



**Convention on the Rights  
of Persons with Disabilities**

Distr.: General  
7 May 2013

Original: English

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**Committee on the Rights of Persons with Disabilities**

**Consideration of reports submitted by States parties under  
article 35 of the Convention**

**Initial reports of States parties**

**Germany\***

[19 September 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

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## I. Introduction

1. The Convention on the Rights of Persons with Disabilities of 13 December 2006<sup>1</sup> has been binding on Germany since 26 March 2009. The Convention has been valid law since then, and provides a major guideline for policy on persons with disabilities in Germany. The Federation, the *Länder* and local authorities, as well as social benefit agencies and other institutions dealing with the circumstances faced by persons with disabilities, work under the umbrella of the Convention to refine the equal participation of persons with disabilities. Civil society is included in this process and makes a valuable contribution. The work of the associations and organisations of persons with disabilities, charity associations, as well as church facilities, employers and trade unions, should be mentioned here.

2. The Convention has further contributed to the paradigm shift in policy on persons with disabilities which started in Germany in the nineties. Persons with disabilities have long ceased being mere objects on which the State imposes its will and to which it provides welfare. The realisation of a dignified, self-determined life in an inclusive society is the goal of modern policy on persons with disabilities in Germany, and hence corresponds to the core of the Convention.

3. Germany has always campaigned at national and international level to increase and promote the participation of persons with disabilities, and was one of the first States to sign the Convention. New statutory provisions at national level have considerably improved the framework in policy on persons with disabilities in the last ten years. A modern benefits system for persons with disabilities, together with advances in the barrier-free design of the environment on the basis of the Convention, support persons with disabilities in leading a self-determined life.

4. The Convention provides a new impetus for Germany to further enhance and expand the system of extensive participation for persons with disabilities. Against this background, the parties forming the Government in Germany agreed in their 2009 Coalition Agreement to develop a National Action Plan to Implement the Convention (NAP). The National Action Plan<sup>2</sup> was adopted by the Federal Cabinet on 15 June 2011, after one and a half years of work. The more than 200 schemes which it contains are in the process of implementation and/or are now to be implemented.

### On the path towards greater inclusion

5. Germany is not starting from scratch when it comes to implementing the Convention. There are many laws, regulations, schemes and projects at federal, *Land* and municipal level facilitating and promoting the right to a self-determined life, as well as the participation and inclusion of persons with disabilities. The paradigm shift in policy on persons with disabilities started with the inclusion of the ban on discrimination in the Basic

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<sup>1</sup> The Act on the United Nations Convention of 13 December 2006 on the Rights of Persons with Disabilities as well as on the Optional Protocol of 13 December 2006 (*Gesetz zu dem Übereinkommen der Vereinten Nationen vom 13.12.2006 über die Rechte von Menschen mit Behinderungen sowie zu dem Fakultativprotokoll vom 13.12.2006*) (Federal Law Gazette [BGBl.] II Part II p. 1419), in force since 1 January 2009, was the prerequisite for Germany being able to ratify the Convention on 24 February 2009.

<sup>2</sup> A summary of the Federal Government's National Action Plan entitled "*einfach machen - Gemeinsam die UN-Behindertenrechtskonvention umsetzen*" (Just do it – Let's implement the UN Convention on the Rights of Persons with Disabilities together) is enclosed with this report.

Law (*Grundgesetz*) in 1994. The next steps at federal level were taken in 2001 with the adoption of a separate Code for the rehabilitation and participation of persons with disabilities – Book IX of the Social Code (*Neuntes Buch Bürgerliches Gesetzbuch – SGB IX*)<sup>3</sup> and of the Act on Equal Opportunities for Persons with Disabilities (*Behindertengleichstellungsgesetz – BGG*)<sup>4</sup> in 2002.

6. Book IX of the Social Code laid the foundation stone for a right to rehabilitation and participation reflecting the general public's interest. The tasks of the various rehabilitation institutions were set out and combined in one law for the first time. This facilitates citizens' access to rehabilitation and participation benefits. Improved procedural regulations can enable claimants to receive the benefits to which they are entitled more quickly.

7. The Act on Equal Opportunities for Persons with Disabilities governs accessibility in an extensive manner, defines disability, takes account of the special interests of disabled women and makes regulations on agreed goals to bring about accessibility in the domain of private law. A core element of the Act is accessibility, with special attention being paid to the public-law domain. The latter ranges from the recognition of German sign language as a separate language, and making documents accessible for both blind people and visually-impaired persons in the administrative procedures, through to the barrier-free design of the Internet presentations of the Federal authorities. A signal effect has furthermore gone out from the voluntary undertaking of the Federation for barrier-free building. Major statutes have also been amended in the transport field, aiming to bring about "optimally broad" accessibility<sup>5</sup>. 16 Acts on Equal Opportunities of the *Länder* flank the Act on Equal Opportunities for Persons with Disabilities and regulate the preconditions for bringing about accessibility at *Land* level.

8. In 2006, finally, the General Anti-Discrimination Act (*Allgemeines Gleichbehandlungsgesetz – AGG*)<sup>6</sup> entered into force. This statute protects people at work and in civil legal transactions against discrimination not only on grounds of a disability, but also of race or ethnic origin, of gender, religion or philosophical creed, age or sexual identity.

9. It is virtually impossible to portray the successful inclusion of persons with disabilities in society in financial terms. Major financial benchmarks however show how strongly Germany's policy on persons with disabilities is orientated towards the needs of persons with a disability or at risk of disability. More than Euro 44 billion<sup>7</sup> were spent in

<sup>3</sup> Book IX of the Social Code – rehabilitation and participation of persons with disabilities of 19 June 2001 (Federal Law Gazette Part I p. 1046) in force since 1 July 2001, most recently amended by Art. 4 Para. 3 of the Act of 22 April 2005 (Federal Law Gazette Part I p. 1138).

<sup>4</sup> Act on Equal Opportunities for Persons with Disabilities of 27 April 2002, in force since 1 May 2002 (Federal Law Gazette Part I p. 1467), most recently amended by Art.12 of the Act of 19 December 2002 (Federal Law Gazette Part I p. 3024)

<sup>5</sup> These include amongst other things amendments to the Passenger Transportation Act (*Personenbeförderungsgesetz*) and to the Air Transport Act (*Luftverkehrsgesetz*).

<sup>6</sup> General Anti-Discrimination Act of 14 August 2006 (Federal Law Gazette Part I p. 1897), in force since 18 August 2006, most recently amended by Article 15 Para. 66 of the Act of 5 February 2009 (Federal Law Gazette Part I p. 160).

<sup>7</sup> In detail: Euro 19 billion for benefits for long-term care (Source: Federal Ministry of Health (2010), *Statistiken zur Pflegeversicherung, Leistungsausgaben der Sozialen Pflegeversicherung 2009*), Euro 11.9 billion net spending on integration assistance from social assistance (Source: Federal Statistical Office, *Sozialleistungen, Sozialhilfe 2009*), 3.6 billion for occupational rehabilitation from the Federal Employment Agency and the *Deutsche Rentenversicherung* (German statutory pension insurance scheme) (Source: *Ausgaben für Rehabilitation und Teilhabe*, version 2010, quoted from the Annual Report (*Geschäftsbericht*) of the Federal Rehabilitation Council – BAR [to be published]), 3.4 billion for medical rehabilitation from the German statutory pension insurance scheme (Source: BAR), 3.5 billion for medical treatment, medical, occupational and social rehabilitation from the statutory

2009 solely for benefits to provide support for long-term care, participation and occupational and medical rehabilitation. The funds are contributed to by the Federation, the *Länder* and local authorities, as well as by the solidarity-based community of contributors to social insurance.

10. 21st Century policy on persons with disabilities in Germany is not only concerned to ensure a well-structured benefit system. In addition, it must be a matter of realising human rights through equal participation in political, societal, economic and cultural life, creating equal opportunities in education, achieving occupational integration and enabling each member of society to contribute towards giving all citizens a self-determined place in a barrier-free society and reducing discrimination. The Federal Government's National Action Plan, the (planned) action plans and schemes of the *Länder* and local authorities, as well as of other state and private organisations, help to put this objective into practice.

11. The Federal Government's National Action Plan has a time horizon of ten years and includes both a stock-take and a summary of the goals and schemes of the Federal Government to implement the Convention in an overall strategy. The goal is to achieve living inclusion and participation of persons with disabilities. A major concern of the Federal Government was and remains the participation of civil society. A large number of their visions and guidelines, as well as proposals for schemes for the NAP, have been included. The participation of civil society is to also continue in the implementation phase. Citizens are to be able to participate with commentaries, questionnaires and feedback campaigns.

12. The NAP describes more than 200 schemes in twelve fields of action which were developed with the participation of persons with disabilities and their associations (for example: work and employment, education and life-long learning, freedom, protection and security, as well as women and mobility). The Federal Government now intends to implement these on a step-by-step basis. The seven cross-sectional topics (need of assistive services, accessibility, gender mainstreaming, equality, migration, self-determined living and diversity of disability) are taken into account in all fields of action. In addition to schemes to improve the data situation regarding persons with disabilities, the topic of "Information and representation" takes on major significance in the NAP. Despite the increasing presence of persons with disabilities in the public, and regardless of the unmistakable progress that has been made in the political arena for persons with disabilities, the general public is virtually unaware of in particular the life situations, everyday challenges and various skills offered by persons with disabilities. The National Action Plan will contribute through a comprehensive communication concept towards bringing many encouraging examples to the public eye.

13. The schemes named in the NAP rarely stand by themselves. Rather, the implementation of a project has an impact on other schemes. Networking between all stakeholders and a constant exchange between the Federal Government and civil society and other state and non-state agencies regarding the individual schemes is a major prerequisite for the successful implementation of the NAP. The coordination mechanism that has been set up with the Federal Government Commissioner for Matters relating to Disabled Persons (consisting of the Advisory Council on Inclusion and specialist committees), the Committee on the NAP which has been established at the state's point of contact at the Federal Ministry of Labour and Social Affairs, as well as the Monitoring Body at the German Institute for Human Rights, actively support the implementation of the schemes of the National Action Plan.

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accident insurance (Source: BAR), 2.6 billion for medical rehabilitation from statutory health insurance (Source: BAR).

## II. Information relating to the articles of the Convention

### Article 1 – Purpose

14. Persons with disabilities in Germany have the same rights as persons without a disability. No person may be disfavoured because of disability. This is stipulated by the Basic Law of the Federal Republic of Germany (Article 3 of the Basic Law). Equal treatment and the promotion of equal opportunities are hence key to policy on persons with disabilities. This policy aims to guarantee the benefit of self-determination and participation of persons with disabilities in life in our society. The Federation, the *Länder* and local authorities are working together to achieve these goals.

15. There are roughly 9.6 million with a disability in Germany. Roughly 7.1 million of them live with a severe disability<sup>8</sup>. People in Germany are regarded as having a disability if their physical ability, mental capacity or psychological health are highly likely to deviate from that typical for their age for longer than six months, and thus hinder their participation in society (section 2 subs. 1 of Book IX of the Social Code, section 3 of the Act on Equal Opportunities for Persons with Disabilities). A severe disability applies from a degree of disability of 50 (section 2 subs. 2 of Book IX of the Social Code). The finding of the degree of disability is carried out on request by the person with a disability (section 69 subs. 1 of Book IX of the Social Code). The impact of a disability on participation in the life of society is categorised as a degree of disability by degrees of ten according to the “medical supply principles” contained in the Medical Supply Ordinance (*Versorgungsmedizin-Verordnung – VersMedV*)<sup>9</sup>. The possibility to claim compensation for disadvantages – a major tool to support the everyday lives of persons with disabilities, and hence enhance inclusion – depends amongst other things on the degree of disability.

16. The term “disability” was redefined with the creation of Book IX of the Social Code, and identical wording was included in the Act on Equal Opportunities for Persons with Disabilities. It takes into account the contents of the World Health Organization’s International Classification of Functioning, Disability and Health (ICF). The German term “*Behinderung*” is based not only on impairments of health functions, but also considers the participation of persons with disabilities in the life of society<sup>10</sup>.

17. The associations of persons with disabilities are in favour of orientating the German definition of disability even closer towards the ICF<sup>11</sup>. The ICF is a bio-psycho-social model for the description of functional health. In the view of the Federal Government, Germany does not have a uniform tool which is to be used in rehabilitation science and recognised in national administrative practice to establish the individual rehabilitation needs of persons with disabilities.

18. The goal of a uniform, fair evaluation of the degree of the disability can be achieved through high-quality assessment principles and with national quality standards in implementation. There is thus provision to adjust the “medical supply principles” to the current state of evidence-based medicine and implement the ICF. Additionally, the Federal

<sup>8</sup> Federal Statistical Office, Microcensus 2009.

<sup>9</sup> Annex 2 of the Versorgungsmedizin-Verordnung of 10 December 2008 (Federal Law Gazette Part I, p. 57).

<sup>10</sup> Report of the Federal Government on the situation of persons with disabilities and the development of their participation of 16 December 2004, short title: Disability Report 2004 (Bundestag printed paper 15/4575) page 17, No. 1.4

<sup>11</sup> German Disability Council 2004 in: Disability Report 2004 (ebd.) page 18, No. 1.5

Government will work together with the *Länder* to achieve a high, uniform standard of quality in the implementation of the assessment and to record the need for support in the law on severe disabilities and in social compensation law.

## **Article 2 – Definitions**

### **1. Communication**

19. A goal of German policy on persons with disabilities is to ensure, promote and refine the access of persons with disabilities to communication facilities. The Federation's Act on Equal Opportunities for Persons with Disabilities offers a foundation for this, as do the Acts on Equal Opportunities of the *Länder*. In accordance with this legislation, persons with disabilities should be able to communicate with the agencies of the Federation and the *Länder* without particular difficulties and as a matter of principle without the assistance of others (for the Federation: section 4 of the Act on Equal Opportunities for Persons with Disabilities).

20. In particular on the Internet, so-called screenreaders for blind people, sign language films for people with hearing disabilities and the use of "simple language" for people with cognitive restrictions will make communication easier. Furthermore, federal authorities must take a person's disability into account when designing written notices and forms. Thus, for instance, visually-impaired persons may demand that notices should also be made available to them in a form which they can comprehend and at no extra cost (for the Federation: section 10 of the Act on Equal Opportunities for Persons with Disabilities). Hearing-impaired or speech-impaired persons should be enabled – also without incurring additional costs – to communicate with the federal authorities in administrative procedures in German sign language, signed German or via other communication aids. The Federal *Länder* have adopted comparable regulations to cover communication between citizens and the facilities and authorities of the *Länder*.

### **2. Sign language**

21. German sign language is recognised as a language in its own right (section 6 subs. 1 of the Act on Equal Opportunities for Persons with Disabilities). Equally, signed German has been recognised as a form of communication of the German language (section 6 subs. 2 of the Act on Equal Opportunities for Persons with Disabilities). In accordance with the relevant laws, hearing-impaired or speech-impaired persons have the right to use German sign language, signed German or indeed other suitable communication aids (including technical aids, prostheses, FM systems, etc.) (section 6 subs. 3 of the Act on Equal Opportunities for Persons with Disabilities).

### **3. Discrimination**

22. Discrimination means placing people at a disadvantage. In accordance with the Basic Law of the Federal Republic of Germany, no person may be disfavoured because of disability (Article 3 Para. 3 of the Basic Law). The term disfavoured, or placing at a disadvantage, (*Benachteiligung*) was defined in the General Anti-Discrimination Act. Accordingly, a disadvantage is incurred if, because of a ground named in section 1 of the General Anti-Discrimination Act, a person receives less favourable treatment than another person receives, has received or would receive in a comparable situation (direct discrimination). Also indirect discrimination, meaning apparently neutral provisions, measures, criteria or procedures which place specific individuals or groups at a disadvantage on grounds of one of the discrimination characteristics without an objective reason, fall under the term "disadvantage". The same applies to the instruction for



discrimination, harassment or sexual harassment (section 3 of the General Anti-Discrimination Act).

#### 4. Reasonable accommodation

23. Reasonable accommodation in Germany is constituted by the benefits and schemes which persons with a disability and those at risk of disability receive in order to promote their self-determination and equal participation in the life of society, to avoid or to counter disadvantages (section 1 of Book IX of the Social Code). In the benefit statutes, for instance, the Social Codes regulate preconditions for claims and the scope of the respective benefit for persons with disabilities. Respect for the interests of persons with disabilities is a cross-sectional topic in Germany. Preconditions for claims and the scope of benefits for persons with disabilities are partly regulated in various fields of law, not all of which lie within the portfolio of the Federal Ministry of Labour and Social Affairs, which has responsibility for the topic, but are closely observed by the Ministry and by the Federal Government Commissioner for Matters relating to Disabled Persons.

#### 5. Universal design

24. “Universal design” is a concept for the planning and design of products and environments (e.g. objects, buildings, public paths, roads and places, systems and technical facilities) which permit all people to use these products and environments as far as possible without individual adaptation or special design<sup>12</sup>. In view of the rising average age of the population and of a future increase in working lives, the significance of universal design will increase considerably.

### Article 3 – General principles

25. The realisation of self-determination and participation of persons with disabilities lies at the core of German policy on persons with disabilities. They are to be able to design their lives in dignity, as independently as possible and without barriers. The Federation, the *Länder* and local authorities ensure that disadvantages of persons with disabilities are prevented or remedied.

26. The stage has been set over the last ten years for greater self-determination and participation, as Book IX of the Social Code, the Act on Equal Opportunities for Persons with Disabilities and the Acts on Equal Opportunities of all 16 Federal *Länder* were adopted. Furthermore, the General Anti-Discrimination Act came into force in Germany on 18 August 2006. This statute protects people who are placed at a disadvantage on grounds of race or because of their ethnic origin, gender, religion or philosophical creed, of a disability, of age or sexual identity.

### Article 4 – General obligations

27. The Federation, the *Länder* and local authorities have completed a paradigm shift in the last ten years in policy on persons with disabilities. Whilst the focus until the end of the 90s was on the principle of State-provided welfare vis-à-vis persons with disabilities, today persons with disabilities are to be supported as far as possible to participate in all areas of society in a self-determined fashion.

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<sup>12</sup> translation of the definition by the Center for Universal Design the North Carolina State University.

28. For this Germany has a modern, well-performing system of participation which is being continuously refined with the entry into force of Book IX of the Social Code. It is not only statutory schemes of the Federation and the *Länder* which play a role in this. Awareness-raising schemes, measures for ascertaining and implementing technological or social innovations from which persons with disabilities can benefit, have been and continue to be funded and guided by the Federation, the *Länder* and local authorities.

29. The paradigm shift also encompasses the inclusion of persons with disabilities and their associations in the work of the Federal Government, which has been practiced in Germany for quite some time. For instance, the German associations were involved from the outset in the drawing up of Book IX of the Social Code. This shows that self-determination is taken seriously and that advice given by the associations of persons with disabilities is taken into account. When involving the associations in the work of the Federal Government, the special interests of women with a disability are taken into account through the participation of female representatives from the associations.

30. In accordance with the federal system set out in the Basic Law, specific legislative competences are incumbent on the Federation. Statutes based on this are hence applicable in the entire federal territory. This is for instance the case with labour and social legislation. Additionally, there are legislative competences to which the *Länder* are entitled in exclusivity, such as in the sphere of education. For instance, there are 16 Schools Acts in the Federal Republic of Germany. As a result of this constitutional sub-division, the Federation is not entitled to intervene in the legislative competence of the *Länder*.

31. The Federal Government has already decided in its 2009 Coalition Agreement to draw up a national action plan to implement the convention. This Action Plan lists the schemes of the Federal Government which are to contribute by 2021 to the advancement of the self-determined participation of persons with disabilities. Persons with disabilities are closely involved in drafting and implementing the Federal Government's National Action Plan, and this was the case from the outset. In addition to a stock-take, the National Action Plan summarises the goals and schemes of the Federal Government to implement the Convention in an overall strategy and describes what should be done both immediately, in this legislative period, as well as in the years to come. The National Action Plan encompasses more than 200 individual schemes and has a time horizon of ten years. The plan is to be a compass for the policy of the Federal Government for persons with a disability. It is to make a contribution towards creating a society in which all people can participate – regardless of whether they have a disability or not.

32. Also the *Länder* are planning for the areas for which they are responsible action plans or other schemes to improve the participation of persons with disabilities, or have already initiated such plans. Details can be found in the overview below.<sup>13</sup>

**Table 1**  
**Scheme to implement the Convention on the Rights of Persons with Disabilities**

<i>Land</i>	<i>Scheme to implement the Convention</i>
Baden-Württemberg	Implementation plan is being drafted jointly with the Land disability advisory council and the associations.
Bavaria	Draft Action Plan adopted by the Bavarian State Government on 3 May 2011, refined with the participation of persons with

<sup>13</sup> Source: National Action Plan to Implement the UN Disability Convention, updated (version: 15 July 2011).

