population's access to clean water*

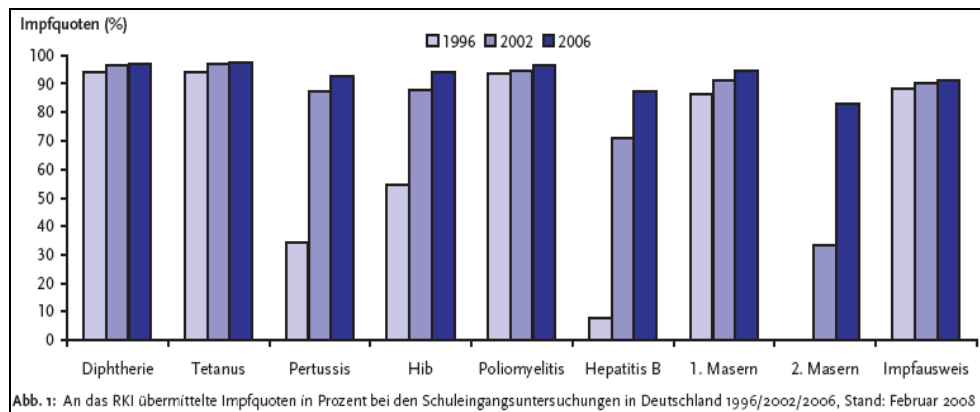
269. In the Federal Republic of Germany, the population's drinking water requirements are met in full by the central water supply systems managed by the water services or through individual supply (private wells). The quality of drinking water is constantly monitored by the authorities of the Länder and the water services. The access of the population of the Federal Republic of Germany to clean drinking water is thus guaranteed throughout the whole of the country.

(c) *Children vaccinated against diphtheria, whooping-cough, tetanus, measles, polio and tuberculosis (by town/ rural district and gender)*

270. The first graph records the vaccination rate of children on starting school in Germany, and is based on the statistics provided by to the Robert Koch Institute to the health offices of the Länder pursuant to article 34, paragraph 11, of the Act on Protection against Infections (*Infektionsschutzgesetz*).

271. The statistics produced from the medical checks carried out when children start school show that vaccination rates have risen consistently over the years. A comparison of the vaccination rates recorded during medical checks, on starting school, in 1996, 2002 and 2006 for children with a vaccination card, shows that the high rates of vaccination against diphtheria, polio and tetanus rose slightly or remained stable during the relevant period. The increased rate was particularly noteworthy in the case of vaccination against hepatitis B, type B *Haemophilus influenzae* and the causative agent of whooping-cough, and thereafter for vaccination against measles. In 2002, only 33.1 per cent of school-age children had been vaccinated twice against measles; in 2006, the rate was already 83.2 per cent.

272. The table provides a break-down of vaccination rates by Länder and provides specific percentage figures for the position at February 2008 (differentiating between the first and second vaccinations for measles, mumps and rubella). The breakdown by Länder also makes it possible to identify the realistic potential for improvement in the different Länder. It is not, however, possible to breakdown the figures by gender or town/rural district, as the figures have been rendered anonymous.



Bundesland	Anzahl untersuchter Kinder	davon Impfausweis vorgelegt (%)	Impfquoten (%)											
			Diphtherie	Tetanus	Per-tussis	Hib	Polio-myelitis	Hep. B	Masern 1.	Masern 2.	Mumps 1.	Mumps 2.	Röteln 1.	Röteln 2.
Baden-Württ.	104.046	92,1	98,1	98,7	92,3	93,4	96,3	82,3	93,7	78,7	93,5	78,6	92,8	77,9
Bayern	131.898	93,4	97,0	97,8	90,5	92,8	95,8	80,4	91,7	75,7	91,3	75,4	90,9	74,9
Berlin	27.400	91,9	96,1	96,4	93,1	93,9	97,5	89,9	93,8	83,6	93,3	83,2	93,3	83,1
Brandenburg	22.755	93,5	96,8	96,9	96,3	96,1	96,5	93,0	97,1	89,8	96,7	89,5	96,5	89,2
Bremen	5.571	86,9	98,3	98,6	91,0	93,0	96,1	88,0	94,6	76,9	93,9	76,1	91,0	72,1
Hamburg	11.711	91,7	95,2	95,9	93,0	91,6	94,7	83,9	93,9	84,0	93,1	83,4	92,6	82,6
Hessen	61.882	92,4	92,9	92,8	93,4	95,2	97,1	87,8	94,8	81,2	94,8	80,9	94,2	80,0
Mecklenb.-Vorp.	13.216	92,1	94,6	97,1	95,2	89,1	97,9	91,8	97,5	91,6	97,7	91,5	97,7	91,5
Niedersachsen	82.916	91,2	96,3	96,6	94,0	95,2	96,9	89,4	95,4	81,6	95,1	81,4	94,8	80,8
NRW	175.765	88,5	98,1	98,5	91,6	93,4	97,2	89,3	95,2	81,6	94,9	81,3	94,6	80,9
Rheinld.-Pfalz	41.723	91,4	97,1	97,1	94,7	94,7	96,4	91,2	94,9	80,8	94,7	80,7	94,3	80,3
Saarland	9.492	91,1	94,9	95,0	91,7	93,6	94,5	90,8	95,2	85,6	94,5	85,2	94,2	84,8
Sachsen	31.731	93,9	97,1	97,1	96,8	95,3	95,5	92,3	97,3	85,0	97,1	84,7	97,0	84,4
Sachsen-Anhalt	17.215	92,6	97,7	97,8	96,1	96,5	97,1	94,8	97,7	89,8	97,7	89,8	97,2	89,7
Schleswig-Holst.	28.747	89,8	98,1	98,6	91,7	93,3	96,8	87,9	94,7	83,6	94,5	83,3	94,2	82,9
Thüringen	18.164	94,6	99,0	99,0	94,9	95,5	97,9	91,7	97,4	88,3	97,4	88,2	97,3	88,1
Dtld. gesamt	784.232	91,4	97,0	97,4	92,7	93,9	96,6	87,2	94,5	83,2	94,3	82,9	93,8	82,4
Alte Bundesld.	681.151	91,1	96,9	97,4	92,2	93,8	96,6	86,3	94,1	80,1	93,9	79,9	93,4	79,3
Neue Bundesld.	103.081	93,5	97,1	97,6	95,9	95,0	96,7	92,7	97,4	88,5	97,3	88,4	97,1	88,2

Tab. 1: An das RKI übermittelte Impfquoten in Prozent der Kinder mit vorgelegtem Impfausweis bei den Schuleingangsuntersuchungen in Deutschland 2006 (n=716.875) nach Bundesländern. Für Sachsen wurden bei der Masern-Mumps-Röteln-Impfung die Daten aus den 2. Klassen verwendet. Für Sachsen-Anhalt wurden Daten von 4- bis 5-jährigen Kindern verwendet, die 2006 untersucht, jedoch erst 2007 eingeschult wurden. Stand: Februar 2008

Source: *Epidemiologisches Bulletin* (Epidemiological bulletin) 7/2008, Robert Koch Institute.

