

# Frant National contribution to the Fundamental Rights Report 2023

**Germany**

**Contractor's name:** German Institute for Human Rights

**Authors' names:**

Dr. Sabine Bernot, Dr. Hendrik Cremer, Judith Feige, Lea Fenner, Sophie Funke, Alina Klehr, Dr. Roger Meyer, Christine Otto, Maike von Restorff, Anna Suerhoff, Eric Töpfer

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## Policy and legal highlights 2022

Franet country study: policy and legal highlights 2022	
Issues in the fundamental rights institutional landscape	<p><b>Amendment of the General Equal Treatment Act</b></p> <p>The German Bundestag has amended the General Equal Treatment Act. <u>The law strengthens the independence of the federal anti-discrimination agency.</u> Among other things, the head of the anti-discrimination agency will now be elected by the Bundestag for a five-year term of office and will be given the status of an independent commissioner for anti-discrimination. The law also strengthens the participation rights of the anti-discrimination agency in legislative processes at federal level.</p>
EU Charter of Fundamental Rights	<p><b>Project providing training for volunteer judges:</b> The “<u>SELECT</u>” project held training workshops for volunteer judges on fundamental and human rights in the Charter. It is expected to contribute considerably to the effective and coherent application of the Charter by national judicial authorities.</p>
Equality and non-discrimination	<p><b>Action plan for the acceptance and protection of sexual and gender diversity:</b> On 22 November 2022, the <u>federal government adopted</u> a nationwide <u>action plan for the acceptance and protection of sexual and gender diversity.</u> The aim is, among other things, to reform family law, to improve health care and protection against violence of LGBTIQ.</p>
Racism, xenophobia & Roma Equality and Inclusion	<p><b>Establishment of a Federal Government Commissioner for Anti-Racism</b> (<i>Beauftragte der Bundesregierung für Antirassismus</i>) <b>and of a Federal Government Commissioner against Antiziganism</b> (<i>Antiziganismusbeauftragter der Bundesregierung</i>):</p> <p>On 23 February 2022, the <u>federal cabinet appointed Minister of State for Integration, Reem Alabali-Radovan, as the first Federal Government Commissioner for Anti-Racism.</u> The commissioner announced upcoming initiatives will include a National Action Plan</p>

	<p><u>Against Racism</u>, establishing a nationwide counselling centre, and developing a Diversity Strategy for the federal administration.</p> <p>In March 2022, the <u>Federal Government</u> also <u>appointed a Federal Government Commissioner</u> against Antiziganism for the first time (Mehmet Daimagüler). He supports the concerns of the Sinti and Sintizze as well as Roma and Romanja in Germany as a contact person in the Federal Government and coordinates measures against antiziganism.</p>
Asylum & migration	<p><b>Important judgement of the European Court of Justice on the right to family reunification:</b></p> <p>On 1 August 2022 the <u>European Court of Justice</u> decided that the German legislation regarding the right to family reunification for recognised refugees is not in line with the EU Family Reunion Directive (2003/86/EC). Parents of unaccompanied minor refugees have the right to get a visa for family reunion even if their children have turned 18 during the asylum application or visa procedure. The same applies to children applying for a visa to join their parents in Germany.</p>
Data protection and digital society	<p><b>Data retention legislation in violation of EU law:</b></p> <p>On 22 September 2022, the <u>CJEU</u> decided that the <u>German legislation of 2015 on the general and indiscriminate retention of telecommunication traffic and location data violates EU law</u>. In the wake of the decision, the Federal Ministry of Justice proposed revised legislation providing for a so-called “quick freeze” solution, which means that the retention and release of telecommunication data could be ordered in the aftermath of serious crimes.</p>
Rights of the child	<p><b>Law to lower the voting age to 16 for European elections:</b></p> <p>The minimum voting age for the right to vote in elections to the European Parliament will be <u>lowered in Germany from 18 to 16 years</u>. On 10 November 2022, the German Bundestag approved the draft law to amend the European Elections Act presented by the coalition parties.</p>