<i>Land</i>	<i>Scheme to implement the Convention</i>
	disabilities
Berlin	Plan of action/schemes with disability-policy guidelines adopted by the Senate in June 2011
Brandenburg	Plan of schemes envisioned by end of 2011
Bremen	Coalition Agreement for the 18th legislative period 2011-2014 provides for Land Action Plan.
Hamburg	Land Action Plan currently under construction
Hesse	Action Plan planned for the end of 2011
Mecklenburg-Western Pomerania	Plan of schemes being drafted
Lower Saxony	Possibility of an Action Plan being examined
North Rhine-Westphalia	Action Plan planned for summer 2011
Rhineland-Palatinate	Action Plan since March 2010
Saarland	Action Plan being drafted
Saxony	Interdepartmental working party examining the need for action; proposals for the implementation of the Convention likely to take place on submission the Land Disability Report
Saxony-Anhalt	Action programme being drawn up
Schleswig-Holstein	“All inclusive” initiative has been in existence since 2006
Thuringia	Action Plan planned for the end of 2011

## **Article 5 – Equality and non-discrimination**

33. The general principle of equal treatment that is enshrined in the Basic Law (Article 3 Para. 1 of the Basic Law)<sup>14</sup>, which guarantees the equality of all people before the law, was supplemented by a provision which came into force in November 1994 in favour of persons with disabilities. Article 3 Para. 3 of the Basic Law was added to by the sentence: “No person shall be disfavoured because of disability.”<sup>15</sup> In contradistinction to the discrimination bans contained in Article 3 Para. 3 sentence 1 of the Basic Law<sup>16</sup>, preferential treatment linked to a disability remains permitted.

34. Even though persons with disabilities already enjoyed constitutional protection against disadvantages, the supplement to the Basic Law has strengthened the position of persons with disabilities by virtue of the fact that Article 3 Para. 3 sentence 2 of the Basic Law is at the same time an expression of an unambiguous constitutional value decision and hands down a mandate to the State to endeavour to bring about the equal participation of persons with disabilities in the life of society.

<sup>14</sup> “All persons shall be equal before the law.”

<sup>15</sup> The constitutions of the *Länder* also contain such regulations.

<sup>16</sup> “No person shall be favoured or disfavoured because of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions.”

(a) In order to lend concrete form to the constitutional ban on discrimination, there are specific provisions in a number of statutes aimed against disadvantages experienced by persons with disabilities:

(i) In accordance with section 1 of Book IX of the Social Code, persons with a disability or at risk from disability receive benefits in order to promote their self-determination and equal participation in the life of society, as well as to avoid or avert disadvantages;

(ii) In accordance with section 1, the Act on Equal Opportunities for Persons with Disabilities aims to eliminate and avert disadvantages of persons with disabilities, to guarantee their equal participation in the life of society and enable them to live a self-determined and participatory life. The ban on discrimination takes on concrete form in section 7 of the Act on Equal Opportunities for Persons with Disabilities for the holders of public power. In accordance with section 15 of the Act on Equal Opportunities for Persons with Disabilities, the Commissioner for Matters relating to Disabled Persons must endeavour to ensure that the responsibility of the Federation to ensure equivalent living conditions for persons with and without disabilities is complied with in all fields of the life of society. This is guaranteed by the Commissioner being involved in all legislative proceedings and parliamentary interpellations;

(iii) In accordance with section 33c of Book I of the Social Code, no one may be placed at a disadvantage when claiming social rights on grounds of a disability. This provision implements the constitutional ban on discrimination across the entire field of social benefits;

(iv) In accordance with section 81 subs. 2 of Book IX of the Social Code in conjunction with the relevant regulations of the General Anti-Discrimination Act, employers may not place persons with severe disabilities at a disadvantage because of their disability;

(v) The General Anti-Discrimination Act aims amongst other things to prevent or eliminate disadvantages on grounds of a disability<sup>17</sup>. As a matter of principle, persons with disabilities may not be placed at a disadvantage in their working life because of their disability when it comes to the selection of applicants or in exercising an occupation, in further training or with regard to promotion<sup>18</sup>. Section 19 of the General Anti-Discrimination Act also contains a civil law ban on discrimination. This relates in particular to the conclusion of everyday transactions (so-called bulk transactions). This covers retail contracts, pubs and restaurants and transportation, examples here being travel on public transport, shopping, visits to restaurants, discotheques, museums and theatres. Furthermore, persons with disabilities are protected when concluding private insurance policies;

(vi) The Act on the Equality of Women and Men in the Federal Administration and in the Courts of the Federation (*Gesetz zur Gleichstellung von Frauen und Männern in der Bundesverwaltung und in den Gerichten des Bundes – BGleIG*), which aims to ensure the equality of women and men, provides in section 1 that the special interests of women with a disability are to be taken into account in preventing and eliminating discrimination on grounds of gender.

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<sup>17</sup> The regulations described below also apply in the event of a disadvantage for the further reasons stated in section 1 of the General Anti-Discrimination Act.

<sup>18</sup> In this respect, the General Anti-Discrimination Act expands the protection which, prior to its entry into force in 2006, was only enjoyed by persons with severe disabilities to include all persons with disabilities.

35. If persons with disabilities are nonetheless placed at a disadvantage in everyday life, in working life or on conclusion of private insurance policies, they have a right in accordance with the General Anti-Discrimination Act to the elimination of the current disadvantage and/or to the prevention of future disadvantages. Furthermore, they may have damage claims. The General Anti-Discrimination Act however permits different treatment of persons with and without disabilities if there is an objective reason for this, for instance to avoid risks.

36. The Federal Anti-Discrimination Agency was established on the basis of the General Anti-Discrimination Act. The Agency carries out its tasks (advice, research and public relations work) independently and free of instructions. It advises people who are placed at a disadvantage on grounds of race or because of ethnic origin, gender, religion or philosophical creed, disability, age or sexual identity. The Agency provides its services free of charge and is related to neither specific formal prerequisites or deadlines. All in all, 14,115 advice-seeking contacts (5,273 of which were multiple contacts)<sup>19</sup> have been recorded at the Agency to date. Persons with disabilities approached the Agency most frequently (24.7%). When it came to multiple disadvantages, the combination of disability and age (16.44 percent) and disability and gender (7.55 percent) are stated most frequently.

37. In accordance with section 14 of the Act on Equal Opportunities for Persons with Disabilities, the Federal Government nominates a Commissioner for Matters relating to Disabled Persons for a legislative period. His/her task is to see to it that the responsibility of the Federation to ensure equivalent living conditions for persons with and without disabilities is complied with in all areas of the life of society<sup>20</sup>. This ensures that matters relating to disabled persons are taken into account in all relevant policy areas. The tasks of the Commissioner include:

- (a) Participation in legislation proceedings and parliamentary interpellations,
- (b) Awareness-raising and public relations work, e.g. by organising specialist discussions, conferences and press work (cf. also Art. 8), and
- (c) Answering more than 2,500 written citizens' enquiries per year on the topic of equality and equal rights of persons with disabilities.

38. Furthermore, all Federal *Länder* have also established a Commissioner for Matters relating to Disabled Persons with comparable tasks and competences who exchange experiences with one another and with the Federal Commissioner on current issues relating to policy on disability. Additionally, many rural districts, towns and local authorities have full-time or honorary municipal disability commissioners, as well as auxiliary disability councils, campaigning specifically at local level for the interests of citizens with disabilities.

39. The Federal Government aims to prevent and effectively combat disadvantages faced by persons with disabilities in all areas of life. This applies to both the public and private domains. To this end, the Federal Government will evaluate the corresponding provisions contained in the Act on Equal Opportunities for Persons with Disabilities and clarify whether adequate justice is done to all groups of persons with disabilities (including persons with learning and mental disabilities and with severe multiple disabilities) and the tools provided by the Act have proven their value. Efforts are also underway in the *Länder* to examine or revise the regulations on equality of persons with disabilities (e.g. Saxony-Anhalt).

<sup>19</sup> This comes to 8,842 cases of advice. Source: survey by the Federal Anti-Discrimination Agency, version: April 2011.

<sup>20</sup> cf. section 15 of the Act on Equal Opportunities for Persons with Disabilities.

40. In order to avoid placing persons with disabilities at a disadvantage, the Federal Government has been promoting the project “Enhancing action competences of the associations in the field of protection against discrimination” of the German Institute for Human Rights since 2009, and will continue to do so until the end of 2011. The project aims to enhance the necessary competences for action of associations in Germany for practical protection against disadvantages and to develop training to this end. A special emphasis is placed here on the provision of effective protection against disadvantages which can be implemented by associations.

41. Moreover, in the coming years the Federal Government will increasingly bring the disadvantages suffered by persons with disabilities in the private domain to the attention of the public. The ADS wishes for instance to initiate a focal year against disadvantages suffered by persons with a disability in 2013.

42. The “Diversity Charter”, a corporate initiative under the patronage of Federal Chancellor Angela Merkel, was launched in 2006, and seeks to create a corporate culture that is typified by fairness and respect. The signatories undertake to create a working environment which is free of prejudices and marginalisation in which each worker experiences respect, regardless of gender, race, nationality, ethnic origin, religion or philosophical creed, disability, age, sexual orientation and identity. More than 900 enterprises and public facilities all over Germany have so far subscribed to the Charter.

## **Article 6 – Women with disabilities**

43. In addition to the existing fundamental rights in the Federal Republic of Germany, which apply to all persons, there are special regulations to reduce the disadvantages experienced by women with disabilities.

44. To promote their self-determination and participation, the legislature stipulated in section 1 of Book IX of the Social Code that the needs of women with disabilities and of women at risk of disability are particularly to be taken into account. Women are frequently subject to multiple disadvantages.

45. Additionally, section 2 of the Act on Equal Opportunities for Persons with Disabilities provides that the special interests of women with disabilities to enforce equality of women and men are to be taken into account and existing disadvantages remedied. Special schemes to promote the de facto enforcement of the equality of women with disabilities and to eliminate existing disadvantages are permissible here.

46. A separate evaluation of the 2005 Microcensus took place in 2009 with regard to the circumstances faced by women with disabilities, which revealed initial information on disability-related and female-typical disadvantage structures. As to the de facto situation of women with disabilities, there have so far been relatively little data and information all in all. In order to create an awareness of the multiple discrimination faced by women with disabilities and to take measures tailored to this target group, their special situation is to be better catered for. Once its Disability Report (cf. Art. 31), which has to be drawn up in each legislative period, has been redesigned, the Federal Government will therefore concentrate more closely on investigating the circumstances faced by women with disabilities. Furthermore, the Federal Government intends to draw up a disability mainstreaming guideline which will also particularly take account of the situation faced by women with disabilities.

47. Women with disabilities are to be supported in their endeavours to defend their interests themselves in order to play an active role in improving their circumstances. The Federal Government is hence promoting the national network entitled “Political Representation of the Interests of Women with Disabilities – *Weibernetz e. V.*”. The project

promotion focuses on initiating schemes to realise the participation of women with disabilities, in particular in the fields of participation in working life, protection against violence, healthcare and parenthood. Since 1 March 2011 the implementation of the Convention has been at the focus of the project, which is also expressed in its new name “Political representation of interests of women with a disability – carrying out tasks to implement the UN Disability Convention and protect against violence”.

48. In addition to the political representation of interests, women with disabilities are also to be enabled in everyday lives to better articulate and put forward their own interests. For this reason, the Federal Government is promoting the project entitled “Commissioners for women in workshops for persons with disabilities and in the residential facilities”. In this project, women with disabilities are enabled to take on the role of the Commissioner for the interests of women in their workshops and residential homes. Women with disabilities are thus given somewhere to go with their problems. The Federal Government will be using the information from the project, to be completed in mid-2011, for a discourse on the consequences and future possibilities of long-term schemes incorporating many workshops.

### **Article 7 – Children with disabilities**

49. Book IX of the Social Code stipulates that the needs of children with a disability are to be respected and that they are to be enabled as far as possible to live a life in their family environment (sections 1 subs. 2; 4 subs. 3 of Book IX of the Social Code). Children with disabilities are to participate in the planning and design of individual assistance in accordance with their age and development. Parents too are to be intensively involved in the planning and design of the aids. The special needs of parents and children are to be taken into account here. Furthermore, Books VIII and IX of the Social Code explicitly strive to achieve a situation in which children with and without disabilities can grow up together.

50. Children with disabilities are to be promoted in their development from the outset and strengthened to experience the diversity of human life, and to experience it as a matter of course and a source of enrichment. A central role attaches here to child day-care facilities. Children aged from 3 to 6 have had a legal right to a childcare place since 1996. The Encouragement and Care of Children Aged under Three Bill (*Kinderförderungsgesetz – KiföG*) has now entrenched a legal right also for children aged from one, starting from 1 August 2013. To guarantee the legal right from this time onwards, the Federation, the *Länder* and local authorities are pushing forward the as-needed, quality-orientated expansion of the care offers for the under-threes. The Federation is contributing Euro 4 billion, and hence one-third of the costs incurred. The expansion in the number of places takes account of the mandate under federal law to promote children with and without disabilities in joint groups (section 22a subs. 4 Book VIII of the Social Code). The project “A garden for children” of the city of Hanover provides a model for such initiatives. In the context of this project, the nation’s first nursery school is to be built by the end of 2011 which operates inclusively without interruption from toddler to crèche groups, in other words in which children with no disability and children with physical, mental or emotional disabilities are taken care of together.<sup>21</sup>

51. All children in Germany have a right to the maximum level of health achievable, as well as to avail themselves of facilities for the treatment of diseases and to restore health. In

<sup>21</sup> Taken from: 3rd and 4th periodical reports on the United Nations Convention on the Rights of the Child, Nos. 181 et seq.

this regard, all schemes of state promotion and assistance are orientated in line with the inclusion perspective, which does not accept any marginalisation. Gender, language, status and segregation barriers are reduced, and the circumstances of children and juveniles with a disability are taken into account in all planning and decision-making processes (disability mainstreaming). Children and juveniles with disabilities can, depending on the type of their disability, receive benefits of integration assistance in Germany in accordance with section 53 Book XII of the Social Code, section 35a Book VIII of the Social Code or section 27d Federal of the War Victims Relief Act (*BVG*) in order to promote their self-determination and equal participation in the life of society, and to avoid or alleviate disadvantages<sup>22</sup>.

52. What is more, children with a disability and at risk of disability have a right to early promotion from birth until starting school. This is to be provided in the shape of an interdisciplinary complex of benefits in accordance with section 30 subs. 1 sentence 2 of Book IX of the Social Code in conjunction with the Early Promotion Ordinance (*Frühförderungsverordnung*). Medical-therapeutic and medical pedagogic benefits for children who need both types of benefit are to be provided from one single agency, which is to deliberately include the family environment. Affected parents of children with a disability, and also disabled associations, repeatedly point in the case of early promotion to competence and funding problems between the competent rehabilitation institutions (health insurance funds and social assistance institutions) in the implementation of early promotion benefits.

53. A fundamental reorganisation of the social assistance systems for children and juveniles in Germany is being discussed in an inter-conference Federation-*Länder* working party, in which the municipal national associations and the Federal Association of the Regional Social Assistance Agencies are involved. In the interest of child-friendly, optimum promotion and care for children and juveniles, the German assistance system is also to be reorganised in the framework of this discussion with regard to children and juveniles with disabilities. In doing so, in particular the previous distribution of responsibility for the promotion of children and juveniles with a mental disability (child and youth assistance) and children and juveniles with a mental and/or physical disability (social assistance) is to be reviewed. In terms of perspective, it is a matter of overcoming the variations in the distribution of responsibilities and combining integration assistance towards children and juveniles with disabilities under the umbrella of Social Code VIII (child and youth assistance) in a consensus between the Federation, the *Länder* and the local authorities ("Grand solution Book VIII of the Social Code").

54. There are furthermore initiatives working towards the integration and inclusion of juveniles with disadvantages. For instance, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth launched the initiative entitled "*JUGEND STÄRKEN*" (strengthening youth) on 15 June 2009. With this initiative, the Federal Ministry is bundling and amplifying its activities for the social integration of disadvantaged children, juveniles and young people with a migration background.

55. Children and juveniles are to be able to participate and not be instrumentalised for political goals. Hence, the Federal Government, together with the associations, will be developing from 2013 onwards a concept for the direct participation of children and juveniles with a disability (e.g. a regular children and youth parliament).

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<sup>22</sup> 3rd and 4th periodical reports on the United Nations Convention on the Rights of the Child, Nos. 181 and 182



## Article 8 – Awareness-raising

56. Book IX of the Social Code, the Act on Equal Opportunities for Persons with Disabilities and the General Anti-Discrimination Act have served to improve the framework to avoid disadvantages for persons with disabilities. The statutes make a major contribution towards achieving the goal of full participation of persons with disabilities in life in our society. Additionally, there is a need for a change in attitudes towards persons with disabilities in our society.

57. 2003, the European Year of People with Disabilities, served to point out to the Member States of the European Union the heterogeneity and diversity of disability and to help raise awareness among the general public of matters relating to persons with disabilities. A survey of the Eurobarometer 2003 revealed that 59 percent of citizens have gained a better understanding of the interests of persons with disabilities through the initiatives carried out in the Member States. The European Year was intensively used in Germany in order to spark off discussions, provide impetus and support changes. The dynamic which this triggered continued beyond 2003. The European Year has helped to considerably enhance the public relations work of the Federal Government in the field of policy on persons with disabilities:

(a) The Internet portal entitled “*Wegweiser Demenz*” (guide on dementia) is being promoted by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. It is to introduce into society knowledge of and competence for dementia and reduce inhibitions. Experiences can be exchanged via fora and blogs;

(b) The Federal Ministry of Health has been promoting the Alliance for Action on Mental Health since 2008. By establishing the Alliance for Action, 70 associations and initiatives aim to inform the public of mental illness and reduce stigmatisation;

(c) The Federal Government launched a broad publicity campaign on the Personal Budget in 2007 in order to inform persons with disabilities and their relatives of the opportunities offered by the Personal Budget.

58. The *Länder* and local authorities, as well as the associations of the persons with disabilities, have also considerably expanded their public relations work in recent years. A broad range of public events, information on the Internet, citizens’ participation, congresses, specialist conferences and fora of the most varied type on the topic of disability in general, as well as on all core topics of the Convention on the Rights of Persons with Disabilities, have raised awareness among the general public for the special problems facing persons with disabilities. The Monitoring Body, as well as the associations of civil society, are in turn helping to bring the Convention to the attention of the general public<sup>23</sup>.

59. The Federation, the *Länder* and local authorities are also publishing a large number of brochures on the topic of policy for persons with disabilities. The associations of persons with disabilities also provide comprehensive information for persons with and without disability. The “*Ratgeber für Menschen mit Behinderung*” (guide for persons with a disability) published by the Federal Ministry of Labour and Social Affairs as a free standard publication on the topic of disability contains comprehensive information for persons with and without disabilities. It is updated annually and is retrieved an average of 100,000 times

<sup>23</sup> e.g. “*Behindert mich nicht*” (do not disable or hinder me) in the context of the “*Frankfurter Leseeule*” children’s and youth book exhibition (November 2009), a conference entitled “*Inklusion konkret*” of the *Institut Mensch, Ethik und Wissenschaft* (Institute for People, Ethics and Science) on the practical applicability of the Convention (21 and 22 March 2011, Berlin), dialogue events in North Rhine-Westphalia to develop an Action Plan for this *Land*

per year. To enhance the understanding of the topic of disability and development cooperation, the Federal Ministry for Economic Cooperation and Development has published a variety of publications, such as the brochure entitled “*Behinderung und Entwicklungszusammenarbeit – 10 mal nachgehakt*” (disability and development – ask ten times).

60. Through its political education activities, the Federal Centre for Political Education is to promote an understanding of political circumstances, cement democratic awareness and promote a willingness to participate in political processes. When drafting its educational measures, the Federal Centre takes the diversity approach as a basis. This approach refers to the diversity of people’s identities and affiliations, as well as their differences, and aims to create an awareness within society of equality and equal opportunities in diversity.