(d) *Life expectancy* (by town/rural district, socio-economic group and gender)

273. In Germany, average life expectancy has consistently risen since reunification, in both the old and the new Länder (see table). According to the mortality rate table for 2002/2004, it is 81.6 years for women and 75.9 years for men. Compared with the period before reunification (1986/88), the increase in the new Länder (including East Berlin) was 4.5 years for women and 3.7 years for men up until 1998/2000. Life expectancy after 65 increased between 1991/93 and 2002/04 by 1.8 years for women rising from 18.0 to 19.8 years and as much as 2 years for men, rising from 14.3 to 16.3 years. The differences between the old and new Länder have become smaller since reunification but remain more significant in the case of men than women.

(e) *Maternal mortality rate and the availability of properly qualified staff to care for pregnant women in childbirth*

274. According to the Robert Koch Institute, there are no data on maternal mortality broken down by town/rural district, socio-economic group and point of death (before or after giving birth). In addition, it was not possible to determine the maternal mortality rate by reference to the point of death (before or after giving birth) for the period covered [by the report].

275. Overall, the maternal mortality rate³ in the Federal Republic of Germany fell slightly between 1993 and 2004, with variations (see table). In 1993, the maternal mortality rate was 5.50; 11 years later, 5.24 deaths per 100,000 live births were the result of complications during pregnancy, childbirth or subsequently.

276. In Germany, all pregnant women have access to properly trained staff and are assisted by such staff during childbirth.

Table

Maternal mortality rate (number of maternal deaths resulting from complications during pregnancy, childbirth or subsequently, per 100,000 live births, ICD10: O00-O99)

<i>Year</i>	
1998	5.60
1999	4.80
2000	5.61
2001	3.68
2002	2.92
2003	4.24
2004	5.24

5. National health system

277. Germany has a very well organized health system, the main features of which have already been described in the information provided in relation to article 9.

278. Citizens are nonetheless responsible for their state of health which is largely a function of a healthy lifestyle. But health and attitudes to health also depend on social situation, income, level of education, unemployment, housing conditions and environmental factors. Disadvantaged groups among the population suffer more frequently from illnesses, pain, injuries and disabilities; they more frequently cite health-related obstacles to performing day-to-day activities and participating in socio-cultural life, and they have a higher mortality risk. Workers with health problems whose earnings capacity is reduced are in turn more likely to be made redundant; they remain unemployed for longer than average and have fewer opportunities of re-entering working life.

279. The statistics provided for 2006 by the German Socio-economic Panel show, for example, that only 39 per cent of individuals whose income was below the poverty risk threshold described their general state of health as very good or good, and were not restricted in their daily life because of their state of health, or suffered from a serious and recognized disability; in the higher income bracket, however, that figure was 53 per cent. The mortality risk for women and men at risk of poverty was 2.4 per cent and 2.7 per cent higher respectively than for individuals in the higher income brackets. Compared with life expectancy at birth, the result is a difference of 8.4 years for women (85.3 years compared with 76.9 years) and 10.8 years for men (80.9 years compared with 70.1 years).

280. A higher level of education also brings with it better health, as people's behaviour is more conducive to good health, and the risks of illness and death decrease in consequence. The results of the health survey by the Robert Koch Institute reveal in this regard, for 2006,

³ The number of maternal deaths resulting from complications during pregnancy, childbirth or subsequently, per 100,000 live births, ICD10: O00-O99.

that women and men with a general school leaving certificate smoke about twice as often as those who have obtained their advanced level certificate, that they smoke more, are more inclined not to engage in sports and are overweight.

281. That correlation between social situation and state of health is already evident among children and young people. The Robert Koch Institute's health survey of children and young people shows that the majority of children and young people in Germany grow up in good health. Where health risks exist, they largely affect children and young people from socially disadvantaged families (overweight, emotional and behavioural disorders, less well developed motor abilities because of a lack of physical sporting activities, and eating disorders, poor nutrition, smoking and passive smoking, as well as a poor rate of participation in early detection examinations for children).

282. In the view of the Federal Government, improving preventive health measures and encouraging a healthy lifestyle are the best ways of sustainably improving the health of the population, and particularly of disadvantaged groups. The Government is, therefore, focusing on extending the measures that take the participative approach advocated by the WHO.

283. The Federal Government is therefore planning to draw up a framework to improve the promotion of a healthy lifestyle and preventive health measures. The measures to promote a healthy lifestyle and preventive health measures must be organized in such a way as make provision accessible to all population groups.

284. In 2000, the sickness insurance funds had already improved the statutory framework conditions for primary prevention. Since 2004, they have been authorized to give insured persons a bonus if they adopt a healthy lifestyle. This system also enables employers and insured persons taking part in it to obtain a bonus by adopting measures to promote health at work.

285. In order to warn people of health risks, the Federal Centre for Health Education (*Bundeszentrale für gesundheitliche Aufklärung*, BZgA) has produced a wide range of pamphlets and publicity material and set up exhibitions, particularly for children and young people. Since 1975, it has also drawn up and published teaching materials on the basic issues of health education and promoting health in schools. The Federal Centre for Health Education's teaching materials are an integral part of the information campaigns on AIDS, the prevention of drug-addiction, nutrition, exercise and sexual education. The Federal Centre for Health Education attaches great importance to equality of opportunity in its work. It intends making prevention in old age a new priority in its work.