<p>Access to justice, including victims of crime</p>	<p><b>Establishment of a National Rapporteur Mechanism on gender-based violence:</b></p> <p>On 1 November 2022, the <u>National Rapporteur Mechanism on gender-based violence</u>, based at the German Institute for Human Rights, started its work. It will use data and evidence-based monitoring to make practical recommendations for action and help to implement measures against gender-based violence more effectively.</p>
<p>Convention on the Rights of Persons with Disability</p>	<p>No developments in 2022</p>

# 1 Equality and non-discrimination

## 1.1 Legal and policy developments or measures relevant to fostering equality and combating discrimination focussing on LGBTIQ people and combating discrimination on the grounds of socio-economic status, health status and physical appearance

LGBTIQ people

**On 30 June 2022**, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend, BMFSFJ*) and the Federal Ministry of Justice (*Bundesministerium der Justiz, BMJ*) presented key points for a **Self-Determination Law** [unofficial translation] (*Selbstbestimmungsgesetz*), scheduled to come into force in the second half of 2023. The law is intended to replace the – in significant parts unconstitutional – “Transsexuals Act” of 1980 [unofficial translation] (*Transsexuellengesetz*) which requires court proceedings and two expert testimonies for a change of gender entry or given name in the register of civil status (*Personenstandsregister*). In future, transsexual, intersexual and non-binary people will be able to have their gender entry or given name changed by a simple declaration at the registry office (*Standesamt*). Not included in the law are physical gender reassignment measures which – as before – will be decided on the basis of specialist medical regulations.<sup>1</sup>

**On 5 January 2022**, the Federal Government appointed Sven Lehmann as the **Federal Government Commissioner for the Acceptance of Sexual and Gender Diversity (Queer Commissioner)** [unofficial translation] (*Beauftragter der Bundesregierung für die Akzeptanz sexueller und geschlechtlicher Vielfalt (Queer-Beauftragter)*). His mandate includes cooperating with the Federal Ministries involved in queer policy projects and, in particular, coordinating the creation and implementation of the National Action Plan for Acceptance and Protection of Sexual and Gender Diversity (*Nationaler Aktionsplan für Akzeptanz und Schutz sexueller und geschlechtlicher Vielfalt*).<sup>2</sup>

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<sup>1</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Eckpunkte für das Selbstbestimmungsgesetz vorgestellt’](#), press release, 30 June 2022; Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) and Federal Ministry of Justice (*Bundesministerium der Justiz*) (2022), [‘Eckpunkte \(...\) zum Selbstbestimmungsgesetz’](#), June 2022; Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) and Federal Ministry of Justice (*Bundesministerium der Justiz*) (2022), [‘Infopapier – Einführung eines Selbstbestimmungsgesetzes: Einfache Regelungen zur Geschlechtsidentität und zur Abschaffung des Transsexuellengesetzes’](#), June 2022.

<sup>2</sup> Lesbian and Gay Association (*Lesben- und Schwulenverband, LSVD*) (2022), [‘Gegen Homophobie und Transfeindlichkeit: Nationaler Aktionsplan für Akzeptanz sexueller und geschlechtlicher Vielfalt’](#), press release, undated.

**On 19 July 2022**, the Federal Ministry of Justice published a **Draft Bill on the Revision of the Sanctions Law** [unofficial translation] (*Entwurf eines Gesetzes zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt*). Among other things, the Draft Bill contains an expansion of the assessment of penalty in § 46 German Criminal Code (*Strafgesetzbuch, StGB*). It adds motives for crime that are “gender-specific” as well as “against sexual orientation” to the list of misanthropic motives and goals that enable a harsher punishment of the offender. The Draft Bill therefore recognises the need for appropriate sentencing of all offences directed against LGBTIQ persons.<sup>3</sup>

On 22 November 2022, the federal government adopted a **nationwide action plan** for the acceptance and protection of sexual and gender diversity. The plan includes measures in six fields of action (legal recognition, participation, security, health, strengthening of community structures, international matters).<sup>4</sup> The aim is to improve the living situation of LGBTIQ people in various areas: among other things to reform family law, to improve health care and protection against violence.