61. The Federal Government has also implemented a number of major national and international events and conferences for awareness-raising:

(a) In June 2007, the Federal Ministry of Labour and Social Affairs, with the participation of representatives from the political arena, industry, associations, research and persons with disabilities organised a European conference on the integration of persons with disabilities under the title “Education, employment, accessibility – making persons with disabilities strong”. The conference aimed amongst other things to raise an awareness among the public for the Convention;

(b) The Federal Ministry of Labour and Social Affairs in May 2009 organised the specialist congress entitled “United for joint education – National conference on Article 24 of the UN Convention on the Rights of Persons with Disabilities” at which, in addition to specialists from schools and occupations, persons with disabilities, in particular school pupils with a disability also took part. This provide all participants a platform to exchange experiences on the further development of learning together;

(c) Under the Motto “All inclusive! The new UN Convention”, the former disability Commissioner of the Federal Government, together with various disability associations, organised eight one-day specialist conferences from January to March 2009 on central topics of the Convention (for instance: education, health and accessibility). Amongst other things through accompanying press and public relations work, this campaign pursued the goal of raising awareness for the Convention and establishing the implementation requirement in various areas of life.<sup>24</sup> A focus of the work of the Disability Commissioner is to initiate events on major fields of action of this Convention, such as in autumn 2010 an information event for enterprises on training of juveniles with a disability, as well as a series of specialist conferences on the topic of “health for persons with disabilities” from autumn 2010 to autumn 2011. These events focus on achieving the greatest possible participation of those concerned;

(d) Moreover, on 3 December 2010 the Commissioner launched a map of the inclusive examples on the [www.inklusionslandkarte.de](http://www.inklusionslandkarte.de) website collecting national best practice examples for living, learning, working, playing together, etc., of persons with and without disability and of inclusion in general. The decision as to whether an example can be regarded as inclusive and included in the map is subject to strict criteria<sup>25</sup>. The evaluation and selection of the applications is carried out by a body of persons with

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<sup>24</sup> The results of the conferences have been published in a brochure which can be retrieved with further reports on the events from the [www.behindertenbeauftragter.de/alle-inklusive](http://www.behindertenbeauftragter.de/alle-inklusive) Internet portal.

<sup>25</sup> The criteria, the application form and further information on the map and on the campaign are available at [www.inklusionslandkarte.de](http://www.inklusionslandkarte.de).

different disabilities who are represented on the Commissioner's Advisory Council on Inclusion (cf. information regarding Art. 33). In order to raise awareness of the map, and to publicise its implementation, the Commissioner, together with the disability commissioners of the *Länder*, is implementing the campaign entitled "Germany is becoming inclusive – We too" in which inclusive examples all over the country are visited and awarded prizes for their commitment.

62. For the planning and establishment of the National Action Plan, the Federal Government and the Commissioner of the Federal Government for Matters relating to Disabled Persons have carried out a number of congresses and workshops with strong participation from civil society and institutions which bear responsibility in Germany for policy on persons with disabilities:

(a) For instance, the future structure of the National Action Plan and the detailed portrayal of fields of action and cross-sectional topics were discussed and developed on 24 March 2010, together with the associations of persons with disabilities;

(b) On 23 June 2010, the Federal Ministry of Labour and Social Affairs organised the congress entitled "Participation needs visions" with roughly 300 participants who work on the visions, guiding concepts and goals belonging to the fields of action. Parallel to this, citizens were able to participate in this process for several weeks online via the Internet portal [www.einfach-teilhabe.de](http://www.einfach-teilhabe.de);

(c) A second congress took place under the motto "participation needs schemes" on 4 November 2010. Roughly 300 participants from the Federal and *Land* ministries, the local authorities, disability associations, as well as broader civil society, had the goal to place concrete schemes and projects for the implementation of the guiding concepts and goals in the centre of the discussions. Here too additional participation possibilities were provided via the Internet portal [www.einfach-teilhabe.de](http://www.einfach-teilhabe.de).

63. Over and above this, the Federal Government will support and accompany the implementation of the National Action Plan with a long-term communication campaign. Their major elements will be coordinated with civil society, and here in particular with the associations of persons with disabilities. Elements of the campaign are:

(a) A logo developed together with civil society to indicate implementation of the National Action Plan, which can also be used to develop and implement further action plans, as well as to implement communication measures of the associations;

(b) A communication platform in the context of the [www.einfach-teilhabe.de](http://www.einfach-teilhabe.de) Internet presentation;

(c) An umbrella campaign which is to raise awareness across the population for the interests of the Convention;

(d) Handouts for companies and representations of persons with a severe disability, which look like action plans of large enterprises and can be implemented like them (in cooperation with various players of civil society, in particular the social partners, as well as the associations of persons with disabilities);

(e) Campaign items which each citizen can use in their everyday lives to publicise the Convention and draw attention to potential improvements.

64. These conferences and congresses, as well as the adoption of the NAP, can help ensure that the topic of disability now also receives more media attention. Newspapers, periodicals, as well as television, are now reporting more frequently about persons with disabilities, and hence helping to reduce residual prejudices towards them.

65. It is not only congresses, events and campaigns which play a role for awareness-raising in Germany. Projects and schemes which the Federation, the *Länder* and local authorities support financially also focus on awareness-raising, and for instance the improvement of the participation of persons with disabilities in working life may serve as an example (cf. Art. 27): The “Job – Jobs without barriers” initiative and the “Job4000” labour market programme help along this path by promoting cooperation relationships and network formation on the part of enterprises and institutions which bear responsibility for the participation of persons with disabilities in working life).

## **Article 9 – Accessibility**

66. In its schemes on accessibility, Germany pursues a broad approach in which the creation of accessibility for all life areas is set as a goal: constructional and other facilities, means of transport, technical utensils, information processing systems, sources of information acoustic and visual and communication facilities, as well as other designed areas of life, are to be accessible to and useable by persons with disabilities without particular obstacles in the customary manner and as a matter of principle without the assistance of others (cf. also Art. 20, 21 and 30)<sup>26</sup>. The special focus lies here in the sense of universal design on the characteristic “as a matter of principle without the assistance of others”. This particularly strengthens the self-determination and personal responsibility of persons with disabilities. The regulations for the creation of accessibility hence form the core of the Act on Equal Opportunities for Persons with Disabilities, which acted a model for the 16 Acts on Equal Opportunities of the *Länder*.

67. The creation of accessibility is a dynamic process which can only be gradually implemented, taking account of the principle of proportionality. The standards of accessibility to be called on are subject to constant change. Specifically for individual regulatory areas, they are established by recognised rules of the art (incl. *Deutsche Industrie Normen* [German industrial standards] - DIN) and – on the basis of the Act on Equal Opportunities for Persons with Disabilities – also via programmes, plans and agreed goals. Although the subsequent need can only be gradually fulfilled given the long useful lives of existing infrastructural facilities and vehicles, constructional and other equipment, means of transport, information processing systems and communication facilities are being successively designed such that they can be used by persons with disabilities without particular difficulty and as a matter of principle without the assistance of others.

### **1. European initiatives**

68. Accessibility and universal design play a major role at European level. In 2007, the Committee of Ministers of the Council of Europe adopted the report entitled “Achieving full participation through Universal Design” as a resolution. The report contains recommendations to the governments as to how universal design strategies can be developed, introduced and implemented; it however also shows that there are already good experience and initiatives in many European countries, including in Germany.

69. The EU regulations which have been adopted at the initiative of the European Commission on the passengers’ rights of persons with reduced mobility and persons with disabilities ensure that these people have easier access to air, rail, ship and bus transportation in the European Union. This increases the personal mobility of persons with disabilities all over Europe (cf. Art. 20).

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<sup>26</sup> cf. section 4 of the Act on Equal Opportunities for Persons with Disabilities.

70. In accordance with European Directive 2004/18/EC, when awarding public contracts contracting authorities can prescribe additional conditions for the implementation of the contract. These may also be conditions on accessibility in general terms, such as in constructional schemes, in transport systems, means of transport or in the design of Internet presentations. The regulations were transposed in Germany by corresponding amendments to the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*).

71. In its Communication of 15 November 2010 on a “European Disability Strategy 2010-2020: A Renewed Commitment to a Barrier-Free Europe”, the European Commission favours improving guarantees of barrier-free access to goods, services and aids for persons with disabilities. After consultations with the Member States and other interest groups, the Commission will be examining whether a European legal act on accessibility is to be submitted by 2012. Germany will take up its position regarding the Commission’s proposals when the time comes, but currently does not see any need for a legislative act at European level. Targeted coordination of statutory regulations towards the various needs of persons with disabilities, as well as the respective contexts in which action can be expediently taken, must primarily take place at national level.

## 2. Building and housing

72. In accordance with the provisions of the Act on Equal Opportunities for Persons with Disabilities, the authorities of the Federation are obliged to build barrier-free in accordance with the generally-recognised state-of-the-art. This applies to new civilian buildings, as well as to major civilian conversions or extensions of the Federation. The *Länder* have similar regulations for buildings of the *Länder*, as well as buildings of local authorities. Regardless of this, the construction regulations of the *Länder* on barrier-free construction apply to all construction projects. These may prescribe compliance with technical regulations on barrier-free construction, such as Deutsche Industrie Normen (DIN), in their entirety or in parts for the respective Federal *Land*.

73. A major contribution towards barrier-free or barrier-reduced housing conversions is provided by the programme of the KfW reconstruction group entitled “Age-tailored conversion”. From 2009 to 2011 for this in the budget of the Federal Ministry of Transport, Building and Urban Affairs programme funds of roughly Euro 80 – 100 million each are available for reduced-interest loans and for investment allowances. The programme contributes towards the removal or at least the alleviation of constructional barriers in self-used and let homes. Amongst other things, promotion focuses for instance on the fitting of lifts, adjustments in the sanitary area, alterations to doors and internal proportions of homes, as well as adjustments in the immediate residential environment.

74. Additionally, the Federal Government continues to work in awareness-raising for the topic of “Age-tailored conversion” – not only with regard to elderly people. A contribution is made to this by 20 model projects on this topic. The participants are highly committed towards trying and analysing solutions to reduce barriers in existing housing and in the residential environment. They are also establishing advisory and intermediary services for housing in old age.

75. One focus of the public promotion of barrier-free housing is furthermore constituted by the promotion of social housing, which in the course of Federalism Reform I was completely transferred to the *Länder* from 2007 onwards. Until 2019, the Federation will be paying compensation benefits for investment schemes to the *Länder*; Euro 518.2 million per year will be tied to housing promotion until 2013. A decision is to be taken on the need for and suitability of the compensation benefits for the *Länder* from 2014 in line with the Coalition Agreement by the middle of this legislative period. The allocation of the funds in the *Länder* differs depending on the political focus that is set. Amongst other things, promotion is provided for schemes to reduce barriers in existing housing, for barrier-free

construction of new rented and owner-occupied housing for older people and for persons with disabilities, or for the modernisation of old-people's homes and nursing homes.

76. What is more, the Federal Government will be expanding and improving the advice that is on offer regarding barrier-free housing through brochures and via the Internet presentation entitled [www.einfach-teilhaben.de](http://www.einfach-teilhaben.de). This also includes discussing the use of new possibilities of "Ambient Assisted Living" in the homes of persons with disabilities, in cooperation with the stake-holders.

77. Matters relating to persons with disabilities are dealt with in town planning promotion, for which the Federation provides funding to the *Länder* and local authorities, and the funds can also be used for implementing the barrier-free design of the residential environment in the promoted quarters. The implementation of the town planning promotion programmes is a matter for the *Länder* and local authorities.

78. In the field of social compensation, injured parties and their surviving dependants are able to receive housing assistance benefits in accordance with the War Victims Relief Act. By these means, amongst other things persons with severe health impediments who have to have constructional changes carried out in their flat or house because of the consequences of their impediments are provided with advice and funding. Examples here are the conversion of a bathroom or the fitting of a stairlift. These benefits however depend on the income and assets of the beneficiaries unless the need is exclusively brought about by the damage. Moreover, housing conversions can also be funded by long-term care insurance or by the rehabilitation institution if the respective prerequisites are met.

79. Accessibility as a topic is to become more prominent in the basic and further training of architects. The Federal Government will be drawing up a concept on this.

### 3. Communication

80. Communication of persons with disabilities with others is ensured, promoted and refined in many ways in Germany. Thus, for instance, the Federation's Ordinance on Barrier-free Information Technology (*Barrierefreie Informationstechnikverordnung – BITV*) and the corresponding ordinances of the *Länder* ensure that their Internet sites are barrier-free for persons with disabilities. The Federation's BITV was adjusted to comply with the current international guidelines ("Web Content Accessibility Guidelines" – WCAG 2.0) which apply worldwide as the recognised standard and explain how web contents can be made accessible for persons with disabilities. The new ordinance, BITV 2.0, will be adopted in the summer of 2011 and will furthermore contain requirements to provide information in Easy Language and in German sign language for the federal authorities.

81. In administrative proceedings and court proceedings (cf. also Art. 13), hearing-impaired or speech-impaired persons have a right to the provision of a sign language interpreter or other communication aids, including technical aids. The Federal Government is promoting a number of research projects to improve the participation of people who are deaf and hard-of-hearing (cf. also Art. 27). Moreover, the Federal Government has commissioned a feasibility study on the potential for development and deployment of sign language avatars, the results of which will be available in 2011.

82. The social-policy interest of the Federal Government with regard to the participation of persons with a hearing disability also aims to permanently install a relay service (technology for a translation service) by means of which deaf people and those with hearing and speech disabilities in Germany can participate in telecommunication via sign interpreters, including with the aid of computers and web cameras. This was ensured by a legal amendment in the Telecommunications Act (*Telekommunikationsgesetz*). The relay

service is currently being offered with the “sign language interpreting” and “written interpreting” services.

83. Moreover, with its sign telephone service, the Federal Ministry of Labour and Social Affairs offers to citizens who are hard-of-hearing or hearing impaired the possibility to obtain information on a variety of topics relating to the Federal Government. Furthermore, the 115 sign telephone hotline was established in cooperation between the Federal Ministry of Labour and Social Affairs and the Federal Ministry of the Interior. The 115 sign telephone hotline overcomes obstacles in verbal communication between citizens who are deaf or hearing impaired regarding via visual portrayal of German sign language (DSG). This now provides to a social group which previously was not able to use the service of the standard authorities’ phone number 115, or only with considerable difficulties, easier access to general information of the entire public administration in Germany via videotelephone. The German Federation of the Deaf, as well as other associations, were involved in the establishment of the 115 sign telephone.

84. The Federal Government shares the view of the associations that accessibility for persons with learning and mental disabilities is not yet comprehensively guaranteed. The Federation, the *Länder* and local authorities are hence increasingly meeting the need for information in Easy Language and publishing brochures and other texts in Easy Language.<sup>27</sup> This need is also catered for by the new BITV 2.0 (cf. above). The Federal Government will nonetheless be examining the involvement of persons with a learning and mental disability in the evaluation of the Act on Equal Opportunities for Persons with Disabilities.

#### 4. Agreed goals

85. In order to guarantee accessibility in the area regulated by law, the Act on Equal Opportunities for Persons with Disabilities created the tool of the agreed goal. This enables associations of persons with disabilities to negotiate with enterprises on the concrete creation of accessibility. Agreed goals offer the possibility to bring about flexible solutions that are adjusted in line with the respective needs of those concerned for a variety of spheres of accessibility. They can range from the barrier-free design of individual facilities through the development of barrier-free products and services, to the design of an accessible web presentation.

86. The negotiations which have been carried out to date and conclusions of agreed goals make clear the broad spectrum of the agreed goal: Both the spheres of information and communication technology, and also building and transport, are covered. The spheres of application range from services which are relevant above all in everyday life, such as the provision of barrier-free services of the Rhineland-Palatinate German Savings Banks Association, or the barrier-free design of the Internet presentation of Pfizer Germany, ranging through to services which are important in terms of tourism, such as the barrier-free design of the Baden Airpark and the listing and evaluation of barrier-free hotels, restaurants and pubs.

87. The possibility of regulating accessibility via agreed goals was however taken up only hesitantly by the associations of persons with disabilities in the past. The Federal Ministry of Labour and Social Affairs has only received 21 agreed goals between the entry into force of the Act on Equal Opportunities for Persons with Disabilities in 2002 and the

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<sup>27</sup> For instance the brochure on the United Nations Convention on the Rights of Persons with Disabilities of January 2010 of the Federal Ministry of Labour and Social Affairs (ed.) or of the Federal Government Commissioner for Matters relating to Disabled Persons of the end of 2010.

end of April 2009<sup>28</sup>. In order to make better use of the tool of the agreed goal, the Federal Government has been promoting the “Federal Centre of Excellence on Accessibility”<sup>29</sup> since 2009, launched by associations of persons with disabilities. The task of the Centre of Excellence is to support associations, enterprises and other parties in organisational, technical and legal terms in developing concrete solutions for barrier-free environmental design and to record these in agreed goals in accordance with the Act on Equal Opportunities for Persons with Disabilities. The Centre of Excellence furthermore coordinates and implements public relations, awareness-creation and skill-building measures.

## Article 10 – Right to life

88. In accordance with German law, the protection of life is comprehensively guaranteed at constitutional level by Article 2 Para. 2 sentence 1 of the Basic Law.<sup>30</sup> In terms of criminal law, the right to life is protected by sections 211 et seqq. of the Criminal Code (*Strafgesetzbuch – StGB*). German law also protects unborn life (sections 218 et seq. of the Criminal Code).

89. German criminal law distinguishes in abortions between two constellations: An abortion – although unlawful – remains exempt from punishment if the pregnant woman requests the abortion by a physician within the first 12 weeks after conception and the physician has documented through a certification in accordance with section 219 subs. 2 sentence 2 of the Criminal Code that she was advised at least three days prior to the operation by a recognised counselling agency (counselling solution). If the mother’s life is at risk or the mother must anticipate a severe health impairment as a result of the pregnancy (medical indication), there is no time-limit and the abortion is exempt from punishment and not unlawful if the risk cannot be averted in another manner which is acceptable for the woman (indication solution).

90. A disability of the child alone (embryopathic indication) is not a reason for a permissible abortion in Germany; the early embryopathic indication was abolished in 1995. A medical indication may exist in individual cases if in accordance with the prenatal diagnosis prospects for the birth of a child with severe impairments for the mother constitutes such a burden that, in the medical view, there is a serious risk to the life or health of the mother and that this risk can only be countered by an abortion.

91. In order to be able to better answer the question of whether a medical finding leading to the conclusion of an illness or disability of the unborn child for the health of the mother constitutes a life-threatening danger, the amendment of the Pregnancy Conflict Act (*Schwangerschaftskonfliktgesetz*), which took place in 2009, guarantees comprehensive medical and psychosocial advice for these cases. In addition to an expanded obligation to advise by physicians of various disciplines, the legislature introduced a three-day consideration period prior to making an indication<sup>31</sup>. Physicians are moreover obliged,

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<sup>28</sup> The agreed goals register is published on the Internet on the homepage of the Federal Ministry of Labour and Social Affairs [www.bmas.de](http://www.bmas.de).

<sup>29</sup> More details on the Federal Centre of excellence at <http://www.barrierefreiheit.de/>.

<sup>30</sup> “Every person shall have the right to life and physical integrity.”

<sup>31</sup> More on this in the brochure entitled “*Schwangerschaftsberatung § 218 - Informationen über das Schwangerschaftskonfliktgesetz und gesetzliche Regelungen im Kontext des § 218 Strafgesetzbuch*” (ed. Federal Ministry for Family Affairs, Senior Citizens, Women and Youth) and in the “*Informationsmaterial für Schwangere nach einem auffälligen Befund in der Pränataldiagnostik*” to be provided by the Federal Centre for Health Education and newly-introduced by the Act Amending



should the pregnant woman agree, to provide contacts with advice agencies and where appropriate with self-help groups and disability associations.

92. The Pregnancy Conflict Act comprehensively regulates the right of the pregnant woman to receive advice in all possible questions concerned with the pregnancy and any conflict situations.

93. After the Federal Court of Justice, as the supreme court in criminal matters, in autumn 2010 regarded pre-implantation diagnostics as not punishable in exceptional cases to recognise severe genetic damage, pre-implantation diagnostics have been the topic of controversial discussion in Germany. This will be permitted in future within strict limits by the Act Regulating Pre-implantation Diagnostics (*Gesetz zur Regelung der Präimplantationsdiagnostik*), adopted by the German Bundestag on 7 July 2011.

### **Article 11 – Situations of risk and humanitarian emergencies**

94. The regulations on the protection of the population in the case of civil defence cover persons with and without a disability without distinction. The same applies to the sphere of protection of the population in the case of a disaster or of other serious accidents which are within the remit of the *Länder*. Special communications channels are already provided in some cases in the *Länder* and municipalities for alarm calls for deaf people (including a telephone for the deaf which makes a written dialogue possible).