286. In 2005, Federal Health Minister Ulla Schmidt launched a national campaign on "exercising and health" with the slogan "3,000 more steps a day". The Federal Health Minister's aim is to increase daily exercise levels and promote healthy lifestyles.

287. The Federal Government's Health Report (*Gesundheitsberichterstattung*, GBE) is designed to provide a realistic picture of the population's state of health, its attitude to health, the spread of risk factors, the availability and take-up of benefits, as well as the costs and resources of the health system. That inventory will shape future policy.

6. Data on specific health sectors

(a) Infectious diseases

288. The Act on Protection against Infections (*Infektionsschutzgesetz*, IfSG) entered into force in January 2001. It has comprehensively modernized the methods and techniques for monitoring and controlling infectious diseases.

289. There have been no cases of polio in Germany during the period covered by this report. The introduction of the compulsory declaration of cases of measles in 2001 has facilitated a better understanding of the epidemiology of measles in Germany, and there has been a significant fall in the number of cases of measles since 2002.

290. The incidence of reported cases of tuberculosis also fell during the period of the report and is currently fewer than seven new cases per 100,000 inhabitants annually.

291. In 2007, Germany transposed into domestic law the International Health Regulations adopted in May 2005.

(b) *HIV/AIDS*

292. Charting the HIV/AIDS epidemic since 1999

293. There was little variation in the number of new cases of AIDS diagnosed in Germany between 1999 and 2002, at around 1,700 cases a year, and there has been a consistent rise since 2003. In 2006, 2,611 cases were recorded. That increase is largely the result of increased use of testing, better reporting and better identification of new diagnoses, as well as an increase in the number of persons suffering from HIV/AIDS who are living longer because of the improvements in treatment.

294. In Germany, the main group affected by HIV/AIDS consists of men with homosexual contacts (61 per cent), followed by persons infected as a result of heterosexual transmission (17 per cent). People from countries classified as high-prevalence regions by WHO/UNAIDS (>1 per cent of the adult population infected with HIV) are in third position at 14 per cent, while intravenous drug-users account for some 7 per cent.

295. The general level of knowledge about HIV/AIDS tends to be lower among male and female migrants and persons from countries with a high prevalence of AIDS than among the German population. HIV/AIDS is often more stigmatized among those groups. Cultural and language barriers also make contact more difficult, and that is why new concepts are currently being applied.

296. The number of persons infected by AIDS and the number of deaths among HIV-positive individuals fell markedly following the introduction, in the mid-1990s, of highly active combined antiretroviral treatments. The number of deaths (including the dark number) has fallen from a peak of 2,600 a year in the 1990s to a current estimate of 750 a year, and the number of cases of AIDS has begun gradually to fall from 2,500 in 1994 to about 650 in 2005. Like all sick individuals who present a health risk, workers suffering from HIV or who have contracted AIDS are entitled to the extensive statutory social benefits.

297. The information campaign "*Gib AIDS keine Chance*" ("Don't give AIDS a chance") launched by the Federal Centre for Health Education, at the request of the Federal Ministry of Health, plays a major role in combating HIV/AIDS. The campaign is essentially based on three pillars: a media campaign, a confidential telephone helpline and word of mouth. It is addressed both to the population generally and to specific target groups.

298. Between 1988 and 2008, the Federal Ministry of Health devoted more than €405 million to AIDS-prevention. That figure includes the promotion of research and development projects, information and prevention measures, as well as the resources allocated to combating HIV/AIDS in cooperation with the countries of eastern European.

299. The federal funds allocated to the Federal Centre for Health Education for its work in providing information have increased in recent years to €12.2 million a year.

300. The Federal Government's information campaign and the efforts made by the Länder, municipalities and associations have borne fruit, resulting, in particular, in better knowledge about AIDS.

301. The most important institutions are the public health offices and the 120 AIDS patients' centres (*AIDS-Hilfen*) because of the advice and assistance they are able to provide and the experience they have.

302. It must be emphasized that the campaign against AIDS, based on information, advice and assistance, is conducted in a spirit of solidarity and cooperation with the individuals concerned and their associations. This is unique in the history of medicine. In relation to no other illness are there such well-established arrangements to provide information, advice and assistance.

7. International cooperation

303. The Federal Republic of Germany naturally cooperates closely with the WHO (see questions 1 and 2), and also with all of the other international organizations involved in the health sector - UNAIDS, for example, the Council of Europe and the International Agency for Research on Cancer in Lyon - as well as with all of the United Nations programmes related to health. The general objective of cooperation with these bodies is (among other things) to take advantage of the international expertise they provide to benefit the national health system.

8. Conditions of care in long-term care centres (paras. 24 and 42)

304. During the period covered by this report, the Federal Government set in place two new legislative procedures to establish a permanent framework for preventing the failures of care and untenable situations in long-term care centres by providing internal and external quality assurance and ensuring centres are adequately staffed.

305. The Act on the Care of the Elderly (*Altenpflegegesetz*) was also amended on 1 August 2003. The aim of the Act is to organize the training of the professionals needed to care for the elderly in such a way as to provide professional training that is geared to practice and standardized throughout Germany, to train more professionals in care for the elderly and, by raising the profession's profile, to professionalize the service and ensure that society gives it the recognition it deserves.

306. In addition, since January 2006, the long-term care insurance funds (*Pflegekassen*) have been applying quality-control guidelines to monitor the services provided in long-term care centres, as well as the quality of those services. Not only does that procedure secure the necessary transparency in relation to quality controls and the advice, it also facilitates the implementation of quality controls by all interested parties.

307. Quality assurance is also an important element in the legislation governing the long-term care centres. Other quality standards, in the form of minimum requirements imposed on the centres, have been included in the implementing regulations of the Act on Homes for the Elderly (*Heimgesetz*) (regulation on minimum building standards for homes for the elderly, regulation on staffing for homes for the elderly, regulation on the involvement of residents' in running homes for the elderly, regulation on the obligations of individuals or bodies managing such establishments). Following the reform of the federal system, the law governing long-term care centres has become a responsibility of the Länder, pursuant to article 74, paragraph 1, subparagraph 7, of the Basic Law.

308. The Federal Government is actively working to improve the situation of persons in need of care by encouraging a range of pilot projects and initiatives. One example is the “care round table” that was set up in autumn 2003 with the aim of developing practical approaches to improving care and disseminating those practices in the short term.

309. The Medical Service of the national associations of health insurance providers (MDS) draws up a report on developments in the quality of care based on reports provided, every three years, by the medical services of the sickness insurance providers and its own information and experience.

310. The Federal Ministry of Health meantime is required by law to provide the federal legislative bodies, every three years, with a report on developments in long-term care insurance, the standard of care provided in the Federal Republic of Germany and the implementation of the recommendations and proposals of the commission responsible for matters linked to long-term care insurance. The first such report was presented in 1997.

Articles 13 and 14

[Right to education and to compulsory, free-of-charge primary education]

Tuition fees /Education in human rights (paras. 29 and 47)

311. Germany has not taken up the Committee’s recommendation. It would, however, clarify in that connection that the tuition fees that have been introduced are at a socially acceptable level and that there are loans to enable students to pay them on completion of their studies. The tuition fees strengthen the position of students within higher education establishments and require those establishments to improve the quality of the courses they offer. The Länder are currently seeking to set in place a monitoring system to make it possible to assess the impact of introducing tuition fees on attitudes to study and the international draw of establishments. It is still too early to determine whether, as opponents of tuition fees fear, their introduction will really cause a drop in the number of students from the more disadvantaged social classes.

312. Education in human rights is enshrined in the legislation on education of the Länder, and the Länder regard education that respects the dignity of human beings and teaches the values enshrined in the constitution of the Federal Republic of Germany, the Basic Law, as a major responsibility of schools. That responsibility must not be confined to passing on knowledge but must also enable young people to evolve an understanding of Germany’s liberal and democratic order, a sense of respect, tolerance and respect for other cultures, as well as a profound sense of social responsibility. Taking that approach, schools enable everyone to develop their own personality and endeavour, as far as they can, to reduce as far as possible inequality of opportunity and to compensate for disability. Every human being is entitled to teaching and education that is appropriate to him or her, regardless of origin or social class. Moreover, the Länder recognize the natural rights of parents to bring up their children and involve them in the work they do, by making them the second pillar of teaching activity.

313. The course subjects to which special importance may and must be attached to the issues listed above and the total number of hours for which they are to be timetabled weekly during the academic year are determined in the teaching hour quotas of the Länder. Religion, ethics, philosophy, history and civics are the most suitable, but these issues may also be covered in lessons on economics and politics, geography and German. While courses in religion, ethics and politics may make it possible to discuss values, standards and the dignity of human beings, history lessons often deal with totalitarian systems; concepts such as slavery, oppression and racial hatred are contrasted with the values of the Enlightenment, freedom and equality. Social studies and civics meantime may provide an opportunity of explaining the great democratic ideals, as we put them into effect, such as

the holding of free and equal elections, and of tackling issues like social inequalities or terrorism. Economics-related subjects provide an opportunity of explaining how the social market economy works, or of explaining the concept of globalization and discussing the issues raised by this development which has an impact everywhere, while German lessons may be devoted to analysing and discussing such issues with the help of the relevant literary texts. The developing countries, cultural values of other societies and the (unequal) distribution of the Earth's riches and raw materials are all appropriate subjects in geography lessons.

314. There are, consequently, many issues appropriate to education in human rights in the various subject-areas. In most instances, however, it is for schools and/or the team of teachers for a particular subject within schools to choose the platform that will be used to provide that teaching. In principle, this is an issue that can be dealt with in all sections, provided teaching content and methods are tailored to the age and maturity of pupils, as well as the level and degree of difficulty of the relevant section

315. Circulars and other publications provide schools and, within schools, teams of teachers for the same subject, with teaching materials about human rights. Schools and teaching teams are also able to dip into a wide selection of appropriate textbooks.

316. To ensure that education in human rights is also effective, the majority of the Länder take specific measures appropriate to the context, downstream, in the form of further training of teachers, symposia and congresses for teachers of the relevant subjects, but also upstream, when teachers are being trained. In the course of teacher training, education in human rights is regarded as a cross-cutting responsibility that merits special attention. At institutional level, targeted measures accompany the review of the framework teaching programmes and the content to be incorporated, as well as the reform of the legislation on teaching. In addition, the Länder generally endeavour to assist schools and teachers by regularly publishing information bulletins for them and posting appropriate [job] offers on the Internet. Schools meantime have the opportunity to demonstrate their understanding of interdependence within society by implementing projects, project-days or weeks, or by setting up partnerships with schools and committing to developing countries. Other possible options include traineeships on this subject, sponsorship and support for institutions working in the field of development assistance, such as, for example, UNESCO's associated schools. In that connection, schools are able to establish contacts with non-academic partners outside the arrangements for cooperation with the institutions of the Länder. Such partners may, for example, include UNICEF, UNESCO, and the Federal Centre for Political Education, as well as centres for the Länder, but also companies, religious organizations, universities and social institutions generally.

317. The education system has its own role and responsibility in relation to education in human rights. Consequently, the Standing Conference of the Ministers of Education and Cultural Affairs of the Länder (KMK) has dealt with this issue on a number of occasions, producing, among other things, agreements and declarations, in particular, in March of this year, the "Declaration on the implementation of the United Nations Convention on the Rights of the Child". Those agreements and declarations provide the basis for the regulations and decrees to that effect adopted by the Länder.

318. We have no information on the extent of education in human rights in Germany's higher education establishments. Teaching content is a matter for those establishments which enjoy autonomy in that respect.

1. Primary education

319. All children are given primary education.

320. Primary education is free of charge, but teaching materials are no longer free of charge in all of the Länder. However, parents are accorded at least partial exemption from the costs of purchasing teaching materials. Textbooks are generally provided on loan, and while parents may sometimes be required to make a contribution, their social situation is taken into account.

321. All of the Länder have regulations on transporting children between home and school. They may provide for the reimbursement of travel costs, generally for public transport, or provide transport services in certain conditions. The aim is to guarantee equality of opportunity between social classes, between towns and rural areas and between children with and without a disability.

322. The schools of the Länder of the Federal Republic of Germany take in many children and young people of immigrant origin. Theoretically, the children of families of immigrant origin have the same rights and obligations as children from other families. However, their particular linguistic, socio-economic and cultural circumstances means that these children and young people find it a lot more difficult to achieve results comparable to those obtained by children and young people who are not of immigrant origin.