95. Germany is also facing the special challenges posed by emergency assistance at international level. The interests of population groups with special needs are explicitly taken into account, both in promotion concepts and promotion applications for development-orientated emergency assistance intervention and in implementation. For instance, the emergency and transitional accommodation funded by Germany in Haiti was tailored in terms of its construction to disability, and persons with disabilities were explicitly accommodated in the selection process.

### **Article 12 – Equal recognition before the law**

96. Legal capacity and capacity to act are regulated in Germany in the Civil Code (*Bürgerliches Gesetzbuch – BGB*). These regulations apply both to persons with and without disabilities. In accordance with section 1 of the Civil Code, all living people have legal capacity, i.e. they can hold rights and duties. This regulation guarantees that persons with disabilities also have unrestricted legal capacity. They can hold and own other rights. Their property and their rights equivalent to assets are guaranteed to them by Article 14 Para. 1 of the Basic Law. In accordance with Article 14 Para. 3 of the Basic Law, expropriations are only permissible for the public good and may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Persons with disabilities may defend themselves against impairments of their property by third parties in the same manner as persons without disabilities. They may conclude contracts in accordance with the same regulations as persons without disabilities. In accordance with the regulations applicable to all, they may establish security rights in moveable items and real estate which belong to them, in particular they may also take up mortgages and other rights in rem in their land.

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the Pregnancy Conflict Act (*Gesetz zur Änderung des Schwangerschaftskonfliktgesetzes*) which entered into force on 1 January 2010.

97. In accordance with sections 104, 827 and 828 of the Civil Code, persons who are of adult age may also be regarded as having capacity to act, i.e. capable of committing crimes and entering into transactions. These regulations presume that they have the necessary insight and decision-making capacity for participation in legal transactions. The capability of committing crimes and entering into transactions of minor-age persons is, by contrast, regulated in a differentiated manner. In accordance with section 828 subs. 1 of the Civil Code, children aged under seven are not capable of committing crimes. In this respect, German law presumes that children of this age do not have the insight required to recognise responsibility for damaging conduct. In accordance with section 104 No. 1 of the Civil Code, they are also incapable of contracting, that is they cannot effectively submit contractual declarations and other declarations of intent. This is based on the consideration that people do not yet have the understanding and will in the first years of life that they need in order to have capacity to act effectively in legal transactions. Those who wish to determine their legal circumstances themselves through legal transactions must be able to do so responsibly.

98. In accordance with section 828 subs. 3 of the Civil Code, those of minor age between seven and 18 are able to commit a crime if they have the necessary insight. Section 828 subs. 2 of the Civil Code particularly regulates responsibility for damage in road and rail transport. As a matter of principle, minors are only responsible for such damage if they have reached the age of ten, unless they have acted with intent. The ability of minors who have reached the age of seven to conclude contracts is restricted in accordance with section 106 of the Civil Code. In accordance with section 106 of the Civil Code, minors who are restrictedly able to contract can only themselves effectively submit declarations of intent by means of which they acquire exclusively legal advantages. If they submit other declarations of intent, these only become effective with the approval of their statutory representatives. These regulations apply in the same way to minors with a disability and without a disability.

99. Also major-age persons, in accordance with sections 827 and 104 of the Civil Code, can exceptionally not have capacity to act. Associations which represent the interests of persons with disabilities consider that these provisions are not compatible with Article 12 since by these means persons with disabilities are said to be arbitrarily not regarded as having capacity to act on grounds of their disability. This is however not correct since sections 827 and 104 of the Civil Code, where they exceptionally rule out the ability of major-age persons to commit crimes and transact, are equally applicable to persons with and without disabilities. Section 104 No. 2 of the Civil Code rules out ability to contract if a person is in a state of pathological mental disturbance, which prevents free exercise of will, unless the state by its nature is a temporary one. Section 827 sentence 1 of the Civil Code rules out ability to commit a crime if someone inflicts damage on another person in a state of unconsciousness or in a state of pathological mental disturbance precluding free exercise of will. These regulations protect those concerned against liability for damage with regard to which they are not reproachable, as well as against disadvantageous consequences of undesirable legal transaction obligations which were carried out in a state precluding free exercise of will. Neither provision is linked to a disability, and hence they neither include all persons with disabilities, nor is their scope of application restricted to persons with disabilities. The legal definition of the pathological mental disturbance used in both provisions can, rather, cover both persons with disabilities where their disability is accompanied by a long-term mental impairment precluding free exercise of will, and persons who suffer from a longer-lasting unconsciousness or other illness not precluding free exercise of will only in the short term. Whether these prerequisites are met is always only related to a concrete individual case. In the event of a dispute, only the courts can decide bindingly whether, related to specific acts or declarations, the prerequisites for ability to commit a crime or to contract exceptionally apply.

100. If a person of full age, by reason of a mental illness or a physical, mental or psychological handicap, cannot in whole or in part take care of his affairs, the custodianship court, on his application or of its own motion, appoints a custodian for him/her in accordance with section 1896 of the Civil Code. The legal capacity and ability to contract of the person are not affected by the appointment of a custodian. In the tasks assigned to him/her, the custodian must carry out measures for the person under custodianship which are necessary for the best interests of the person under custodianship; his/her wishes are to be taken into consideration, sections 1901 subs. 2 and 3 of the Civil Code. In his/her tasks, the custodian represents the person under custodianship, section 1902 of the Civil Code. The core issue of the law on custodianship is to enhance the individual's self-determination. The strict principle of necessity, as well as a strict standard of proportionality with measures under the law on custodianship, strengthen the guarantee of self-determination here.

101. A court must hear the person concerned in person prior to the appointment of a custodian<sup>32</sup>. On the appointment of a custodian, the court must rule on the basis of an expert report. No custodian may be appointed against the free will of the person of full age (section 1896 subs. 1a of the Civil Code). The custodianship court supervises the entire activities of the custodian (sections 1837 subs. 2 and 1908i subs. 1 sentence 1 of the Civil Code). The custodianship court has to intervene against breaches of duty of the custodian through suitable instructions and prohibitions. It is also in breach of duty if the custodian does not maintain regular contact with the person under custodianship (section 1897 subs. 1 of the Civil Code) and does not discuss matters which are important for the person under custodianship (section 1901 subs. 3 of the Civil Code). The court must remove the custodian if he/she proves to be unsuitable or there is another compelling reason (section 1908b of the Civil Code).

102. Where the person concerned is able to freely form their own will, the right of self-determination also includes the freedom to be ill. A custodian may therefore not be appointed for instance in order to bring about an examination or treatment on the person concerned considered by those around them to be necessary. Accommodation under the law on custodianship serves solely to avert a considerable self-endangerment in situations in which the person under custodianship cannot exercise his/her right of self-determination on grounds of his/her illness (section 1906 of the Civil Code). The Code provides for the accommodation of the person under custodianship only with the appropriate approval of the custodianship court (section 1906 subs. 2 of the Civil Code).

103. Although German law on custodianship is hence in conformity with the Convention and there is no need for legislative action, all concerned are endeavouring in applying the law to take advantage of potentials for improvement. A working party on the law on custodianship will hence explore the question, amongst others, of what potential for improvement exists in the custodianship system from the point of view of the Convention on the Rights of Persons with Disabilities. Additionally, an extensive evaluation is planned to take place of the Act on Proceedings in Family Cases and in Matters concerned with Non-contentious Litigation (*Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG*), which entered into force on 1 September 2009. Amongst other things the regulations on court proceedings in

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<sup>32</sup> The court must hear the person concerned in person prior to appointing a custodian. Since the hearing as a rule is to take place in the customary surroundings of the person concerned and the court comprehensively informs the person concerned of the state of the proceedings, it is ensured that each person concerned is suitably able to take part in the proceedings and to express their own wishes and needs.

custodianship and accommodation cases are to be subject to a critical review in the evaluation.

### **Article 13 – Access to justice**

104. German law guarantees access to justice for persons with disabilities. Appropriate provisions are contained for instance in the Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*) and the Code of Criminal Procedure (*Strafprozessordnung – StPO*).

105. Thus, for instance, in accordance with section 191a of the Courts Constitution Act blind or visually-impaired persons may demand that court documents are made available to them in a form accessible to them to the extent that this is necessary in order to safeguard their rights. In accordance with section 186 of the Courts Constitution Act, the necessary aids must also be furnished where appropriate to facilitate the communication of a hearing-impaired or speech-impaired person. The content of these provisions applies not only in court proceedings, but also in the investigation and execution proceedings, which the public prosecution office is to oversee in procedural terms. Section 187 of the Courts Constitution Act provides that the court calls in an interpreter or translator for an accused or convicted person or for persons who have the right to join a public prosecution as a private accessory prosecutor who are hearing impaired or speech impaired where this is necessary to enforce their rights in criminal proceedings.

106. If an accused person is unable to defend themselves in criminal proceedings for instance on grounds of a disability, they are to be appointed defence counsel (section 140 subs. 2 of the Code of Criminal Procedure). Section 140 subs. 2 sentence 2 of the Code of Criminal Procedure additionally orders that the application of an accused person with a hearing or speech disability for the appointment of counsel is to be complied with.

107. In accordance with section 259 subs. 2 of the Code of Criminal Procedure, hearing-impaired or speech-impaired person accused persons must be told of the final pleadings at least of the applications of the public prosecution office and of the defence counsel via an interpreter.

108. In accordance with section 68b of the Code of Criminal Procedure, a lawyer is to be appointed for witnesses for the duration of their questioning if specific circumstances apply making it evident that they are unable to exercise their rights themselves on being questioned. Additionally, victims of a criminal offence both with and without disabilities who are to be questioned as witnesses may take along to their questioning a person enjoying their trust (section 406f subs. 2 of the Code of Criminal Procedure).

109. In accordance with section 60 No. 1 of the Code of Criminal Procedure, it is guaranteed that persons who for instance on grounds of a mental disability have no adequate idea of the essence of an oath do not have to give an oath.

110. In accordance with section 66 of the Code of Criminal Procedure, the court must make available the technical aids which are necessary for persons who are hearing-impaired or speech-impaired who are questioned as witnesses to facilitate the understanding of the taking of an oath for these persons.

111. The representations of interests of persons with disabilities favour further improvements in access of persons with disabilities.

112. Since the access of persons with disabilities to justice is a major concern to the Federal Government, it is seeking to continue to improve accessibility to justice and to close any gaps in the area of the criminal and administrative fine proceedings, as well as in the field of family and non-contentious jurisdiction (cf. also Art. 12). Further training for

judges on the topic of persons with disabilities make a contribution towards awareness-raising in this field.

## Article 14 – Liberty and security of the person

113. No one is deprived of their liberty in Germany solely on grounds of disability. Liberty and security are rights which are guaranteed to all people.

114. Only in special exceptional cases and under strict prerequisites is accommodation of a person under custodianship which is connected with deprivation of liberty permissible. Accommodation under the law on custodianship serves solely to avert a considerable self-endangerment in situations in which the person under custodianship is unable to exercise his/her self-determination on grounds of his/her illness. Section 1906 of the Civil Code permits accommodation only where a person under custodianship is unable to exercise his/her will as a result of illness, but not where the person under custodianship is still able to exercise will freely. The case-law here places high demands on the de facto and legal prerequisites of accommodation. It in particular applies a strict proportionality standard.<sup>33</sup>

115. Deprivation of liberty can hence not be reasoned by the existence of a disability.

116. For accommodation in a psychiatric hospital in accordance with section 63 of the Criminal Code, it is necessary inter alia that a person was unable to contract guilt or able to contract reduced guilt when committing a criminal offence, and that he/she may be expected to commit further considerable unlawful acts as a result of this state and they therefore pose a danger to the public.

117. Similar prerequisites apply in some cases to accommodation in accordance with the *Land* statutes which provide for aids for mentally ill people. Accommodation in a psychiatric hospital is always contingent, in addition to a mental illness, on the existence of a danger to life or limb of the person in question or to legal interests of others.

118. In the Federal Republic of Germany, all people who are deprived of their liberty are dealt with in accordance with the guarantees provided for in the international human right provisions.

119. Thus, for instance, an independent court rules on the accommodation of a person under custodianship<sup>34</sup>. It is also stipulated by law that the custodian must end the accommodation if the prerequisites for it cease to apply. The custodian must also report the ending of the accommodation to the custodianship court (section 1906 subs. 2 and 3 of the Civil Code).

120. The *Länder* implement de-escalation training for staff in acute psychiatric treatment. The goal is also to structure acute emergency situations within a joint treatment plan. Regular coordination with local self-help groups of the mentally ill also helps consider patients' interests in such situations. Also, the Federal Government will examine in detail the call by the associations to establish independent psychiatric complaint agencies. What is more, the development of supra-sectoral systematic quality assurance for the care of mentally ill people is currently being discussed in the Joint Federal Committee.

<sup>33</sup> Federal Constitutional Court, Order of 23 March 1998 – 2 BvR 2270/96 – NJW 1998, 1744; Federal Court of Justice, Order of 23 June 2010 – XVII ZB 118/10 – FamRZ 2010, 1432.

<sup>34</sup> Without court approval, accommodation is only permissible if delay entails risk; the approval must thereafter be obtained without undue delay (section 1906 subs. 2).

121. The actual practice of enforced accommodation in accordance with provisions of *Land* law is criticised by the associations of those concerned since they are said not to do justice to the special needs of persons with disabilities.

122. Insofar as medical schemes or aids for persons with disabilities who are serving a prison sentence are necessary, the provisions on healthcare contained in the prison laws of the *Länder* and in the Prison Act of the Federation are applied, unless they have adopted their own statutes. Accordingly, the inmates have a right to be supplied with aids. If a prison which is responsible per se for convicts with a severe disability who rely on a wheelchair is unsuitable because of a lack of accessibility, execution of sentence can take place in another suitable prison.

### **Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment**

123. Torture, cruel or degrading treatment or punishment is prohibited for all people in Germany. This prohibition is entrenched in the Basic Law.<sup>35</sup> The ban on torture is furthermore safeguarded by a variety of provisions of criminal and criminal procedure law in non-constitutional law. Thus, superiors are prohibited by section 357 of the Criminal Code from inciting their staff to commit unlawful acts or indeed to only tolerate such acts. Furthermore, statements obtained by coercion under torture or the threat of torture may not be used as evidence (section 136a of the Code of Criminal Procedure). Extortion of testimony is also a criminal offence in its own right. It is not important here whether the person in question has a disability or not.

124. The measures of medical research which are legally permissible in Germany within narrow limits do not fall within the scope of application of the article. In accordance with the law as it stands, research on people as a matter of principle requires informed consent of the participants. A person is able to consent if he/she is able to recognise the essence, significance and scope of the measure and to exercise his/her will accordingly. With persons who are unable to do so, a statutory representation or proxy-holder may only consent to the medical act if it serves the best interests of the person unable to consent – i.e. it is in their direct interest (cf. section 1901 subs. 2 of the Civil Code, section 41 subs. 3 of the Medicinal Products Act [*AMG*]). In accordance with this, in the case of minors consent of the statutory representative (as a rule the parents) is conditional on the medical measure being in the best interests of the child (section 1627 of the Civil Code), that it is therefore research in the person's self-interest.

125. Consent by the person having care and custody to research which exclusively benefits others is hence ruled out as a matter of principle in accordance with German law. Only for the field of the testing of medicines on minors who suffer from an illness for the treatment of which the medicine to be tested is to be applied has the German legislature – pushed by European Community law – provided for a relaxation and, subject to narrow prerequisites, permitted a “group benefit” of the clinical test to be sufficient. This relaxation however explicitly does not apply to minors who would not be capable of consenting after coming of age (section 41 subs. 2 of the Medicinal Products Act).

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<sup>35</sup> Art. 1 Para. 1 of the Basic Law “Human dignity shall be inviolable”, Art. 104 Para. 1 of the Basic Law “Persons in custody may not be subjected to mental or physical mistreatment.”

## Article 16 – Freedom from exploitation, violence and abuse

126. Special criminal provisions exist in Germany to protect persons with disabilities. In particular, section 174a of the Criminal Code imposes punishment on the sexual abuse of prisoners, patients and institutionalised persons. Section 174c of the Criminal Code punishes sexual abuse exploiting a relationship of counselling, treatment or care. Persons who are incapable of resistance are protected against sexual abuse in accordance with section 179 of the Criminal Code. Section 225 of the Criminal Code places the abuse of persons under care or custody under punishment, including persons who are defenceless due to frailty or illness.

127. Furthermore, the Victim Compensation Act (*Opferentschädigungsgesetz – OEG*) is to be adhered to as a part of social compensation. This Act regulates independent state compensation beyond the general social security systems and social assistance towards all people in Germany who have fallen foul of a violent act. The Victim Compensation Act aims to compensate for the health and economic consequences of violent acts.

128. Women and girls with disabilities are particularly at risk of exploitation, violence and abuse<sup>36</sup>. Justice is also done to this realisation by Action Plan II to fight violence against women<sup>37</sup>. The Action Plan discusses all forms of violence and acts where there is a particular need for action, for instance when taking account of women with disabilities or in the field of medical care.

129. In order to obtain an overview of the scope and extent of violence against women with disabilities, a representative study was commissioned in February 2009. The project is to provide representative data in the out-patient, in-patient and domestic domains for age groups from 16 to 65-year-olds and work out problematic areas, as well as ascertaining the support and action needed. The results are likely to be available at the end of 2011.

130. An effective prevention strategy against violence is to strengthen those concerned themselves before they become victims. Therefore, courses are offered to strengthen self-confidence (section 44 subs. 1 No. 3 of Book IX of the Social Code). In the context of the three-year project entitled SELF (*SELBST*) of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, secure knowledge of the effectiveness and structure of such exercises was obtained. A curriculum for the exercises and for the training of the exercise leaders was developed.

131. There are approx. 360 women's houses and roughly 500 out-patient counselling agencies in Germany for women affected by violence. The Federal Government is promoting their technical linking with the networking agencies of the women's houses, as well as the women's counselling agencies and women's emergency alarm services. These networking agencies carry out activities in order to make it easier for women with disabilities to gain access to the women's support system.

132. The planned national "violence against women" telephone helpline is to be set up barrier-free: The telephone helpline will serve to make the existing women's support system also accessible and better known for women with disabilities by offering qualified initial counselling and mediation. The telephone helpline is to be launched at the end of 2012/beginning of 2013.

<sup>36</sup> Cf. Chapter 5,2 in the Sixth Report of the Federal Republic of Germany on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>37</sup> *Aktionsplan II der Bundesregierung zur Bekämpfung von Gewalt gegen Frauen*, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Berlin, May 2009, 2<sup>nd</sup> edition, pp. 23 et seqq.

133. With the Action Plan to Protect Children and Juveniles against Sexual Violence and Exploitation, the Federal Government in 2003 furthermore established a comprehensive overall strategy. The Action Plan primarily aimed to refine criminal protection, enhance prevention and victim protection and promote the networking of the aid and advice offers and international cooperation to protect children and juveniles. This Action Plan is currently being refined by the Federal Government. Examples of the expansion of aid, counselling and intervention offers, as well as the technical infrastructure, are the medical advice agencies with Internet platforms and the “Number against Troubles” (*Nummer gegen Kummer e.V.*) association. This is a nationwide network providing a free, anonymous telephone hotline for children and young people, including Internet counselling and a telephone helpline for parents.

134. With regard to the protection of children with and without disabilities, Germany has ratified the Optional Protocol to the Convention on the Rights of the Child. It came into force on 15 August 2009. A focus of the commitment of the Federal Government against the sexual abuse of minors was the further development of their protection under criminal law. Criminal law was tightened up in many ways, in particular in the field of criminal offences against sexual self-determination<sup>38</sup>.

135. In view of the occurrence of a large number of cases of sexual abuse committed on children and juveniles in schools, boarding schools and facilities within church, state or independent agencies, the Federal Government established a roundtable in the family domain under the leadership of three Federal Ministries (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Federal Ministry of Justice, Federal Ministry of Education and Research) in 2010 to deal with the problem of sexual abuse of children in dependent and power-based relationships in private and public facilities<sup>39</sup>. The goal of the roundtable, which is to continue until the end of 2011, is to enhance prevention, protection and support for those concerned (including tangible and intangible assistance from the responsible institutions), improve education and disclosure, guarantee timely, effective criminal prosecution of sexual abuse and advance research and evaluations on the topic of “sexual violence”.

## **Article 17 – Protecting the integrity of the person**

136. Under German criminal law, any medical or other treatment entailing an encroachment on physical integrity complies with the element of the criminal offence of (dangerous) bodily harm in accordance with section 223 of the Criminal Code, and depending on the case constellation may also satisfy the qualification elements contained in sections 224 et seqq. of the Criminal Code.