323. Schools employ a variety of measures to promote the integration of children and young people from immigrant backgrounds to help them to learn German and gain German diplomas. They also benefit from the support of special teams of teachers of German as a second language and teachers who are themselves of immigrant origin. Different measures are set in place, varying in form from one Land to another, and designed to secure their integration. For instance:

- Preparatory classes for foreign pupils to enable them to learn German.
- Classes given in a foreign language in which teaching in the main subjects is combined with intensive teaching of German.
- Bilingual classes (in which both the pupils' mother tongue and German are used as teaching languages).
- Intensive courses in German as a foreign language.
- Additional courses outside school hours designed for foreign students who are already taking courses in German to improve their standard of German.

324. Additional teaching in the mother tongue, with teaching content relating to the country of origin, is also on offer for a maximum of five hours per week to ensure that foreign students do not lose their cultural identity.

2. Secondary education

325. The second report, and more particularly the section of the implementation of articles 13 to 15 of the Covenant, provides a detailed account of the measures taken to enable children to attend school - including, therefore, secondary education establishments - whatever their financial situation. We will confine ourselves here to emphasizing once again that these schools are free of charge and that there is entitlement to financial support in certain conditions.

326. In the general secondary education system, measures have been taken to make it possible to move, without loss of time, from one type of school to another and thus avoid poor options (the establishment of the so-called transition classes, for example, that allow pupils to defer their choice of type of school until the end of class 6). Attendance at full-time vocational training establishments is, in principle, open to all, provided they meet the entry requirements (compulsory school-age leaving certificate from a (*Hauptschule*) or general secondary school (*Realschule*), work experience where appropriate).

327. Encouraging the transition from school to working life of second and third generation migrants is one of the major integration policy objectives. The Federal Employment Agency offers young foreigners, in addition to its normal services, vocational guidance and guidance on preparing for working life. Those measures also make it possible to catch up on the knowledge needed to obtain diplomas (such as, for instance, the compulsory school-leaving certificate). We would refer here to the information provided in relation to article 6.

328. Along with general schooling, vocational education is the central tool enabling foreign students to be integrated into society, initially by becoming integrated into working life. Foreign students are over-represented in schools in which compulsory education ends (42 per cent compared with 18 per cent of German students) and leave these schools without qualifications far more frequently (18.1 per cent) than German students (7.4 per cent). The vocational training rate fell from 31 per cent in 1994 to 25 per cent in 2004. The proportion of students from schools for pupils of compulsory school age (including foreigners) in the dual track vocational training system is falling, whereas the proportion of students holding diplomas from general education colleges and, above all, the school-leaving certificate qualifying for university entry (*Abitur*) is rising.

3. Higher education

329. Training is essential to every young person's personal development and to enable them to enjoy a successful working life. Higher education establishments must be open to all social classes.

330. Access to higher education establishments in Germany is open to anyone with the requisite qualifications, provided there are sufficient places available. All Germans may pursue the higher education course of their choice, provided they have the necessary qualifications. The qualification required is, basically, a secondary school diploma qualifying students for higher education. Individuals who have obtained a qualification through vocational training may also qualify in a different way that will be determined more specifically in the legislation of the Länder. Nationals of a Member State of the European Union are treated in the same way as Germans, if they have the language skills they need to be able to pursue their chosen course of study. Similar provisions have been adopted in the Länder in relation to citizens of non-member countries of the European Union.

331. Foreigners wishing to take a course in higher education must be able to prove that the education they have undergone is similar to that of German applicants on the basis of a general or technical secondary education certificate qualifying them for higher education. If they cannot, they must sit an entrance examination to assess their standard.

332. The development of the education system in the Länder of the Federal Republic of Germany has made it possible to increase from 8 per cent in 1965 to about 41.6 per cent in 2005 the percentage of students obtaining a secondary general school certificate qualifying them for higher education. The vocational stream paving the way to the higher technical institutes plays a major role here. The qualification for entry to the higher technical institutes (*Fachhochschule*) is generally obtained on completion of 12 years' study and a diploma awarded by a senior technical school (*Fachhochschulreife*). Currently, almost half of students beginning their studies in a higher technical institute hold a secondary general school qualification that also entitles them to pursue university studies. Individuals who hold diplomas from the higher technical institutes may continue their studies in universities or equivalent higher education establishments.

333. All applicants who so wish may, in principle, also be permitted to pursue higher education courses in public establishments, if they have the necessary qualifications. Only some subjects for which demand is particularly high are subject to restrictions at national or local level.

334. The average obtained by the applicant in his or her upper secondary general school-leaving examinations and the waiting time between the secondary school leaving examination and submission of an application to the higher education establishment are the main selection criteria in both national and local selection procedures. Additional criteria (tests and interviews) are used for medicine. If places for the subject being applied for are allocated centrally, foreign applicants from a European Union Member State must submit their applications to the Central office for the allocation of places (*Zentralstelle für die Vergabe von Studienplätzen, ZVS*) in the same way as German students.

335. Maintenance costs are the main costs of higher education in Germany. Tuition fees are almost non-existent or very low viewed from an international perspective. Since Germany is a federal State, it is for the Länder to decide on the establishment of tuition fees. The guarantee of an initial course free of charge, introduced under a federal act in 2002, was held to be anti-constitutional by the Federal Constitutional Court, on 26 January 2005. The Court has, however, emphasized the obligation to guarantee equality of opportunity within the educational system, and that obligation is incumbent upon all of the Länder in accordance with the principle of the social State.

336. All State higher education establishments charge every student about €50 by way of administrative fees. Most of the Länder now also charge tuition fees of €500 per semester for long-term students and students taking a second course. Some Länder (Baden-Württemberg, Lower Saxony, Bavaria, Hamburg and North-Rhine Westphalia) are considering the introduction of general tuition fees of a maximum of €500 per semester, probably starting in 2007. Those Länder are, however, providing for exemptions for students in need and students with children of their own or several siblings. The introduction of tuition fees is simultaneously accompanied by the award of preferential-rate loans making it possible to pay the fees, with all students being entitled to such loans without means-testing. The loan is repaid on completion of studies, and repayment does not commence until annual income exceeds a specific threshold.

337. In order to improve equality of opportunity in access to higher education in Germany still further, the Federal Government has comprehensively reorganized the system of training assistance designed to fund maintenance costs when studying, by giving it a broader capital base. The massive increase in total spending on training assistance (Federal Training Assistance Act, BAföG) resulted, as early as 2001 and 2002, in a significant rise in the number of beneficiaries. Whereas, in 1998, there were still only 341,000 beneficiaries, by 2004, the number had already risen to 532,000. That measure made it possible to move a little closer to the objective of equality of opportunity in education, by enabling young people from families on low incomes to access higher education. Between 2000 and 2003, the proportion of young people from families with low levels of education (secondary general school-leaving examination) pursuing higher-education courses increased by 5 per cent to 21 per cent.

4. Education specifically for adults

338. It goes without saying that, with a very few exceptions, school attendance is compulsory in Germany. Nonetheless, for various reasons, there are some people who lack an adequate level of basic knowledge. They are offered special courses as part of adult education provision. The courses are held in adult education centres (*Volkshochschule*) and are encouraged by both the governments of the Länder and the Federal Government.

339. The Federal Government supports the many measures taken by the Länder to improve the quality of day nurseries by means of pilot projects, quality-assessment measures, consultations with significant partners, new ideas, expert reports, or, indeed, the report on young people and children that is regularly drawn up by a committee of experts. Close cooperation with parents is needed if encouraging the attendance of children - particularly children of immigrant origin - at day nurseries is to be successful. The aim is to organize the process of child-raising on the basis of greater cooperation with parents and to give parents support to enable them to continue this within the family. This is primarily a role for educators, but institutions advising and educating parents also have a part to play. Nursery schools can also fulfil an important role in relation to integration.

340. The Federal Government also supports the Länder through the programme of investment called "Education and care for the future" (*Zukunft Bildung und Betreuung*, IZBB); between 2003 and 2008, €4 billion is being spent on building and fitting out schools open throughout the day to meet need. Between 2003 and 2005, the IZBB created almost 5,000 new day places. The aim of encouraging schools to remain open all day in Germany is to improve the quality of learning, by encouraging children individually and at an early stage, but also to break the link between social origin and academic success by establishing a new culture of learning and teaching and devoting more time to learning together.

341. The importance the public attaches to day-long learning, education and care has clearly increased as a result of the initiatives of the Länder and the Federal State. The number of full-day places on offer and the number of pupils applying for them are clearly rising for all types of schools and all of the Länder. An average of 23 per cent of school administrations offer full-day places - a percentage that varies according to the Länder, with the highest figures coming from the new Länder where the infrastructure already existed (Saxony: 79 per cent; Thuringia: 73 per cent; Saarland: 39 per cent; Berlin: 38 per cent; Hamburg: 27 per cent; Mecklenburg-Vorpommern: 26 per cent; Brandenburg: 25 per cent; Baden-Württemberg: 12 per cent; Lower Saxony, Schleswig-Holstein: 11 per cent). In 2004, 12.5 per cent of pupils used such places up to the lower secondary level (compared with 9.8 per cent in 2002). The level of take-up also varies according to the Länder (Thuringia: 29 per cent; Berlin: 23 per cent; Saxony: 22 per cent; Rhineland-Palatinate, Baden-Württemberg: 7 per cent; Saarland: 5 per cent; Bavaria: 2 per cent).

342. The objective continues to be to establish a modern infrastructure to keep schools open all day, that is to say a supply of places tailored to needs in all regions and which:

- (a) improves the quality of education for all children and young people
- (b) encourages all children and young people, whatever their social origin, to become better educated and qualified, and
- (c) helps families to achieve a balance between family and working life by reducing the risks of poverty.

5. Literacy/Participation in basic education /Adult education and continuous training /Failure and success rates at all educational levels

343. In Germany, illiteracy barely exists except by way of "secondary" illiteracy (significant gaps in reading and writing skills despite having attended school)). In contrast, "primary" illiteracy due to a lack of schooling is negligible.

344. We do not have any statistical information or scientifically-based studies on the extent of illiteracy. As far as we know, it is a problem for every other country also.

345. It is impossible to draw up statistics without a clear definition of the term “illiterate”, that is to say without precise criteria regarding the linguistic qualifications and skills that distinguish between a person who is literate and one who is not. However, there is, as yet, no definition of “functionally illiterate” that is common to all States, and, consequently, there are no statistics. It is all the more difficult to arrive at such a definition because the minimum communication skills people need vary depending on a country’s economic and social development. Therefore, international comparisons can be made only subject to reservations. Moreover, (minimum) written language skills are constantly changing, and their definition would have, as a result, constantly to be updated.

346. Three groups of adults are perceived as being in need of special encouragement:

(a) *Adults of a certain age with an inadequate basic education*

347. These are often individuals who attended a general school a long time ago (and often left school without qualification) and lack the reading and writing skills needed for daily life and the world of work. In their working lives, they have very often performed only simple tasks requiring no reading, writing or mathematical skills - subjects that were neglected and in which they made no progress.

(b) *Young people leaving school without qualifications*

348. Currently, about 1.3 million young people between the ages of 20 and 29 have failed to obtain a vocational training qualification (that is 14.9 per cent of the relevant resident population). Young people who are poorly qualified or entirely without qualifications are decreasingly less likely to find work on the labour market. They account for 38.9 per cent of the unemployed, and actually for 47.9 per cent of the unemployed under the age of 25. The statistics supplied by the Federal Statistical Office are another source of concern: every year, some 85,000 young people leave a general secondary school without a qualification equivalent to the compulsory school-leaving certificate. For the 2003/2004 academic year, 8.9 per cent of students failed to obtain the compulsory school-leaving certificate (7.6 per cent of German students and 19.2 per cent of foreign students). Differing socio-demographic factors also result in regional differences.

(c) *Migrants*

349. There are currently some 7.3 million foreigners living in Germany. About 3 million immigrants of German origin have emigrated to Germany, with the majority having German nationality. In Germany, about 15 per cent of the unemployed are foreign, and they account for 30 per cent of the long-term unemployed. In 2004, 15,300 foreign youngsters left school without the general secondary school qualification, in many cases, a failure attributable to an inadequate knowledge of German.