137. Consent of the injured person to the bodily harm (section 228 of the Criminal Code) can only justify it if it is granted effectively and there is no impairment of the exercise of free will, caused for instance by deceit, error or coercion. In order to be effective, consent to medical encroachments must be given in knowledge of the reason, nature, extent and intended and possible consequences of the concrete incursion.

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<sup>38</sup> For instance by the Act Amending the Provisions on Criminal Offences against Sexual Self-Determination and Amending other Provisions (*Gesetz zur Änderung der Vorschriften über die Straftaten gegen die sexuelle Selbstbestimmung und zur Änderung anderer Vorschriften*), of 27 December 2003 (Federal Law Gazette [*BGBl.*] 2003 Part I, 3007).

<sup>39</sup> Roundtable – Sexual child abuse in dependency and power situations in private and public facilities and in the family sphere



138. The forced sterilisation of persons with disabilities is not permissible and is liable to punishment. In case of a life-threatening or grievous danger to health for the person concerned, the Civil Code permits the sterilisation of adults who are unable to consent only subject to very strict prerequisites which are met only in rare exceptional cases. Sterilisation may also not run counter to a person's natural will if the person under custodianship is unable to consent. Even if the custodian specifically appointed for consent to sterilisation with the approval of the custodianship court has consented and only then the resistance of the person concerned is shown, sterilisation may not take place. Equally, abortions without the consent of the pregnant woman are prohibited and may also be punished as bodily harm crimes in accordance with section 218 of the Criminal Code.

## **Article 18 – Liberty of movement and nationality**

139. For German nationals, liberty of movement is guaranteed by Article 11 of the Basic Law. It encompasses the right to take up residence and to live unhindered in any place in the Federal Republic and the right to enter the Federal Republic. Liberty of movement of non-Germans is protected by Article 2 Para. 1 of the Basic Law.

140. The residence of a foreign person can be geographically limited. For instance, residence of asylum-seekers, those whose obligation to leave is executable and foreigners whose deportation has been temporarily suspended are restricted by law to the Federal *Land* or the district of the immigration authority. The allocated residence area may only be left in exceptional cases as a rule or with special permission.

141. German nationality is as a rule acquired by birth (if at least one parent is German at that time)<sup>40</sup>, through adoption or through naturalisation.

142. The applicable naturalisation law makes it easier to acquire German nationality for persons with disabilities. It provides for exceptional statutory regulations for persons with disabilities if the disability would make naturalisation more difficult or impossible, for instance when it comes to proving knowledge of German and the necessary civil knowledge (section 10 subs. 6 of the Nationality Act [*StAG*]). Further exceptional provisions apply to children and juveniles aged up to 16.

143. Loss of German nationality on grounds of a disability is ruled out by the Constitution since this constitutes deprivation of German nationality which is prohibited by the Basic Law (Article 16 Para. 1 of the Basic Law). Nationality may however be withdrawn if it was obtained by malicious deception, threat or bribe or by intentional providing incorrect or incomplete information.

144. Regardless of a disability and of nationality, any birth of a child in the Federal Republic is to be reported to the registry office within one week and thereupon certified by the latter. The parents, hospitals and other facilities are particularly obliged to report. There are no specific regulations for persons with disabilities. The existing rules however cover them and lead neither directly nor indirectly to discrimination on grounds of the characteristic of disability.

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<sup>40</sup> A child born in Germany both of whose parents are foreigners is a German if one parent has lived lawfully in Germany for eight years at that time.

## Article 19 – Living independently and being included in the community

145. Book IX of the Social Code supports with its principles the self-determination and participation of persons with disabilities in the life of society. Section 9 subs. 3 of Book IX of the Social Code provides for example that benefits, services and facilities leave to the beneficiaries as much scope as possible to shape their circumstances on their own responsibility and promote their self-determination. The legitimate wishes of the beneficiaries must be met when deciding on benefits and implementing benefits for participation (section 9 subs. 1 of Book IX of the Social Code). Taking account of the interests of the beneficiaries and of the circumstances of the individual case, Book IX of the Social Code pursues the principle of providing out-patient benefits in preference to in-patient ones.

146. A major instrument for self-determined participation and inclusion in society is the Personal Budget in accordance with section 17 of Book IX of the Social Code. Since 1 January 2008 there has been nationwide a legal right to the implementation of all participation benefits in the shape of Personal Budgets. With the Personal Budget, persons with disabilities can receive a monetary benefit or vouchers in place of services and benefits in kind, should they so request, in order to acquire for themselves the assistance services necessary for self-determined participation. This lends concrete form to the right to express a wish and to choose of persons with disabilities. Personal Budgets can be received by all persons with a disability and at risk of disability, regardless of the nature and severity of the disability and of the nature of benefits needed.

147. Persons with disabilities receive assistance for participation in work (for instance: establishment of a driving service, employment of readers for blind workers, provision of sign language interpreters for the deaf) in accordance with section 102 subs. 4 of Book IX of the Social Code.

148. In the context of integration assistance towards persons with disabilities, which is contributed by the institutions of social assistance, there may be a right to benefits for participation in life in the community. These include for instance assistance towards self-determined life in supported residences and assistance to participate in community and cultural life. The reorientation of integration assistance towards persons with disabilities from a largely institutional to a person-centred participation benefit is discussed in the Federation/*Länder* working party “Refining integration assistance towards persons with disabilities” of the Conference of Labour and Social Affairs Ministers.

149. Children and juveniles with disabilities in Germany also receive integration assistance benefits, subject to the prerequisites of section 53 Book XII of the Social Code, section 35a Book VIII of the Social Code or section 27d of the War Victims Relief Act, in order to promote their self-determination and equal participation in the life of society, and to avoid or counter disadvantages.

150. The Accommodation and Care Contract Act (*Wohn- und Betreuungsvertragsgesetz*), which entered into force in 2009, enhances the rights of older persons in need of long-term care and persons with disabilities if they conclude contracts on the provision of residential space with long-term care or care benefits. As a modern consumer protection statute, the Act serves to enforce the rights to self-determination described in Art. 1 of the Charter of Rights for People in Need of Long-Term Care and Assistance.

151. Living independently is however not brought about until, in addition to homes, the neighbourhood infrastructure also becomes accessible (including the immediate social environment). To this end, the NAP provides for appropriate measures.

152. Federal Ministry for Family Affairs, Senior Citizens, Women and Youth promotes barrier-free standards in buildings, homes, shared accommodation and sociocultural

facilities in the context of the programme entitled “Building models of aid for the elderly and aid for persons with a disability” as a model of independent living for persons with disabilities.

## **Article 20 – Personal mobility**

153. The personal mobility of persons with disabilities is one of the central prerequisites for self-determined, equal participation. Public transport plays a decisive role for them. The transport systems must be accessible to them and access must be made as easy as possible. With its understanding of barrier-free environment design, the Act on Equal Opportunities for Persons with Disabilities has created an important foundation for the design of the infrastructure in Germany. It is flanked by the Acts on Equal Opportunities of the *Länder* and amongst other things supplemented by the amendments in the Passenger Transportation Act, in the Rail Construction and Operation Code (*Eisenbahn-Bau- und -Betriebsordnung*) and in the Air Transport Act, which give particular consideration to the special interests of persons with disabilities.

### **1. Mobility aids**

154. The supply of aids and technical assistance in accordance with Book IX of the Social Code supports the optimum independence and self-determination of persons with disabilities. In order to ensure that persons with disabilities remain mobile in everyday life, help to participate in community and cultural life is also provided in the context of benefits for participation in the life of the community. This includes necessary mobility aids, in particular also in the context of 24 hour care.

### **2. Local public passenger transport**

155. Major progress has been observed in the local authorities in recent years when it comes to barrier-free local public transport. For instance, only low-floor vehicles are being used in new acquisitions in many municipalities. Furthermore, accessible stops are being built. The construction measures include the construction of bus stops and railway platforms to match low-floor vehicles and the use of floor indicators (grooves, ribbed and knobbed boards) as an aid for the orientation of blind and visually-impaired persons. These schemes are based on the local transport plans drawn up by the *Länder*. The interests of persons with a disability have had to be taken into account here since 2002.

156. A major contribution to participation in local passenger transport is also made by the free carriage of persons with severe disabilities who as a result of their disability have considerably-reduced mobility in road traffic, who are helpless, blind or deaf. The costs of this benefit are met by the Federation and the *Länder* (roughly Euro 440 million in 2007).

### **3. Travelling by rail**

157. Railway companies and station operators were obliged with Regulation (EG) Nr. 1371/2007 to establish rules for the carriage and discrimination-free access of persons with disabilities with the active participation of the associations. The companies must ensure that railway stations and platforms, vehicles and other facilities are accessible for persons with disabilities. Furthermore, they are obliged to do their utmost to offer free assistance in getting on and off. The railway companies must furthermore draft programmes for the design of railway facilities and vehicles with the aim in mind of achieving optimum accessibility (section 2 subs. 3 of the Rail Construction and Operation Code). The programme of Deutsche Bahn AG of June 2005 prioritises the gradual creation of accessibility with new constructions and extensive conversions of railway stations from 1,000 travellers per day upwards. Here, in particular the construction of lifts or longer

ramps is provided for. In the case of railway stations with fewer than 1,000 travellers per day, these schemes are also provided for if an increased need exists because of the specific environment, for instance because of the proximity to a special school or a workshop for persons with disabilities<sup>41</sup>. Representatives of associations of persons with disabilities and of Deutsche Bahn AG are currently working on refining the programme which is still to be adopted in the course of 2011. The new programme focuses on large numbers of improvements in accessibility with the train generations planned to come into operation from 2014 onwards. Also the *Länder* are endeavouring to provide barrier-free access to more railway stations through the Railway Station Modernisation Programme.

158. After initial reservations, the private railway companies have become aware of their responsibility for persons with a disability and have submitted their own programmes for barrier-free vehicles.

#### **4. Road transport**

159. Section 3 subs. 1 of the Federal Highways Act (*Fernstraßengesetz – FStrG*) ensures that the interests of persons with a disability and other people with restricted mobility are taken into account in the construction and maintenance of federal highways with the aim in mind of attaining optimum accessibility. Comparable regulations are contained in the road traffic statutes of the *Länder*. In line with the prerequisites of the Federal Highways Act, the interests of persons with a disability are taken into account in general terms in new construction, conversions and expansions of federal highways, on the basis of a large number of technical regulations which are continually revised in line with the latest information. For instance, parking spaces for persons with disabilities, barrier-free paths as well as toilets have been set up at service stations nationwide. Also in the municipal field, which is particularly significant in terms of accessibility, the interests of persons with a disability are taken into account in new construction, conversions and expansions of the road infrastructure. This is supported by financial support which is conditional on a barrier-free design. The Road and Transportation Research Association has drafted “Guidelines for barrier-free design of transport facilities” which are to be published in 2011. Furthermore, the *Deutsches Institut für Normung* is in the process of revising DIN 18024-1 “Construction of accessible buildings”.

160. Because of the different requirements as to the barrier-free design of transport facilities depending on the nature of the disability, there is still a need for research here. For this reason, research projects were included in the Federal Government’s urban transport research programme for 2010 and 2011.

161. The group of persons who may park their motor vehicles on disabled parking spaces has been expanded. Previously, people with an extremely-reduced disability, as well as blind people, were among the group of beneficiaries. In future, these rights will particularly also apply to people with Contergan damage. Persons with disabilities who depend on regularly using a motor vehicle for participation in life in the community because of the nature or severity of their disability can receive assistance to acquire or maintain a motor vehicle

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<sup>41</sup> 57% of these railway stations are barrier-free in the sense of stepless access. What is more, optical-tactile floor indicators make it easier for visually-impaired passengers. The handrails of some railway stations already have prism or Braille letters or indeed tactile maps. The new-generation Service Points are furthermore equipped with induction loops for speech amplification for hearing-impaired persons.

suitably equipped for their disability in the context of integration assistance in accordance with Book XII of the Social Code or War Victims Relief Act.<sup>42</sup>

## 5. European regulations

162. The European Council and the European Parliament have adopted regulations in recent years including uniform European regulations on passengers' rights in carriage in commercial passenger air, rail, ship and bus transport.

163. The Regulation concerning the rights of disabled persons when travelling by air of 5 July 2006<sup>43</sup> prohibits air carriers from refusing to accept a reservation or to embark a person on the grounds of disability. A derogation is only possible if carriage is not possible because of other statutory legal and legitimate safety reasons. The reasons for such a refusal to carry or the imposition of the requirement of being accompanied by another person must be notified to the person with reduced mobility in writing. Furthermore, persons with reduced mobility have since mid-2008 had free assistance benefit in airports and on board the aircraft.

164. Persons with reduced mobility now also have a right to free support when getting on, off and changing, as well as on board, when travelling by scheduled long-distance rail, ship or bus. They must however notify the corresponding need for assistance to the company in question in advance of the journey. The regulations relating to ship and bus transport were adopted in 2010 and 2011, respectively, and will hence not be entering into force until 2012 and 2013.

## Article 21 – Freedom of expression and opinion, and access to information

165. All people in Germany have the right to express and disseminate their opinions in speech, writing and pictures (Article 5 Para. 1 of the Basic Law). As a direct expression of human personality in society, the fundamental right to freedom of opinion is one of the most important human rights of all.

166. A prerequisite for enforcing the right of free expression of opinion for persons with disabilities is access to information. Information and media are to be as accessible as possible for them in the interest of their self-determination and participation, that is they should be able to access and use them without special difficulty and as a matter of principle without the assistance of others. For the authorities of the Federation, this was placed into concrete form in three ordinances in accordance with the Act on Equal Opportunities for Persons with Disabilities<sup>44</sup>. The provisions contained in the ordinances are flanked by comparable regulations which the *Länder* have enacted for fields falling within their remit (cf. also Art. 9).

<sup>42</sup> Motor vehicle aids to participate in work are provided in accordance with the Motor Vehicle Aids Ordinance (*Kraftfahrzeughilfe-Verordnung*).

<sup>43</sup> Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air (Official Journal of the European Union L 204/1)

<sup>44</sup> Communication Aid Ordinance of 17 July 2002 (Federal Law Gazette Part I p. 2650), which was amended by Article 15 of the Act of 19 December 2007 (Federal Law Gazette Part I p. 3024); Ordinance on Barrier-free Documents in the Federal Administration of 17 July 2002 (Federal Law Gazette Part I p. 2652); Barrier-free Information Technology Ordinance of 17 July 2002 (Federal Law Gazette Part I p. 2654).

167. German sign language is recognised as a separate language. Persons who are hearing-impaired and visually-impaired have the right to communicate with federal authorities in administrative proceedings in German sign language, in signed German or via other technical communication aids. The costs for this are to be met by the authorities.

168. Blind persons and visually-impaired persons participating in administrative proceedings have a right to be provided with documents to defend their own rights in a form which they can understand. The form of the documents is orientated here in line with the perception possibilities of those concerned. Documents may need to be provided *inter alia* by reading out, with the aid of sound media, in Braille, as large print, electronically or by other means. Additional costs which are caused exclusively by the disability are not to be charged to those concerned. The same also applies to proceedings before the courts.

169. The Federation's Barrier-free Information Technology Ordinance (BITV) and the corresponding ordinances of the *Länder* guarantee that the web pages are barrier-free for persons with disabilities. The Barrier-free Information Technology Ordinance has been revised, and will be adopted as BITV 2.0 in the summer of 2011.

170. The Federal Government also stressed in its National E-Government Strategy that electronic communication between citizens and the administration must be user-friendly and barrier-free. The Federal Ministry of Labour and Social Affairs, which manages matters relating to disabled persons within the Federal Government, emphasises this concern through its own "eGovernment Strategy on Participation for Persons with Disabilities". This strategy aims to improve the self-determined participation available to persons with disabilities by using modern barrier-free information and communication technologies. A major element of the strategy is the barrier-free Internet platform [www.einfach-teilhabe.de](http://www.einfach-teilhabe.de) of the Federal Ministry of Labour and Social Affairs, which has been online since July 2009 and which offers a large amount of information and services on the topic of disability and also enables citizens to participate actively in selected topics as part of political opinion-forming. The strategy is moreover to help ensure that administrative proceedings, in particular those of the social administration, are optimised and where appropriate supported by electronic means.

171. The *Länder* are also developing user-friendly E-Government strategies by means of which persons with disabilities can use administrative services from their homes.<sup>45</sup>

172. To support the realisation of the freedom to acquire information, assistance to participate in community and cultural life is provided for in Book IX of the Social Code. Persons with disabilities can *inter alia* be granted assistance to attend events and aids serving to acquire information on current events or on cultural events. In this respect, for instance, the assumption of the costs for entrance tickets, also for a carer, can be considered.

173. What is more, in accordance with the Interstate Broadcasting Fees Agreement (*Rundfunkgebührenstaatsvertrag*) persons with disabilities may under certain preconditions be exempted from the obligation to pay for a television licence. With the 15th Act Amending the Interstate Broadcasting Agreement (*Rundfunkänderungsstaatsvertrag*), the Federal *Länder*, which are competent for broadcasting legislation, agreed to enact a structural reform of the broadcasting fees model, which also affects persons with disabilities. In future, persons with a disability who are well off are to pay a reduced one-third contribution. These fees are to be used to improve the level of accessibility provided by the *Land* broadcasting corporations combined in the first channel (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland – ARD*), the

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<sup>45</sup> For example: [www.service-bw.de](http://www.service-bw.de) from Baden-Württemberg.

Second Channel (*Zweites Deutsches Fernsehen – ZDF*) and in the national *Deutschlandradio* radio service. The Act Amending the Interstate Broadcasting Agreement is currently still in the ratification process.

174. The provision of information in German sign language or the promotion of the provision of information also for persons with learning and mental disabilities, in particular the expansion of subtitling and audiodescription, can be considered in order to implement accessibility in film and on television. Above all, the public-law television corporations, which are funded via fees, have expanded videotext subtitling and audio-description in recent years – of films, series and live broadcasts – and are continually expanding the service. The private operators have now also expanded their service, albeit to a considerably reduced level. The public-law radio and television corporations and all private operators of nationwide radio stations are to increasingly include barrier-free services over and above their existing commitment as they are technically and financially able. This has been prescribed by the Interstate Broadcasting Agreement (*Rundfunkstaatsvertrag*) since 1 June 2009. The *Länder*, which are responsible under the law on the division of competences, review this on a regular basis.

## Article 22 – Respect for privacy

175. Privacy is extensively protected in the Basic Law and at non-constitutional level.<sup>46</sup>

176. The protection of the privacy of natural persons in the processing of personal data is legally guaranteed in Germany by the European Data Protection Directive<sup>47</sup> and the Council of Europe's Data Protection Convention<sup>48</sup>, the Federal Data Protection Act, the data protection statutes of the *Länder* and many sector-specific data protection statutes.

177. Health data are subject to special protection (sections 67 et seqq. Book X of the Social Code and section 35 of Book I of the Social Code). The provisions relating to data protection do not create any specific regulations for persons with disabilities, but do cover them and lead neither directly nor indirectly to discrimination on grounds of the characteristic of disability.

178. The protection of posts and telecommunications for persons under custodianship is regulated in section 1896 subs. 4 of the Civil Code. Accordingly, a custodian may receive and open the post of the person under custodianship only if the court has explicitly found that this is permissible. Such an order is contingent on a considerable risk to major legal interests of the person under custodianship.

<sup>46</sup> Protection of general privacy, including the right to informational self-determination, which affords to the individual the right as a matter of principle to decide for themselves when and within what boundaries circumstances of their personal lives are disclosed (Art. 2 Para. 1 in conjunction with Art. 1 Para. 1 of the Basic Law); Privacy of correspondence, posts and telecommunications (Art. 10 of the Basic Law); Inviolability of the home (Art. 13 of the Basic Law).

At non-constitutional level: protection of honour (sections 185 et seqq. of the Criminal Code) and of personal life and secrecy (sections 201 et seqq. of the Criminal Code).

<sup>47</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

<sup>48</sup> Council of Europe Convention No. 108 for the Protection of Individuals with regard to Automatic Processing of Personal Data of 28 January 1981 guarantees Germany the protection of the privacy of natural entities in the processing of personal data.

## Article 23 – Respect for home and the family

179. Marriage and the family enjoy the special protection of the state (Article 6 Para. 1 of the Basic Law). This fundamental freedom guarantees amongst other things the freedom to conclude marriage. A person who has no legal capacity can however not conclude a marriage. Despite considerable doubts as to legal capacity in other respects, however, partial legal capacity may exist for the conclusion of marriage<sup>49</sup>. This is the case if the individual is able to understand the essence of marriage and to exercise his/her will freely in this respect.