350. The PISA (Programme for International Student Assessment) study has revealed a significant link between academic performance and social origin in Germany. It concluded, among other things, that the children of immigrants account for about half of the “at-risk” group who fail to acquire sufficient knowledge at school to complete some form of vocational training; a total of 22 per cent of young people aged 15 are affected.

351. These “target groups” are not compartmentalized, and there is some movement between them. But, for practical teaching purposes, this system of differentiating by categories has proved its worth thus far and made it possible to develop different teaching methods that are capable of being used in combination, and should be used in that way where necessary.

352. Despite the intensive work on literacy done, in particular, in the adult education centres that reach between 20,000 and 30,000 people every year, the total estimate is not decreasing significantly. The majority of these educationally disadvantaged individuals remain in the at-risk group, even after having successfully attended courses; the lack of a school qualification reduces their chances of finding training and a job, and therefore makes them particularly vulnerable to unemployment. The basic qualifications needed to obtain a vocational training qualification go far beyond just learning to read and write.

353. It is the responsibility of the Länder and the local authorities to ensure that schools take steps to prevent illiteracy and measures to encourage adult literacy. The Basic Law does not accord the Federal State any powers in that regard, so that it bears no financial responsibility.

(d) *Those taking part in training measures*

354. Breakdown of those taking part in training measures by gender and nationality (Germans/foreigners) (data available for schools and vocational training only).

In 2004, the situation in educational establishments was as follows:

Table
Spending on education (basic funds) from public budgets (including measures to benefit young people and day nurseries)
- As a percentage of the total budget (direct expenditure) (1975-2004)

Year	<i>Education (including measures to benefit young people, day nurseries)</i> <i>OF 11-15 (without 118,138), 261, 264, 271, 274 (VÖ 10 0 1, 19 T 0)</i>				<i>Measures to benefit young people, day nurseries</i> <i>F 261, 264, 271, 274 (VÖ 19 T 0)</i>				<i>Education (not including measures to benefit young people, day nurseries)</i> <i>OF 11-15 (without 118, 138) (VÖ 10 0 1)</i>			
	<i>Federal Government</i>	<i>Länder</i>	<i>Municipalities/ intermunicipal bodies, intermunicipal unions</i>	<i>Total</i>	<i>Federal Government</i>	<i>Länder</i>	<i>Municipalities/ intermunicipal bodies, intermunicipal unions</i>	<i>Total</i>	<i>Federal Government</i>	<i>Länder</i>	<i>Municipalities/ intermunicipal bodies, intermunicipal unions</i>	<i>Total</i>
1975	3.51	36.18	10.96	16.37	0.09	1.75	2.32	1.38	3.42	34.42	8.63	14.99
1980	3.05	35.17	9.23	15.57	0.10	1.52	1.77	1.14	2.95	33.65	7.46	14.43
1985	2.14	33.02	7.99	14.11	0.09	1.40	1.95	1.13	2.05	31.62	6.03	12.98
1990	2.01	31.33	7.78	13.48	0.12	1.50	2.34	1.33	1.89	29.83	5.43	12.15
1995	1.84	31.55	8.67	13.95	0.09	2.54	3.05	1.91	1.75	29.01	5.63	12.94
1998	1.78	32.81	10.47	15.55	0.09	2.59	3.86	2.14	1.69	30.22	6.60	14.17
1999	1.86	33.14	10.59	15.67	0.13	2.66	3.95	2.20	1.72	30.48	6.64	14.01
2000	1.82	33.00	10.65	15.81	0.14	2.44	4.03	2.18	1.68	30.55	6.62	14.05
2001	2.12	32.50	10.99	16.18	0.09	2.37	4.12	2.21	2.02	30.12	6.87	13.97
2002	2.29	34.10	11.31	16.92	0.09	2.30	4.44	2.29	2.20	31.80	6.86	14.64
2003	2.74	38.11	11.34	18.52	0.11	2.60	4.45	2.50	2.64	35.51	6.89	16.02
2003	2.95	37.53	11.35	18.50	0.11	2.54	4.45	2.49	2.83	34.99	6.90	16.00
2004	3.23	38.01	11.36	18.51	0.10	2.66	4.44	2.49	3.13	35.35	6.91	16.01
1975	3.51	36.18	10.96	16.37	0.09	1.75	2.32	1.38	3.42	34.42	8.63	14.99

Source: Financial report on education by the Commission of the Federal Government and the Länder for educational planning and the promotion of research (BLK) 2003/2004 - Extract from table 2.6.

Distribution of students by school type and gender in 2004

<i>School type</i>	<i>Students</i>			<i>Foreign students</i>		
	<i>Total</i>	<i>Boys</i>	<i>Girls</i>	<i>Total</i>	<i>Boys</i>	<i>Girls</i>
Pre-school classes	18 610	9 632	8 978	4 340	2 228	2 112
Nursery schools	29 396	19 202	10 194	6 961	4 067	2 894
Primary schools	3 149 546	1 602 979	1 546 567	361 419	184 130	177 289
Orientation classes regardless of school type	110 801	57 440	53 361	18 216	9 337	8 879
Schools at which compulsory education ends	1 084 300	610 626	473 674	203 092	109 657	93 435
Schools offering a variety of courses of study	379 468	203 706	175 762	11 864	6 277	5 587
General secondary schools	1 351 452	671 042	680 410	97 868	47 224	50 644
Grammar (pre-university) schools	2 404 043	1 107 185	1 296 858	98 371	44 934	53 437
Integrated comprehensive schools	537 920	273 689	264 231	70 463	34 643	35 820
Private Waldorf schools	75 307	36 284	39 023	1 575	721	854
Specialist schools	423 771	267 716	156 055	67 421	40 759	26 662
Evening courses - Schools at which compulsory education ends	1 298	665	633	501	268	233
Evening courses - General secondary schools	20 765	10 956	9 809	5 471	2 826	2 645
Evening courses - Grammar (pre-university) schools	20 503	9 647	10 856	2 755	1 299	1 456
Adult education	17 674	9 030	8 644	997	521	476
Total	9 624 854	4 889 799	4 735 055	951 314	488 891	462 423

In 2004, the number of persons attending training courses was as follows:

Total number of persons attending training courses (Germans and foreigners)	1 564 064
Men	937 064
Women	627 000
Total number of foreigners attending training courses	72 051
Men	40 047
Women	32 004

(e) *Social benefits in education*

355. The Federal Training Assistance Act (*Bundesausbildungsförderungsgesetz*) was comprehensively revised at 1 April 2001 and now provides an effective system of social benefits that make it possible to guarantee, on a sustainable basis, financial equality of opportunity for the education of individuals from disadvantaged backgrounds.

(f) *Teaching language*

356. Unlike government and the justice system, the education sector is not subject to legal provisions concerning the language to be used. In general schools, vocational training establishments and higher education establishments, German is, in principle, the teaching language. The exceptions at school level include some private schools, all bilingual schools and classes, as well as mother-tongue teaching and supplementary mother-tongue teaching for pupils who have not yet properly mastered German.

357. Children from the Danish minority in Schleswig-Holstein can attend private schools that provide an education equivalent to the education provided in State schools (*Ersatzschulen*) instead of the State general schools, so long as their teaching and educational objectives are basically the same as those in the types of school for which the legislation governing the education system in Schleswig-Holstein provides. In those schools, lessons are given in Danish, with German generally being compulsory from class 2. It is for parents to decide whether or not to enrol their children in the Danish minority schools. Those responsible for bringing up the child have merely to present, at the State primary school at their place of residence, written justification for enrolling the child in a Danish minority school, and the child will then be granted exemption from attending the State school.

358. Children of the Sorbian minority living in the Sorbian regions of Brandenburg and Saxony are taught, in both Sorbian schools and other schools, in Sorbian as mother tongue, second language or as a foreign language. Here again, it for the parents to decide whether or not to send their children to the Sorbian schools where Sorbian is a compulsory subject and to some extent the teaching language.

359. The Romani language spoken by the Sinti and Roma and the Frisian and Low German languages spoken in the Länder of the north are taken into account in different ways in schools, higher education establishments and adult education.

360. In higher education, the rule is that teaching should be provided in German. Applicants who do not hold a certificate qualifying them for access to higher education from an establishment where teaching is in German must demonstrate they are sufficiently well versed in the German language. Knowledge of a foreign language may be required for

entry to some higher educational establishments or for certain courses. In research institutes, however, the freedom of research, which is a fundamental freedom (art. 5 para. 3 of the Basic Law), means that the exclusive use of a language other than German is permitted.

(g) *Teachers*

361. In most Länder of the Federal Republic of Germany, teachers are usually public servants of the Länder. Their old-age pension and, therefore, also their pay, are governed by the legislation applicable to all public servants and constantly adjusted in line with trends in the cost of living. Consequently, the financial position of teachers compared with other professional groups may be regarded as being adequately secured.

8. Private schools

362. The Basic Law of the Federal Republic of Germany guarantees the right to set up private schools. It also includes, as a fundamental right, the right of parents to decide on their children's education. That right also includes the freedom to choose a school, and that school may, therefore, also be a private school. For children of school age, the private school must, however, be approved by the State (*Ersatzschule* providing an education equivalent to that provided in State schools). State approval guarantees that the school uses only qualified teaching staff and that teaching objectives and qualifications are equivalent to those in the State sector, but this does not mean that private schools have to comply strictly with the timetables and curricula of State schools. Private schools may have objectives relating to religious education or specific beliefs and employ their own teaching methods.

363. Private schools that meet those criteria benefit from substantial financial support from the Länder. To receive that support, they have, compulsorily, to accept children from all social classes, regardless of their parents' income. In 2004, private schools in Germany provided 6.9 per cent of general education and 21.7 per cent of vocational education.

364. As well as providing for the establishment of private schools, two Länder of the Federal Republic of Germany (Lower Saxony and North Rhine-Westphalia) provide, additionally, for State schools to be run on a denominational basis if sufficient numbers of parents so wish. However, that rule applies only to primary schools, which all children are compulsorily required to attend, and the schools in which compulsory education ends, which all children not attending another secondary school have to attend. In the other Länder, denominational schools can only be set up by private bodies, that is to say in the form of private schools.

Article 15

[Right to take part in cultural life and enjoy the benefits of scientific progress, and the right of authors to benefit from the protection of their interests]

1. Taking part in cultural life

365. Interest in the arts and culture has a formative effect on personality and identity; it influences an individual's personal development, development of the senses, creativity and expression of feeling. It also has an impact on social skills. Despite the many cultural initiatives addressed to the public, there are many people who do not avail themselves of the cultural opportunities on offer. Cultural institutions are often (wrongly) perceived as places of high culture and what they have to offer is, as a result, too often dismissed by uneducated groups among the population.

366. Cultural education is therefore at the heart of the debate on cultural policy in the Federal Republic of Germany. It goes without saying that it is basic and key in order to access art and culture, as well as being essential if people are to take an active part in social life. The Federal State's specific interest in cultural education forms part of a more general debate on cultural values in a society that is cultural extremely diverse and questions its own cultural traditions and values in the face of cultural influences brought to the country by migrants.

367. The activities of the Federal Government Delegate for Culture and the Media in relation to cultural education are therefore geared to one objective above all, within the framework of the rights which the Constitution accords the federal institutions: to give people living in Germany, whatever their age and social or cultural background, opportunities to expand their cultural experience. That responsibility of the Delegate for Culture and the Media is reflected in the institutions promoted, although national initiatives along the same lines may also be supported. While it is important to be able to give full rein to one's creativity, it is also important to reflect the fundamental and liberal values of the European Union, including the right to self-determination, tolerance and civic courage, as well as to understand the historical aspect of Germany's liberal and democratic constitutional order. Opportunities for cultural education must be sustainable and meet the specific needs of people living in Germany, who must themselves be involved in selecting and developing them; they must enable people to exercise self-determination, encourage them and get them to shoulder responsibilities within society and to engage socially. Experience gained at international level, as well as the results of research carried out in this area, must be brought to bear here.

2. Copyright

368. The WIPO Copyright Treaty (WTC Treaty) and the WIPO Performances and Phonograms Treaty (WPPT Treaty), as well as the relevant provisions of Directive 2001/29/ EC of the European Parliament and of the Council on the harmonization of certain aspects of copyright and related rights in the information society were transposed into domestic law, in 2003 and 2007 respectively, by the first and second acts on copyright in the information society. (*Erstes und Zweites Gesetz zur Regelung des Urheberrechts in der Informationsgesellschaft*).