180. In order to be able to exercise the right to marriage, partnership and sexuality, persons with disabilities need barrier-free information appropriate for their age regarding sexuality, reproduction and family planning. The Federal Centre for Health Education therefore published a focus issue of the periodical FORUM Sexual Education and Family Planning in 2010 on the topic of “Sexuality and disability”. The study on youth sexuality and disability was commissioned via this issue.

181. The family is the community of parents and their children. The term “family” is meant in de facto terms – it however exists with unmarried couples with joint or not joint children, as well as with parents and a child. Article 6 Para. 2 of the Basic Law provides that the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. At non-constitutional statutory level, the provisions of the Civil Code primarily apply to the civil law issues of marriage and the family. In the legal relationship between children and parents, in accordance with the provisions contained in this statute, the best interests of the child are decisive. Furthermore, the Civil Partnerships Act (*Lebenspartnerschaftsgesetz*) must be complied with for persons of the same gender. The provisions cover persons with and without disabilities equally.

182. Book IX of the Social Code explicitly covers the situation of children with a disability in several places (sections 1; 4 subs. 3; 30 of Book IX of the Social Code) and entrenches in the law that the needs of children with a disability are to be respected and that they are to be enabled to live in their family environment as far as possible. Children should be involved in the planning and design of the individual assistance in line with their age and their development. This equally applies to their parents. The special needs of parents and children should be taken into account here. The respective specific Social Codes, in particular the Book VIII of the Social Code – children and youth assistance, provide for a wide variety of benefits which support families who have children with a disability and enable the children to remain in their social environment. This also applies to children with disabilities whose parents are unable to take care of them and hence have them taken care of in special facilities with special skills for them.

183. Working mothers and fathers who take care of children with a disability are exposed to extraordinary time burdens. The Federal Government will examine whether existing regulations to reduce the burden on this group of individuals can be further developed in order to support them more in carrying out their (care) tasks.

184. Also mothers and fathers with disabilities are to be able to live parenthood in a fulfilled manner and with full responsibility. When deciding on benefits and implementing the benefits for participation, the special needs of mothers and fathers with a disability are

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<sup>49</sup> It corresponds to the established case-law (including a ruling of the Bavarian Highest Regional Court of 1996) that legal capacity may be restricted to a specific physically-limited group of matters (so-called partial legal capacity).



to be taken into consideration in carrying out their parental mandate, and hence the special needs of children with a disability<sup>50</sup>.

185. The granting of parental assistance for mothers and fathers with disabilities is not explicitly regulated in the law. This leads to difficulties in practice in some instances when it comes to granting assistance to parents with disabilities. Currently, the inter-conference working party of the Conference of Labour and Social Affairs Ministers (UAG V) is dealing with the topic of “Legal right to parental assistance: supporting mothers and fathers with disabilities in carrying out their parental mandate”. The working party has now reached the interim conclusion that parental assistance is already covered by the statutory regulations. It is being examined whether a procedure can be found to overcome the difficulties in practice which includes all beneficiaries.

186. Forms of self-help support, such as mentoring programmes, have already been developed for parents with chronic mental illnesses in some parts of Germany close to where people live. The Federal Government stresses the need for such flexible support services.

187. The right to live a self-determined life also applies to older persons with disabilities. The Federal Government is hence supporting the idea that these people can remain in their own homes and social environments. Social accommodation means here not only barrier-free housing, but also a neighbourhood and infrastructure: an inclusive immediate social environment. Advice services on conversions appropriate to age are being expanded, networked and professionalised. Existing programmes are being continued. Networks and services can facilitate both independence and participation in the life of society.

## Article 24 – Education

188. All children and juveniles in Germany have the right to free, suitable schooling, promotion and support. The obligation to attend school and the right to free schooling, which applies nationally, covers children and juveniles both with and without a disability<sup>51</sup>.

189. Education is a matter for the *Länder*, which select various forms of organisation and approaches in the pedagogic promotion of children and juveniles with disabilities. The Federal Government is however endeavouring to ensure that inclusive learning becomes the norm in Germany. Kindergartens and nursery schools, schools, higher education institutes and further training facilities should take up and promote all people in their uniqueness and with their individual needs from the outset.

190. Special schools play a particular role in the German school system. Special schools focus on providing specific special education, advice and support. They can be both places of learning with separate educational offers, and centres of excellence providing special pedagogical services to the general schools.

191. Teacher training imparts special skills and specialisations at the institutions of higher education and in the practical part of the training. Because of the many fields of tasks and forms of action, teachers work together with various professional groups, in particular with social pedagogic specialists, school psychologists, advisory teachers, long-term carers, other assistance workers, as well as medical-therapeutic specialists.

<sup>50</sup> cf. section 9 subs. 1 of Book IX of the Social Code.

<sup>51</sup> As to the portrayals on early learning in nursery schools, reference is made to the information regarding Article 7.

192. The “Recommendations of the Conference of Ministers of Culture and Education on Special Pedagogical Promotion in Schools in the Federal Republic of Germany” from 1994<sup>52</sup> are currently being revised and form the basis for the developments at *Land* level in the field of special pedagogical promotion<sup>53</sup>. The central concern of this article is the inclusion of children and juveniles with disabilities in joint learning in general schools<sup>54</sup>. The German Disability Council<sup>55</sup> is calling for the timely and comprehensive initiation of the necessary school and educational policy measures for more inclusive education. The Council intends to also initiate a quality debate here relating to good inclusive education.

193. All the Schools Acts of the *Länder* already provide for pupils with and without a disability to learn together. For instance, in the 2009/10 school year, roughly one-fifth (20.1%) of pupils with special educational needs were taught in general schools. The aim is to further increase this quota. The *Länder* have agreed to do a stocktake for the field of education, to define steps to be taken towards further development, to have corresponding measures taken and to develop any necessary legal measures to increase inclusive education at general teaching (general and special schools) and occupational schools.

194. The *Länder* are drafting amongst other things overall concepts aiming to ensure that the school organisation, the guidelines, education and teaching plans, pedagogy and not lastly teacher training are designed in perspective terms in such a manner that a learning environment is created at the general schools in which all children and juveniles with and without a disability can develop optimally. This takes place as a matter of principle in coordination with civil society. Model projects, school trials, focus schools, as well as corresponding reforms in the *Länder* Schools Acts, support these projects. For excellent best practice models, the Federal Government’s Disability Commissioner awarded the “Jakob Muth Prize for Inclusive Schools” for the second time in autumn 2010, which had been created by his predecessor in cooperation with the Bertelsmann Foundation and the German United Nations Children’s Fund (UNESCO) Commission. A guideline for parents produced by the Commissioner on joint teaching also provides information on the procedural steps taken in the individual Federal *Länder* to enable children and juveniles with special teaching needs to attend general schools.

195. General teaching schools, as well as occupational schools and higher education institutions, face particular challenges when it comes to the transition from school to work. Given their direct connection with the world of work, this applies above all to the occupational schools. The transition to working life is however also intensively prepared by early occupational orientation, which already starts at secondary level, as well as individual promotion and accompanying schemes in cooperation with the occupational schools, the Employment Agency, the specialist integration services and other partners. Codes are currently being created as a model for training for people for whom training in a recognised training occupation cannot be considered because of the nature and severity of their disability.

196. Another future task is to ensure the professionalism of special teaching. Moreover, the realisation of inclusive education enhances cooperation between general teaching and

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<sup>52</sup> Resolution of the Conference of Ministers of Education and Culture of 6 May 1994.

<sup>53</sup> The recommendations on the promotional foci of learning, language, mental development, seeing, hearing, physical and motor development, emotional and social development, as well as on teaching of children with autistic conduct, and on teaching pupils who are ill, are also fundamental to special needs education.

<sup>54</sup> General schools are general teaching and occupational schools, not including promotional schools and promotional centres.

<sup>55</sup> All the major organisations of people with a disability and chronically ill have come together to form an alliance for action in the German Disability Council (DBR).

special instruction. For instance, it is a goal to prepare and further train teachers in all types of schools in the various training phases to teach all pupils together in order to acquire the necessary skills to deal with heterogeneous manifestations of learning and performance prerequisites. Corresponding concepts are available in a large number of *Länder*, and are being tried and expanded.

197. In order to intensively push forward the above goals in schooling, the recommendations of the Conference of Ministers of Culture and Education on special teaching promotion in schools are being refined. In order to enhance inclusive education, particular significance attaches to the following aspects, amongst others:

- (a) Information for the public in the sense of awareness-raising under the guiding concept of participation and self-determination (forms of solution: e.g. publications, regional education conferences and action plans);
- (b) Overcoming inhibiting attitudes and positions (“mental barriers”) (forms of solution: e.g. information and further training for specialists, parents and pupils, in cooperation with teacher further training institutes, a good flow of information and exchange between ministries and civil society);
- (c) Greater networking with regard to the benefits of school and non-school cost units and agencies, in particular of youth and social assistance;
- (d) Needs-orientated skill-building of teachers of all forms of schools, in particular with regard to heterogeneity and collegial cooperation; engagement of teachers of all forms of school through an advisory and support system;
- (e) Stronger cooperation with parents (forms of solution: e.g. discussions with parents, educational partnerships, promotional commissions, conferences in branches of education);
- (f) Expansion of promotion in general and occupational schools in steps or grades (forms of solution: e.g. regional education landscapes, focus schools, open schools);
- (g) Efficient use of existing structures to refine the school education of pupils with a disability;
- (h) Enhancing parents’ rights.

198. The Conference of Ministers of Culture and Education published the documentation entitled “*Sonderpädagogische Förderung in Schulen 1999 bis 2008*” (Special pedagogical promotion in schools 1999 to 2008) in March 2010, and this is updated every two years<sup>56</sup>. Specific surveys in the context of the National Education Panel – NEPS<sup>57</sup> on pupils with an increased need for education are continued.

199. Because of the significance also attaching to the international exchange on questions of inclusive education, the Federation and the *Länder* will continue to support the European Union’s “European Agency for Development in Special Needs Education”.

200. The study conditions for students with disabilities have considerably improved in recent years. The higher education institutions and student unions have invested in barrier-free structures, developed special advice services and a system of disadvantage compensation. Corresponding regulations in the Higher Education Framework Act

<sup>56</sup> cf. <http://www.kmk.org/statistik/schule/statistiken/sonderpaedagogische-foerderung-in-schulen.html>

<sup>57</sup> With the NEPS long-sectional data on skills developments, education processes, education decisions and education profits in formal, non-formal and informal contexts have been collected over the entire lifespan.

(*Hochschulrahmengesetz – HRG*) in accordance with which the higher education institutions must ensure that students with a disability are not placed at a disadvantage in studies, can take up the offers of the higher education institution as far as possible without the assistance of others and their specific interests are taken into account in the examination regulations, are now largely implemented in *Land* law. The Federal Government supports the efforts of the *Länder* and of the higher education institutions to raise the number of students with a disability through increased barrier-free services.

201. At the same time, as a consequence of the increasing autonomy of the higher education institutions new barriers for students with a disability have also arisen which need to be countered. This relates in particular to registration for studies (individual selection regulations) and the study design (e.g. regulations on the course of the studies, examination codes).

202. With the unanimously-adopted recommendation entitled “A higher education institution for all”, the higher education institutions undertook in April 2009 to take measures to bring about equal opportunities for students with a disability or chronic illness.

203. On the basis of the 1982 commendation of the Conference of Ministers of Culture and Education (*KMK-Empfehlung “Verbesserung der Ausbildung für Behinderte im Hochschulbereich” vom 25.06.1982*), the Federal Government is promoting the Information and Advice Agency on Studies and Disability (IBS) at the German National Association for Student Affairs as a centre of excellence for students with a disability and the chronically ill (with approx. Euro 360,000 per year).

204. Moreover, the Federal Government is promoting the research project entitled “Discrimination-free higher education institution”, in which the structures and mechanisms are to be revealed which lead to placing persons with disabilities – amongst others – at a disadvantage at higher education institutions. The results are to be published in 2011 in a manual for higher education institutions. In order to improve the data available, the Federal Government is funding in 2011/2012 a comprehensive survey of the German National Association for Student Affairs on the situation of students with a disability or chronic illness in the Bachelor/Master study system.

205. Female students with a disability run a considerable risk that gender-related and disability-related disadvantages occur as a bundle. The mentoring project for female students with a disability which is being carried out by the Hildegardis Association and is unique in Europe (the third and last mentoring phase is taking place in 2011) is funded by the Contergan Foundation and promoted by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth by funding individual modules (e.g. conferences).

## **Article 25 – Health**

206. Health support in the Federal Republic is a matter for the Federation, the *Länder*, the local authorities, as well as health insurance and long-term care insurance. The legal basis is to be found largely in the Social Codes (Book V of the Social Code – Statutory health insurance, Book XI of the Social Code – Social long-term care insurance) and in the Health Service Acts of the *Länder*.

207. Statutory health insurance takes on a decisive role in the system of health support. It provides benefits in kind for medical treatment for all insured parties which correspond to the generally-recognised state of medical knowledge and take medical progress into account. This equally applies to persons with disabilities. The Book V of the Social Code contains a separate provision which exclusively places the focus on the interests of persons with a disability (section 2a of Book V of the Social Code). Accordingly, the special interests of persons with disabilities are to be taken into account.

208. In accordance with Book V of the Social Code, insured parties have a right to the necessary benefits, in particular for medical rehabilitation, in order to avert, alleviate or compensate for a disability or need of long-term care. These also include benefits for early recognition of illnesses for adults, as well as for early diagnosis and promotion of children with a disability and at risk of disability. In accordance with the provisions contained in Book VI of the Social Code, statutory pensions insurance also provides benefits for the medical rehabilitation of children and juveniles in order to remedy a considerable risk to their health or to restore or improve health that has already been impaired.

209. The early recognition examinations for children and juveniles are being continually refined by the Joint Federal Commission<sup>58</sup>. Since April 2005, the expanded screening of newborns has included an examination for twelve target illnesses. Since 1 January 2009, screening for hearing impairments among newborns has been implemented as a mandatory benefit of statutory health insurance. An additional examination for children aged 3 was introduced in July 2008. The high level of benefits in healthcare for persons with disabilities is to be maintained and refined in a targeted fashion. This relates in particular to the supply of high-quality medicines and medical aids. Here, the Federal Government will examine proposals as to how the supply of medicines and medical aids can be improved, in particular with hearing aids for persons with a disability.

210. Geographically-accessible out-patient medical and dental care, including in rural areas, is to be achieved by the regulations to ensure the supply of panel doctors (sections 99 et seqq. of Book V of the Social Code) and the guidelines for needs planning issued on that basis. Moreover, further measures have come into force and more are provided for (Supply Act [*Versorgungsgesetz*] being planned) aiming to maintain and improve medical and dental care in rural areas.

211. The public health service is responsible for major tasks in the field of health prevention, health promotion, consumer health protection, and health protection on the basis of federal statutes (e.g. Infection Protection Act) and specific regulations under *Land* law. For children who are chronically ill or have a disability, the public health service frequently takes on a significant role as mediator and exercises a pathfinding role through the network of advisory and care facilities. It advises and supports individuals who need special care in the context of health assistance. Moreover, health offices take on large numbers of medical care tasks on a subsidiary basis for certain population groups; this frequently also concerns persons with a disability.

212. The associations of persons with disabilities criticise that barrier-free access (for instance for wheelchair users) to medical surgeries and other health facilities is not yet adequate<sup>59</sup>. A survey in the *Land* Brandenburg revealed that roughly 20 percent of medical surgeries can be reached barrier-free. The goal of the Federal Government is where possible to enable all persons with disabilities barrier-free access to health facilities. Here, the outlook of women and men with disabilities and their specific needs – both in relation to illnesses and to how they are approached, to assistance and to communication – need to be tackled. Together with the *Länder* and the medical profession, the Federal Government will develop an overall concept for barrier-free medical surgeries or clinics. The goal is to be to make an adequate number of medical surgeries barrier-free in the next ten years. Suitable aids for action such as guidelines for doctors and hospitals will be developed to this end.

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<sup>58</sup> The Joint Federal Committee is the highest decision-making body of the joint self-administration of doctors, dentists, psychotherapists, hospitals and health insurance funds in Germany. It determines in the shape of guidelines the list of benefits of statutory health insurance for more than 70 million insured parties, and hence determines which healthcare benefits are refunded.

<sup>59</sup> Information on the accessibility of medical surgeries and other healthcare facilities can be retrieved for instance via the [www.einfach-teilhaben.de](http://www.einfach-teilhaben.de) Internet portal.

213. With a view to providing access to private health insurance, section 19 of the General Anti-Discrimination Act provides that a disadvantage in concluding a private insurance policy for the reasons named in the General Anti-Discrimination Act, e.g. because of a disability, is not permissible. Different treatment because of a disability is only permissible if this is based on recognised principles of calculation appropriate to risk, in particular on an actuarially risk evaluation, consulting statistical surveys. From 1 January 2009 onwards, persons with disabilities who are to be attributed to the group of individuals who are to be privately insured have had the possibility to take up private health insurance in the so-called basic tariff. Exclusions of benefits or risk supplements are not permissible in this tariff. The benefits must be comparable with those of statutory health insurance in terms of their nature, scope and amount.

214. Persons in need of long-term care, including many persons with disabilities, have a right to good long-term care. The guideline of long-term care insurance entrenched in the Book XI of the Social Code is dignified long-term care which aims to facilitate as independent a life as possible, and hence also helps to contribute towards self-determined participation in the life of society.

215. In the context of the 2008 long-term care reform, measures were taken, in particular for qualitative and structural improvement of long-term care. It should be stressed here in particular that benefit improvements in accordance with the principle of out-patient in preference to in-patient long-term care, as well as diverse structural adjustments by means of which long-term care insurance is adjusted better than ever to the needs of those concerned. What is more, measures were included in order to improve the quality of long-term care, reduce existing shortcomings in quality and bring about transparency in long-term care. What is more, the development and updating of expert standards as a major tool of quality assurance has been legally entrenched in long-term care. If the benefits of long-term care insurance are not sufficient, as a matter of principle there is a right to help for long-term care in accordance with sections 61 to 66 of Book XII of the Social Code vis-à-vis the social assistance institutions.

216. The term “need for long-term care” is criticised in many cases as being too narrow and related to tasks. This term is currently being examined by the Federal Government. The goal is affordable, suitable and self-determined long-term care that is results orientated.

217. The Federal Government is seeking to improve the reconciliation of work with domestic long-term care in order to better support caring relatives. Hence, the Federal Cabinet on 23 March 2011 adopted the Draft of an Act on Reconciliation of Long-term care and Work, the main element of which is the Family Long-Term Care Leave Act (*Familienpflegezeitgesetz*). This Act improves the framework for domestic long-term care of persons in need of long-term care by working close relatives. Employers and workers can hence contractually agree that employees work a reduced number of hours for a period of up to two years (family long-term care leave) for the purpose of long-term care of a close relative and during this time receive a topping up of their remuneration for work as an advance. The amount is topped up by half the difference between the previous remuneration and the lower remuneration amount emerging from the reduction in working hours. Employers can refinance this remuneration top-up through an interest-free loan from the Federal Office for Family and Civil Society Duties. After family long-term care leave, the workers return to the full number of hours, but continue to receive the reduced remuneration for up to two years until the wage advance granted by the employer during the long-term care phase has been worked off. Relatives providing long-term care are hence able to maintain their livelihood and avoid interruptions in their working biography.

218. The right of self-determination, the right to careful medical treatment, the right to education in the context of healthcare, as well as the right to freely choose doctors and hospitals and other rights of patients (with a disability) are not specifically regulated and

codified. The statutory basis can be found inter alia in the law on health, in social law and in civil law. This frequently makes it difficult for patients to enforce their rights. This can be particularly difficult for patients with a disability. Doctors and medical staff also need clarity as to which legal obligations they have. The Federal Ministry of Health and the Federal Ministry of Justice, together with the Federal Government's Commissioner for Patients' Rights submitted a fundamental paper on patients' rights in Germany in March 2011. On this basis, a Patients' Rights Act (*Patientenrechtegesetz*) is to be drawn up in order to make the legal situation for patients more transparent and to improve the de facto enforcement of patients' rights. What is more, there is provision to enhance the rights of patients with the planned Act, for instance in the transition from in-patient to out-patient care or in relation to treatment errors. These regulations also benefit persons with disabilities.

## **Article 26 – Habilitation and rehabilitation**

219. The basis for the law on rehabilitation and participation in Germany is constituted by Book IX of the Social Code. It aims to promote the self-determination and equal participation of persons with disabilities or at risk of disability in the life of society, as well as to avoid disadvantages. Book IX of the Social Code contains fundamental principles, procedural provisions and the description of benefits for medical rehabilitation, participation in working life and participation in life in the community, as well as maintenance-securing and other supplementary benefits. Benefits for rehabilitation and participation in Germany are the task of the various sectors of social security and of the law on social compensation. Specific law codes are attributed to each rehabilitation institution, and these regulate the competences and the prerequisites for the benefits. The provisions of Book IX of the Social Code apply directly unless a deviating provision has been made in the specific Social Code. The rehabilitation institutions are to endeavour in the context of their defined tasks and of their benefit statutes to ensure that the occurrence of a disability including a chronic illness is avoided. A disability which has already occurred is to be overcome or its consequences are to be reduced. The institutions also have an obligation to inform and support persons with disabilities supra-institution. This advice is offered in roughly 500 Joint Service Agencies. The use of these agencies is however low since many questions can already be cleared up in the general advice agencies of the individual institutions and in the benefit providers, but also because the supra-institutional cooperation between the social insurance companies in the Service Agencies does not yet always work seamlessly.

220. The benefits for participation aim inter to also promote personal development in a holistic manner and to facilitate or make easier participation in the life of society, as well as a life that is as independent and self-determined as possible. Legitimate requests are complied with when deciding on benefits and in the implementation of benefits. Taking account of the interests of the beneficiaries and of the circumstances of the individual case, Book IX of the Social Code pursues the principle of providing out-patient benefits in preference to in-patient benefits.

221. The Federal Government intends to refine the right to rehabilitation with regard to an inclusive approach and to find potential solutions for implementation deficits, in particular in the field of the supra-institutional Personal Budget (cf. Art. 19), in supra-institutional counselling and in the early promotion of children with disabilities (cf. Art. 7). In this context, a uniform, comprehensive procedure is also being discussed for participation planning in which the individual need is ascertained comprehensively and at supra-institutional level in individual cases. At the same time, the reporting in the law on severe disabilities and social compensation law has also been adjusted in line with the current state of evidence-based medicine, taking account of the ICF's bio-psycho-social

model. Furthermore, by using information and communication technologies, the Federal Government will try to alleviate and solve the interface problems of Book IX of the Social Code, in particular with the Joint Service Agencies and in the benefit form of the Personal Budget.

222. A major concern of the Federal Government is to ensure that all persons with disabilities have barrier-free access to all rehabilitation services. To this end, the Federal Government will be commissioning a survey of the actual situation.

223. Further central goals of the Federal Government are self-determination and equal participation for persons with disabilities, including in the field of participation in life in the community. In the context of the Federation-*Länder* working party entitled “Refining integration assistance towards persons with disabilities” the Conference of Labour and Social Affairs Ministers, the re-orientation of integration assistance for persons with disabilities from a largely institution-related to a person-centred participation benefit is being discussed.

### **Article 27 – Work and employment**

224. Participation in work is one of the core areas of German policy for persons with disabilities. Finding work and a job, as well as maintaining employability, are major prerequisites for successful participation by persons with disabilities in the life of society. There are state provisions at legislative level and below legislative level to regulate this participation. Thus, provisions of the Workplace Ordinance give employers the protective goal of establishing places of work barrier-free where persons with disabilities are employed. This ordinance is lent concrete form by workplace regulations which define the state-of-the-art. Workplace regulations are provided by the workplace committee. The publication of workplace regulations on accessibility of workplaces can be expected in the spring of 2012. Employers may apply for subsidies from the integration offices of the *Länder* (section 102 of Book IX of the Social Code) for the barrier-free design of workplaces and assistance to accompany work. Furthermore, there are statutory compensations for disadvantages such as integration allowances, allowances for probationary employment and internships which employers can receive where they employ persons with disabilities (section 34 of Book IX of the Social Code). The promotion of the participation of persons with disabilities on the labour market is also served by the now long-standing system of the obligation to employ and the compensatory levy<sup>60</sup>.

225. To enhance their mobility workers with a severe disability themselves receive under certain preconditions allowances to acquire a motor vehicle, cost refunds if car pools are used or free access to public transport. When using a passenger car, they can claim tax allowances depending on the amount of their disability.

226. Special dismissal protection also exists for persons with severe disabilities (sections 85 et seqq. of Book IX of the Social Code). It stipulates that the employer is obliged to obtain the consent of the integration office prior to dismissal. The integration office examines all types of assistance which might ensure the continuation of the employment. Consent to dismissal is granted if, after considering the interests of both sides, continued employment of the person with severe disabilities is not possible or not acceptable.

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<sup>60</sup> Employers with 20 workers and more must employ in 5 percent of their jobs persons with a severe disability or persons with disabilities equivalent to them (employment quota). If they do not comply with this obligation, they must pay a (scaled) compensatory levy.



227. It is particularly important for employees with a disability that they can hold down a job in the long term. The company integration management<sup>61</sup>, introduced on 1 May 2004 in Book IX of the Social Code, does justice to this necessity. If employees – regardless of whether they have a disability – are unable to work for more than six weeks within one year, the employer must clarify with the consent of the person in question how the inability to work can best be overcome and which benefits and assistance are necessary. The implementation of company integration management also in small and medium-sized enterprises is supported by the Federal Government by promotion of various model projects.

228. The above schemes are having a positive effect and have helped to increase the employment rate from 4.0 percent (2003) to 4.5 percent (2009). Public employers are particularly aware of their obligation to employ persons with severe disabilities. Here, the rate increased from 5.4 percent (2003) to 6.3 percent (2009).

229. Despite all compensation for disadvantages, persons with disabilities frequently find it more difficult than persons without disabilities to find and hold down a job. This is shown by the development of the unemployment of persons with severe disabilities in recent years. Developments on the labour market were substantially influenced in this period by the impact of the financial and economic crisis. Even if looked at over an annual average, unemployment of persons with severe disabilities in 2009 in comparison to total unemployment only increased below average and the share of unemployed persons with severe disabilities among total unemployment fell slightly at that time, unemployment of persons with severe disabilities has not developed as favourably in the last three years as unemployment as a whole.

230. Further efforts are therefore necessary in order to improve the participation of persons with disabilities on the labour market. Also the associations of persons with disabilities are calling for greater promotion in the integration of persons with disabilities on the labour market. The Federal Government has hence created initiatives and programmes in this field to improve the participation of persons with disabilities in training and at work:

(a) With the “Inclusion initiative”, the Federal Government will be providing an additional Euro 100 million for the promotion of training and employment of persons with severe disabilities. In cooperation with the *Länder*, industry and benefit institutions,

(i) 4,000 additional jobs are to be created for persons with severe disabilities over 50 in the next four years (promotion per job = Euro 10,000; total volume of promotion = Euro 40 million);

(ii) until 2013 for up to 10,000 pupils with special needs, education promotion means that the transition from school to work should be made easier. Careers conferences, implementation and evaluation of internships (primarily on the general labour market), formation of network structures (inclusion of parents, teachers, potential cost-refunding institutions and enterprises) are examples which may be considered here for promotion (total volume of promotion = Euro 40 million);

(iii) in the next five years, 1,300 training places in recognised training professions will be created on the general labour market for juveniles with a severe disability. Under certain preconditions, employers can receive up to Euro 10,000 for creating an additional training place (total volume of promotion = Euro 15 million);

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<sup>61</sup> section 84 subs. 2 of Book IX of the Social Code.

(iv) by 2013 the advice skills in the chambers (chambers of trade and industry and craft chambers and agricultural chambers) in inclusion-related matters should be enhanced. With the promotion available for the chamber (maximum of Euro 100,000 per chamber), by means of targeted advice more training places and jobs are to be created for persons with severe disabilities (total volume of promotion = Euro 5 million);

(b) Existing initiatives and programmes of the Federal Government to increase company training possibilities such as the federal “Job4000” labour market programme and the “Job - Jobs without barriers” initiative, will be implemented and terminated as planned.

231. The “Job - Jobs without barriers” initiative has been carried out since 2004 by the Federal Ministry of Labour and Social Affairs together with employers, trade unions, disability associations and organisations, the Federal Employment Agency, the integration offices, rehabilitation agencies, as well as rehabilitation services and facilities, the Advisory council for the participation of persons with disabilities and other organisations. The purpose of the initiative is that persons with a disability and persons with severe disabilities are to have a better chance of participation in working life and the employability of workers ensured in a sustainable fashion by introducing company integration management. The initiative is to end in July 2011.

232. The “Job4000” programme, which was embarked upon because of experience from the projects and activities of the “job” initiative, will in particular create new jobs and training places for persons with a disability in 2007 to 2013.<sup>62</sup> This labour market programme will also be promoted with the financial participation of the Federal *Länder*.

233. Moreover, the Federal Government is promoting amongst other things a number of projects which are to improve the participation in working life of persons who are particularly affected (for instance blind persons and those who are visually-impaired, as well as deaf persons and persons who are hearing-impaired).

(a) In the three-year “Leibniz” project of the German Central Library for the Blind in Leipzig, an IT procedure for individual transfer services is being developed in order to considerably improve the supply of literature for blind and visually-impaired persons with specialist and non-fictional books in schools, higher education institutions, training and at work. By these means, the participation of blind and visually-impaired persons is to be promoted not only in the cultural field, but above all in the fields of education and at work;

(b) The goal of the three-year project entitled “Hearing impairment and accessibility” of DIAS GmbH is to enhance the employment opportunities of persons with hearing difficulties and to safeguard their jobs. In order to advance the barrier-free access by persons with hearing disabilities in working life, inter alia framework conditions and procedures are being developed in order to bring together the responsible facilities and to promote the exchange of experience and skills. Furthermore, concepts and tools are to be developed in order to strengthen the accessibility of hearing-impaired persons in everyday working life.

234. The *Länder* are also taking part by means of a large number of projects and programmes in the integration of persons with disabilities on the labour market.

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<sup>62</sup> It was possible to create amongst other things 2,055 new jobs and 552 new training places in the period to 2010.

**Table 2**  
**Schemes to integrate persons with disabilities into the labour market**

<i>Land</i>	<i>Schemes</i>
Baden-Württemberg	“Action 1000” programme, which was able to establish a total of 1,250 new employment relationships for juveniles with a mental disability by 31 December 2009, is continued by the “Action 1000 plus”.
Bavaria	Special programme entitled “Creating Opportunities“ promotes integration projects and specialist integration services in order to place persons with severe disabilities in work.
Berlin	Labour market programme entitled “Persons with a severe disability – Job offensive Berlin 2010 (SchwoB 2010)”, which additionally supports the creation of jobs and training places and provides additional support in the transition from school to work and in the transition from the workshop for persons with disabilities to the general labour market.
Brandenburg	Model project expansion “Transition from school to work” from the 2011/12 school year for all pupils needing special educational promotion (“mental development”, “physical-motor development”, “hearing” and “seeing”). The goal is to create alternatives to employment in a workshop for persons with disabilities, as well as to non-company training, by expanding school-work transition management.
Bremen	“PLUS labour market programme” provides promotion possibilities to create temporary employment relationships as a start into employment subject to mandatory social insurance.
Hamburg	Project entitled “PICO – Person individual coaching for people with a mental illness”
Hesse	The programme for special promotion of the participation of persons with severe disabilities in working life on the general labour market ran until June 2010. Because of its great success, the programme was extended and topped up from 1 January 2011 to 31 December 2012.
Mecklenburg-Western Pomerania	Model project entitled “Promotion of integration into companies and company integration management for persons with a severe disability / people on the same footing in the craft works in Mecklenburg-Western Pomerania”.
Lower Saxony	11th special programme to promote the willingness of employers to recruit persons with severe disabilities with the participation of the Employment Agencies, the Job Centres and the licensed municipal institutions.
North Rhine-Westphalia	In the context of the Land programme entitled “Undertake integration!” (2008 to 2011), in cooperation with the agricultural associations, 1,183 promotions were achieved for jobs subject to mandatory social insurance for persons with a disability in integration enterprises. The programme is being continued with the aim to create an additional 250 jobs per year.

<i>Land</i>	<i>Schemes</i>
Rhineland-Palatinate	With the aid of special Land programmes to reduce unemployment among persons with severe disabilities, more than 4,000 persons with severe disabilities have received a job on the general labour market in recent years.
Saarland	Saarland participation programme for the integration of particularly affected persons with severe disabilities who have previously participated in a recognised workshop for persons with disabilities in a scheme in the occupational training field or were employed in the working area, on the general labour market.
Saxony	Model programme “SUPPORT” of the Work + Disability Alliance, coordinates benefits for the integration of persons with disabilities in small and medium-sized enterprises and then offers these to enterprises on a one-stop basis.
Saxony-Anhalt	Business start-up programme for persons with a disability supports persons with a severe disability when going self-employed.
Schleswig-Holstein	Model project “Transition from school to work” for pupils of the promotion centres mental and physical development with the goal of enabling them to achieve a successful start to working life in line with their individual skills.
Thuringia	With the project entitled “INTEGRA 2010”, disadvantaged juveniles and juveniles with a learning disability in the first training are offered the opportunity to graduate from a stay abroad during their training that is relevant to their occupation.

235. In order to be able to become established on the labour market it is indispensable for a person with a disability, as also for all persons without disabilities, to undergo vocational training. In order to improve the training situation, the disability associations are calling on employees to enter into a voluntary undertaking for a training offensive favouring young persons with disabilities. The national associations of German industry and the Federal Government agreed in the National Pact for Training and Young Specialist Workers (which has been extended to 2014) to exploit all potentials for training. They also would like to support and promote young people with a (severe) disability individually here together. Together with the *Länder* and industry, the Federal Government is endeavouring to achieve improved participation in in-company training for juveniles with a disability.

236. It is to be welcomed in the training situation first and foremost that 99 percent of those who were registered with the Federal Employment Agency as applicants for a training place ended up in training, gainful employment or alternative skill-building<sup>63</sup>. Where possible, and taking account of their right to express a wish and to choose, persons with disabilities are to be integrated into working life and society and not taken care of in facilities. This particularly applies in the case of young people with a disability in order to prevent them becoming socially isolated from the outset. It is hence preferable for all juveniles to participate in in-company training close to their homes. This is promoted by the Employment Agencies and the institutions of the basic security benefits for job-seekers with appropriate allowances.

<sup>63</sup> Information from the Federal Employment Agency for the 2008/2009 training year.

237. For people for whom training is not possible despite making use of all available support to compensate for their disadvantages, the Federal Government has developed a new form of support as per 1 January 2009 in the shape of “supported employment”<sup>64</sup>. “Supported employment” leads people with a special need for support in line with their abilities and leanings to new employment opportunities in an enterprise. In line with the principle of ‘placement first, training second’, they are trained and supported on the job as long as is necessary until an employment contract can be concluded. Where necessary, they may subsequently receive further vocational accompaniment on the job from the integration offices.

238. With the “RehaFutur” initiative launched by the Federal Government in 2007, occupational rehabilitation is to be given a sound future. In addition to short-term schemes (including to directly stabilise the financial situation of individual vocational promotion agencies), all activities serve in particular to stabilise the medium and long term and ensure the future of the system of vocational rehabilitation. A major goal is to increase the efficiency of all schemes.

239. There are currently roughly 700 workshops for persons with disabilities in Germany. The workshops offer an employment opportunity to people who because of the nature or severity of their disability cannot (yet) be employed on the general labour market. Roughly 280,000 persons with disabilities are employed in the workshops. Recognised workshops for persons with disabilities are to be preferentially taken into account when awarding public contracts (section 141 of Book IX of the Social Code).

240. In the context of the Federation-*Länder* working party on “Refining integration assistance for persons with disabilities” of the Conference of Labour and Social Affairs Ministers, the Federal Government is striving for a considerable enhancement of the person-centred approach. Accordingly, when reorientating the law on workshops, the need for support of persons with disabilities is to be individually ascertained and then met, either in a workshop or with another supplier of the same quality. The persons with disabilities in workshops participate through workshop councils in the matters which affect their interests. This Workshops Participation Ordinance has now been in existence for ten years (cf. on this also Art. 6).

241. All forms and all types of discrimination of persons with disabilities are to be rejected and must be combated. The Federation and the *Länder* are in agreement on this. Persons with disabilities are protected in working life against discrimination because of their disability (section 7 in conjunction with section 1 of the General Anti-Discrimination Act). This covers direct and indirect disadvantages, as well as harassment. Protection already applies to job advertisements and to the selection of applicants. Employers are furthermore obliged to create the necessary measures to provide protection against disadvantages. Should there be a breach of the ban on discrimination, employers must compensate for the damage thus caused or provide compensation (section 15 of the General Anti-Discrimination Act).

## **Article 28 – Adequate standard of living and social protection**

242. All people in Germany who cannot support themselves on their own strength or from primary support have a right to needs-dependent, tax-funded social benefits because of need of assistance.

<sup>64</sup> Act Introducing Supported Employment (*Gesetz zur Einführung Unterstützter Beschäftigung*) of 22 December 2008, in force since 1 January 2009 (Federal Law Gazette Part I, p. 2959).

243. For persons in need of assistance who are not able to be in gainful employment, social assistance in accordance with the Book XII of the Social Code provides benefits to ensure a dignified subsistence. Assistance towards living expenses comprises the living expenses needs (standard needs) as well as the cost of appropriate accommodation, including heating costs. Additionally, for special needs which cannot be covered by the standard rate benefit so-called additional needs may be paid for.

244. Persons in need of assistance who have reached the age of 18, but not of 65, and who have suffered complete and permanent loss of earning capacity solely because of illness or disability, are entitled to receive basic security benefits in old age and basic security benefits in case of loss of earning capacity in accordance with the Book XII of the Social Code. The amount and scope of the benefits correspond to assistance towards living expenses. A core element of basic security benefits is that – unlike in the case of assistance towards living expenses – the income of the applicants’ children or parents is not taken into account if their total annual income is not more than Euro 100,000.

245. With unemployment benefit II, persons in gainful employment who are in need of assistance, that is persons who can be in gainful employment for at least three hours per day under the usual conditions on the labour market receive benefits to ensure their living expenses in accordance with Book II of the Social Code.

246. Social assistance may also apply as a subordinate system under certain preconditions if support is needed in specific circumstances, for example as a result of illness, disability or need for long-term care. The benefits of “integration assistance towards persons with disabilities”, “assistance towards long-term care” and “assistance towards healthcare” can be considered for this. Persons may also receive benefits of assistance towards long-term care and integration assistance who draw benefits of basic security benefits for job-seekers in accordance with Book II of the Social Code.

247. Over and above this, persons in need of assistance may receive welfare benefits of social compensation in accordance with the War Victims Relief Act. The types of benefit include as individual assistance in individual respects, including assistance in special circumstances, assistance towards long-term care, supplementary assistance towards living expenses or indeed assistance for the elderly. These benefits depend on income and assets unless the need is exclusively caused by the damage.

248. Housing benefit in accordance with the Housing Benefit Act (*Wohngeldgesetz*) can be paid to fund suitable family accommodation as a supplement to rent or benefits for owner-occupied accommodation. Housing benefit also benefits persons with a disability. In order to do justice to the increased accommodation needs of persons with disabilities, persons with a severe disability can claim allowances which increase housing benefit under certain preconditions.

249. Persons with disabilities whose gainful employment has been reduced to a degree which is relevant under pension law can receive a pension for loss of earning capacity from the statutory pensions insurance. Such pensions are paid – regardless of age – if a person is no longer able to engage in gainful employment for at least six hours per day (pension because of partial loss of earning capacity) or for three hours per day (pension because of complete loss of earning capacity) under the conditions of the general labour market as a result of a health-related reduction in gainful employability. Prior to the occurrence of the loss of earning capacity, the general waiting period of five years must have been completed and, additionally, three years’ obligatory contributions to the pensions insurance must have been paid in the past five years prior to the occurrence of loss of earning capacity. Certain exceptions from this are possible.

250. The possibility exists in old age for persons with severe disabilities to draw an unreduced pension early from the age of 63 if 35 years have been recorded in accordance

with pension law. From 2012 onwards, with old-age pension for persons with severe disabilities the age limits for an unreduced pension will be gradually increased from 63 to 65. The age limit for the earliest early claiming of this pension with reductions is to be increased from 60 to 62. The special consideration of the situation of persons with severe disabilities will however be retained in future: Whilst for the other old-age pension age limit for drawing an unreduced pension is to be increased to 67, with old-age pension for persons with severe disabilities with the increase to 65 years the previous two-year gap to the standard age limit is retained.

251. A supplement to the statutory pensions insurance through company and private old-age pensions is indispensable to ensure the standard of living in old age. The Federal Government has hence been promoting precisely this construction since 2002. The regulations contained in the Company Pensions Act (*Betriebsrentengesetz*) and those on the state promotion of additional old-age pensions apply accordingly to persons with disabilities who meet the prerequisites in other respects. There is no discrimination on grounds of the characteristic of disability here.

### **Article 29 – Participation in political and public life**

252. In accordance with the constitutional principle of general elections, persons with disabilities may naturally also vote as well as stand in Bundestag, Landtag and municipal elections in Germany (Article 38 and Article 28 of the Basic Law). This principle extends to European elections (section 1 of the European Elections Act [*Europawahlgesetz*]). Persons for whom a custodian has been appointed to take care of their affairs in whole, and not only by a temporary order (cf. Art. 12 on the law on custodianship), or who are in a psychiatric hospital on the basis of a court order because of an unlawful act (section 63 of the Criminal Code) committed in a state of incapacity to be adjudged guilty (section 20 of the Criminal Code) (section 13 of the Federal Elections Act [*BWahlG*]) are however excluded from the right to vote, and hence may also not hold elective office.

253. As a result of the highly-specific definition of exclusion contained in the Federal Elections Act (only a judicial order for custodianship in all matters leads to exclusion from the right to vote; custodianship in part is not sufficient for exclusion from suffrage), the group of individuals concerned is kept as small as possible. The provision only covers those cases in which citizens are unable to take a highly-personal decision on who to vote for on their own responsibility.

254. The Election Acts of the Federation and the *Länder*, moreover, contain a number of provisions regulating participation by persons with disabilities in elections. For instance:

- (a) Polling stations are to be selected and equipped in such a way that the entire electorate, in particular persons with disabilities, is enabled to take part in the elections;
- (b) The electorate is informed which polling stations are barrier-free;
- (c) Voters who are unable to mark the voting slip or to fold or place it in the ballot box may avail themselves of the assistance of another person;
- (d) Blind voters or those with a visual disability may use a ballot slip stencil to mark the ballot slip;
- (e) Special polling districts are formed for voting for hospitals, old people's homes and nursing homes, as well as for similar facilities with a larger number of voters;
- (f) Election organisations should provide a variety of information on the Internet in a barrier-free form.

255. For its part, the Federal Government will be investigating the active and passive participation of people with mental and psychological disabilities in elections and developing recommendations for action to improve participation on this basis.

256. All people in Germany have the right to establish associations and societies<sup>65</sup>. There is positive and negative freedom of association. Whether or not someone has a disability does not play any role here. As a personal right of the individual person with a disability, positive freedom of association includes the freedom to establish associations and to be active in them. Negative freedom of association guarantees the right of persons with disabilities not to establish an association, to remain away from existing associations and to leave them.

257. Receiving assistance and also having the opportunity to help are rights accruing to citizens in Germany, whether they have a disability or not. Civil commitment makes it possible to experience recognition, as well as to participate in the life of society and in political life. Persons with disabilities are committed to the most varied initiatives. They are naturally addressees of the Federal Government's commitment policy just as much as persons without disabilities. The commitment of persons with disabilities to the Federal Government's National Commitment Strategy deserves to be explicitly mentioned and recognised. As a matter of principle, the areas of activity include all fields of commitment. Above all, "godparent" schemes and mentoring models offer individual opportunities for commitment tailored to the specific needs.

### **Article 30 – Participation in cultural life, recreation, leisure and sport**

258. In the context of the international community, Germany has undertaken to uphold the right of all people to participate in cultural life. The Ministers and Senators of the *Länder*, who are responsible for culture, consider access to culture for all people a natural concern which finds its reflection in a number of recommendations of the Conference of Ministers of Culture and Education. The Conference most recently appealed in September 2004 to enhance media-provided, mobile culture offers for people with reduced mobility.

259. The guarantee of equal access by persons with disabilities to media services is one of the fundamental prerequisites for participation by persons with disabilities in cultural life. For persons with a hearing disability in Germany, hence, the recognition of German sign language as an independent language is combined with this. Arrangements and schemes to make television programmes accessible for persons with a hearing disability fundamentally a matter for the *Länder*. The television corporations have especially expanded videotext subtitling in recent years. By contrast, sign language interpretation is used more rarely, but nonetheless increasingly. In the meantime, a number of news broadcasts, as well as programmes relating to specific events (including celebrations, broadcasts on the Bundestag elections) are broadcast with interpretation into German sign language. Added to this is a growing number of services which can be accessed as videostream with sign language interpretation (cf. Art. 21).

260. Associations of persons with disabilities regret that many programmes of private broadcasters are not yet subtitled. Further efforts are needed here on the part of the private broadcasters and the supervisory bodies to improve access for persons with disabilities to television. ProSieben launched the first regular subtitle service for the deaf on private television in 2000, Kabel eins has been providing subtitles since 2002. In 2010 on both

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<sup>65</sup> Art. 9 Para. 1 of the Basic Law provides freedom of association to Germans, whilst it is guaranteed for foreigners in section 1 of the Associations Act (*Vereinsgesetz*).



channels, more than 220 feature films as well as two US series were broadcast with subtitles. The RTL private television station announced in 2010 that it would be making its broadcast service accessible to deaf people. In particular in the evening prime time feature films have been shown with subtitles since December 2010. RTL will be continually expanding this service. Information acquisition through television is elementary for all people.

261. The Federal Government will therefore continue to campaign for greater consideration of barrier-free formats towards all television stations and in particular also vis-à-vis the private providers.

262. The Film Promotion Act (*Filmförderungsgesetz*) provides for facilitation of promotion conditions for films with audiodescription for visually-impaired persons and detailed subtitling for persons with a hearing disability. This is to establish an incentive for the creation of barrier-free versions of cinema films. In the context of the coming reform of the Film Promotion Act, the Federal Government will be placing particular emphasis on whether the relaxation of the promotion conditions for barrier-free films has led to increasing availability of German cinema films with audiodescription and expanded subtitling. Should this not be the case, the Federal Government will aim to find an arrangement which does better justice to the needs of cinema-goers who are visually-impaired or hearing-impaired. The specific design will have to be discussed in the reform proceedings.

263. Art and culture are to be opened up for persons with disabilities. The goal is to overcome restrictions on cultural and artistic development faced by persons with disabilities so that unhindered access to cultural heritage and works of art is possible. Not all buildings which serve cultural purposes are barrier-free, and hence they are not accessible for all people equally.<sup>66</sup> This is also felt by the associations of persons with disabilities. The *Länder* however take care on their own responsibility to ensure that the restrictions existent in cultural facilities, and here in particular in historic buildings, for visitors with disabilities are eliminated wherever possible.

264. In order to ensure access by persons with disabilities to cultural performances such as theatre performances or museum visits, assistance for participation in community and cultural life is provided for in Book IX of the Social Code. Persons with disabilities may be able to be granted inter alia assistance to attend events which serve to provide information on current events or on cultural events.

265. The promotion of sport is largely a matter for the *Länder*. The Federation is responsible when it comes to projects representing the nation, and for the promotion of top sport in particular. The performance sport programme from 2005 provides for equal treatment of top sport of athletes with and without a disability. The Federation and the *Länder* provide funding for the promotion of participation of persons with disabilities in the broad spectrum of sports services and activities. In particular, these comprise funding towards of the Federation for German Disabled Sport, the German Deaf Sports Association, the German Blind Chess Federation and Special Olympics Germany, which organise activities in performance, popular and rehabilitation sport. All in all, the Federation provided more than Euro 20 million for performance, popular and rehabilitation sport for persons with disabilities for 2010 to 2013. Access to sports facilities and to the different forms of participation in top, popular and rehabilitation sport is guaranteed by specific benefits which are offered and by the statutory regulations which provide the background.

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<sup>66</sup> For instance, the Film Promotion Institute published a study in 2009 on the structure of cinema theatres in Germany. Of the cinemas participating in the study, 84 percent were accessible. Moreover, six percent of all cinema theatres were able to provide hearing aids for the hard of hearing.

The Federal Government will hence continue to promote performance sport staff, the annual sport plans and organisation costs for major national and international events at home in disability sports associations, whilst at the same time initiating new competitions for children and juveniles with disabilities. The second pilot event “YOUTH TRAINS FOR THE PARALYMPICS” will be taking place in Berlin in 2011.

266. Access to tourism and to the services offered in this context is a major element of social participation for persons with disabilities. For holiday-makers with disabilities it is not only questions of obtaining information, how to get there and accommodation which are significant, but also the possibility of being able to take up leisure activities in situ and deal with everyday life at the holiday destination. For this, there is a need for all players involved in tourism to work together, in particular the *Länder* and regions.

267. A central point of contact for the interests of barrier-free tourism is the National Coordination Agency Tourism for All (NatKo). The NatKo is available to travel operators, transport companies, tourism regions, hoteliers and other providers in the field of tourism as a point of contact in order to support them in designing barrier-free services. Projects of the Coordination Agency are promoted by the Federal Government. For instance, in a nationwide training and skill-building initiative of the German Hoteliers Association and the National Coordination Agency, hoteliers, restaurateurs and providers of tourism services are trained in how to deal correctly with persons with a disability and reduced mobility.

268. The Federal Government has investigated the economic significance of barrier-free tourism for all in Germany in two studies<sup>67</sup>, and has worked out success factors and schemes to improve its quality. A working party “Barrier-free travel destinations in Germany” has been formed in this context. This working party is committed to developing offers for guests with a disability in the regions.<sup>68</sup>

### **Article 31 – Statistics and data collection**

269. Statistical data on the population and labour market, as well as on the housing situation of households in Germany, are collected by the Federal Statistical Office and the *Land* Statistical Offices on the basis of the 2005 Microcensus Act (*Mikrozensusgesetz*). The Microcensus is a multi-purpose sample which provides detailed information on the economic and social situation of the population and provides information on matters related to gainful employment, the labour market and training. The data are to make it possible to judge the implementation of existing regulations and obligations, identify difficulties and where appropriate make corrections. Questions are also regularly asked in the context of the Microcensus on disability and health, on vocational participation of persons with disabilities as well as on their training and income situation. The responses to these questions are voluntary as a matter of principle. However, as a rule sufficient information is collected on these topics so that an evaluation and additional extrapolations of the data can be implemented in this field. On the basis of the data of the 2005 Microcensus, additionally,

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<sup>67</sup> “*Ökonomische Impulse eines barrierefreien Tourismus für alle*”, Federal Ministry of Economics and Technology, December 2003; “*Barrierefreier Tourismus für Alle in Deutschland – Erfolgsfaktoren und Maßnahmen zur Qualitätssteigerung*”, Federal Ministry of Economics and Technology, August 2008.

<sup>68</sup> Cf.: [www.barrierefreie-reiseziele.de](http://www.barrierefreie-reiseziele.de).

the “circumstances of women with a disability in Germany” were evaluated with a view to possible disadvantages.<sup>69</sup>

270. The “Report on the Situation of Persons with Disabilities” to be drawn up by the Federal Government in each legislative period frequently found little public attention in the past, and was criticised by the associations of persons with disabilities as not authoritative – in particular because an indicator-supported evaluation policy on persons with disabilities was lacking so far. Because of the criticism, a redesign of the Disability Report as an indicator-supported report was carried out. The connection with the fields of action of the National Action Plan is very important here. The goal is to have completed the redesign of the Disability Report by the end of 2012 and to initiate the implementation and gradual introduction of a new indicator-based disability reporting on this basis. In detail the redesign of the Disability Reports is intended to

- (a) Considerably improve the data provided;
- (b) Ensure comparability through indicators with a fixed definition;
- (c) Evaluate disability-policy schemes; and
- (d) Design reporting in a more independent fashion.

271. The Federal Government has furthermore initiated an evaluation of benefits for the participation of persons with disabilities in working life in the context of departmental research of Books III and II of the Social Code. Amongst other things, the necessary data bases are currently being built up, descriptive analyses carried out and the feasibility of cause-and-effect analyses examined. The goal is to obtain representative information on the effectiveness and efficiency of these benefits by 2015. Hence, indications for any necessary optimisation of the practical implementation and to refine the legal framework are to be identified

## Article 32 – International cooperation

272. One billion persons with disabilities live worldwide, up to 190 million of whom have severe disabilities. Of these people, only approx. 1-2 % have access to medical rehabilitation measures or to education. 80 % of persons with a disability live in developing countries. German development policy promotes the inclusion of the rights of persons with disabilities in development projects – be it at bilateral level, in cooperation with international organisations, non-governmental organisations and organisations of persons with disabilities<sup>70</sup>. For instance, more than 180 projects in 40 countries have been promoted in the last 20 years with a total of more than Euro 70 million which had persons with disabilities as a direct or indirect target group.

273. Through support for independent national and regional human rights institutions such as human rights commissions and ombudsmen agencies, the Federal Government is

<sup>69</sup> The available statistics furthermore include the statistics on persons with severe disabilities, unemployment statistics, as well as the statistics of the Federal Employment Agency on the employment situation of people with a disability and the statistics on the welfare of victims of war. Also the Socio Economic Panel according to the statements on income courses, subjective well-being and social participation of persons with disabilities can be taken as a major source of data.

<sup>70</sup> cf on this: *Behinderung und Entwicklung, Beitrag zur Stärkung der Belange von Menschen mit Behinderungen in der deutschen Entwicklungszusammenarbeit*, Deutsche Gesellschaft für Technische Zusammenarbeit (ed.), Eschborn, November 2006, as well as *Entwicklungspolitischer Aktionsplan für Menschenrechte 2008 bis 2010*, Federal Ministry for Economic Cooperation and Development, Berlin, March 2008.

also campaigning for the implementation of this Convention being monitored in its partner countries and failings in compliance with the obligation of state to implement it being demonstrated in a constructive manner.

274. In order to be able to react suitably to the challenges which this Convention poses for German development cooperation, a study has been commissioned on the implementation of the Convention in German development cooperation. In line with the recommendations of the study, additional financial resources and staffing were provided by the Federal Ministry for Economic Cooperation and Development in order to improve the inclusion of persons with disabilities in German development cooperation in the coming years. The goal is to better entrench the interests of persons with disabilities in development policy concepts and strategies, and to design projects in the partner countries increasingly inclusively.

275. Concrete disability-specific schemes in the field of development cooperation in particular encompass the sectoral project entitled “Persons with disabilities” organised by the Gesellschaft für internationale Zusammenarbeit (GIZ) commissioned in 2009 by the of Federal Ministry for Economic Cooperation and Development, as well as the Roundtable on the Inclusion of Persons with a Disability in Development Cooperation of the Federal Ministry for Economic Cooperation and Development, established in 2010. The Federal Ministry for Economic Cooperation and Development will draft a strategy in 2011 and 2012 on the inclusion of persons with disabilities. The strategy draws on the experience of international donors and United Nations organisations and is to facilitate a sustainable approach and seek answers to the existing challenges.

276. One example of the implementation of inclusive projects in partner countries is support for self-representation organisations and their active participation in the drafting of national poverty reduction strategies in Cambodia, Viet Nam and the United Republic of Tanzania. The initiatives showed the considerable success achieved in recent years in strengthening the institutions of the self-representation organisations. Partner governments have developed a human rights understanding of disability.

277. Through a reform fund in Chile, the Federal Government has promoted the development and establishment of inclusive pre-school education in the context of social policy reforms. This has enabled more than 2,200 children with disabilities from particularly poor households to be admitted to standard kindergartens. Further examples are support for the implementation of this Convention in Bangladesh, as well as training and vocational inclusion of visually-impaired persons in Uzbekistan.

278. The Federal Government particularly takes account of the interests of persons with a disability in development-orientated emergency and transitional assistance projects in Haiti. The emergency and transitional houses financed by Germany are prepared during construction for use in line with disability and can be built to be accessible where needed. In the project entitled “Disaster-prevention re-construction and stabilisation of the livelihood of the local population, particularly considering persons with disabilities”, inter alia the specialist expertise of civil society organisations available in Haiti is used in order to ensure the participation of persons with disabilities in the schemes.

279. The Federal Ministry of Labour and Social Affairs is seeking to achieve the implementation of the Convention on the Rights of Persons with Disabilities in the context of its bilateral relations, and promotes dialogue in the field of policy on persons with disabilities with other states. A disability policy exchange exists in particular with the Russian Federation, China and Viet Nam. This encompasses not only the discussion of the situation of persons with disabilities and an exchange of information on the implementation of the Convention in the context of discussions at managerial and specialist level, but also – for instance in the case of Viet Nam – the implementation of a project on the ground. For

instance, a project was organised in November 2010 in cooperation with the Federal Ministry for Economic Cooperation and Development on the inclusion of young persons with disabilities on the labour market in cooperation with the Vietnamese Ministry of Labour – Invalids and Social Affairs and GIZ GmbH.

280. For many years, the Federal Ministry for Economic Cooperation and Development has furthermore been promoting specific projects of private institutions and via the central church agencies. Additionally, a specific human rights facility was established in 2010 (annually Euro 3 million), which in 2011 is particularly promoting legal services provided by private organisations, including benefiting the rights of persons with disabilities in developing countries, as well as networking of civil society organisations.

281. Persons with disabilities receive greater consideration in the staff selection and development of the Federal Ministry for Economic Cooperation and Development and the GIZ. The volunteer programme “worldwards” helps develop specialists with disabilities for German development cooperation by assuming additional costs for volunteers with disabilities.

282. The data situation on persons with disabilities is improved by a research project of the Federal Ministry for Economic Cooperation and Development established for 2011 to 2014 on persons with disabilities in developing countries.

283. The Federal Ministry for Economic Cooperation and Development in May 2011 adopted the concept entitled “Human Rights in Development Policy”, which establishes binding, concrete requirements for the implementation of human rights-based development policy. It serves the systematic orientation of German development policy towards human rights which are based on international human rights agreements, including the Convention on the Rights of Persons with Disabilities. Human rights are the umbrella under which the rights of particularly disadvantaged groups, including persons with disabilities, are strategically promoted here.

### **Article 33 – National implementation and monitoring**

284. The Federal Ministry of Labour and Social Affairs has assumed the role of the state point of contact (focal point) for matters relating to the implementation of this Convention in Germany. Points of contact have already also been established at *Land* level<sup>71</sup>.

285. The Commissioner of the Federal Government for Matters relating to Disabled Persons takes on the task of the state coordination mechanism. For Germany, the coordination mechanism is one of the most important tools for the monitoring and support of the implementation of this Convention. Its main task consists of guaranteeing the inclusion of persons with a disability and their associations and organisations, as well as of the broader civil society, in the implementation process. An Advisory Council on Inclusion, which forms the core of the coordination agency, has been established to accompany strategic implementation in the long term. It is supported by four specialist committees which report to it on various topical areas. A regular exchange of information takes place between the advisory council and the committees, as does active cooperation. The advisory council is responsible for the external communication and representation of the coordination mechanism.

286. The majority of the members of the Advisory Council on Inclusion are persons with a disability. There is also a representative of the state point of contact, a representative of

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<sup>71</sup> List contained in the NAP.

the Conference of the *Land* Disability Commissioners and a representative of the Monitoring Body. The task of the advisory council established in accordance with Art. 33 Para. 1 of the Convention is to support the implementation of the Convention. To this end, it guarantees the flow of information both towards the state point of contact in the Federal Ministry of Labour and Social Affairs and towards civil society, as well as where possible at *Länder* level, actively engages in public relations work and coordinates the work of the specialist committees.

287. The four specialist committees<sup>72</sup> are primarily made up of representatives of industry, trade unions, churches, cost units and agencies, charities, research, as well as other thematically-relevant institutions and organisations, and hence guarantee active inclusion of civil society in the process of implementing the Convention. It is the task of the committees to promote and advance implementation at various levels of society. This means both vis-à-vis the Federal and *Land* Governments and at municipal level, as well as vis-à-vis civil society.

288. In addition to a Forum for Information and Discussion, the coordination mechanism also acts as a meeting place between the civil society level, the focal point and the Monitoring Body.

289. The process of self-definition of the advisory council and the committees, and the precise definition of the task, is deliberately given an open structure by the Commissioner. Above all, persons with a disability are to be able to contribute their expectations, wishes and ideas as experts in their own field, and to help design the coordination mechanism. A fixed list of tasks of the coordination mechanism will therefore not be jointly developed until the process is underway<sup>73</sup>.

290. The Federal Government has tasked the German Institute for Human Rights, headquartered in Berlin, with carrying out the monitoring and implementation role. The German Institute works according to the Paris Principles. Its necessary independence is guaranteed by freedom from instructions from the political arena and civil society, as well as by the pluralist composition of its membership.

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<sup>72</sup> The specialist committees are to deal with the following themes:

1. health, long-term care, prevention, rehabilitation
2. freedom and protection rights, women, partnership, family and bioethics
3. work and education
4. mobility, construction, housing, leisure, social participation, information and communication.

<sup>73</sup> Further information at [www.behindertenbeauftragter.de](http://www.behindertenbeauftragter.de).