## **1.2 Findings and methodology of research, studies, or surveys on experiences of discrimination against LGBTIQ people and on the grounds of socio-economic status, health status and physical appearance**

**On 13 October 2022**, the study “**Well Advised! On the Way to Comprehensive Anti-Discrimination Counselling in Germany**” (*Gut beraten! Auf dem Weg zu einer flächendeckenden Antidiskriminierungsberatung in Deutschland*) on behalf of the Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) was published. It reveals a nationwide lack of counselling centers for people who experience discrimination. On average, there is only one counsellor for every 920,000 inhabitants (nationwide less than 100 full-time positions for anti-discrimination counselling exist). In addition, three out of four counselling centers describe their funding as insufficient. The data of the study is based on a written online survey in which 88 anti-discrimination bodies participated in the period from 17 May to 30 June 2021. The study shows which

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<sup>3</sup> Germany, Federal Ministry of Justice (*Bundesministerium der Justiz*) (2022), ‘[Neustart in der Strafrechtspolitik](#)’, press release, 19 July 2022.

<sup>4</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), ‘[Bundeskabinett beschließt Aktionsplan “Queer leben”](#)’, press release, 18 November 2022.



elements would strengthen anti-discrimination counselling in Germany.<sup>5</sup> In addition to more reliable financing, the authors identify a need for one full-time counsellor position for every 200,000 inhabitants. This would mean a quadrupling of full-time positions. Moreover, the authors of the study point out the relevance of local counselling services. So far, the counselling centers are mainly located in the larger cities.

The **study “Discrimination Experiences of Employees in the Context of Pregnancy, Parental Leave, and Care of Relatives”** (Diskriminierungserfahrungen von fürsorgenden Erwerbstätigen im Kontext von Schwangerschaft, Elternzeit und Pflege von Angehörigen) which was conducted on behalf of the Federal Anti-Discrimination Agency highlights that the discrimination of parents and caregivers is widespread. In a qualitative and quantitative survey, which included interviews with experts and focus groups of parents and caregivers (esp. working parents with young children under the age of seven and working people who informally care for relatives) as well as an online survey of 2,500 parents and 500 caregivers (mixed-method approach), it was found that, during pregnancy, 56 % of all parents have at least one discriminatory experience. Regarding parental leave, 52 % of parents reported at least one discriminatory experience while applying for it during pregnancy and 62 % upon returning from parental leave. Of people who care for others, nearly one in two (48 %) have had at least one discriminatory experience at work.<sup>6</sup>

LGBTQI people

**On 16 August 2022**, the Federal Independent Anti-Discrimination Commissioner (*Unabhängige Bundesbeauftragte für Antidiskriminierung*), Ferda Ataman, presented the **“Annual Report 2021 of the Federal Anti-Discrimination Agency”** (*Jahresbericht 2021 der Antidiskriminierungsstelle des Bundes*). The report underlines that the number of reported cases of discrimination in Germany remains at a high level (more than 5,600 requests for counselling were made to the Anti-Discrimination Agency in 2021). Frequent reasons for discrimination were gender (20 % of requests), age (10 %), religion and world views (4 %) as well as sexual identity (4 %).<sup>7</sup> In 2021, in 160 cases, trans and intersex people contacted the Anti-Discrimination Agency as they experienced discrimination in all areas of life, e.g., refusals to address them with the correct form of address as well as sexual and verbal harassment in public and at work.<sup>8</sup>

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<sup>5</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [‘Neue Studie belegt erheblichen Nachholbedarf bei Beratung gegen Diskriminierung’](#), press release, 12 October 2022; Bartel, D., Kalpaka, A., Louw, E., Fode, P. (2022), [‘Gut beraten! Auf dem Weg zu einer flächendeckenden Antidiskriminierungsberatung in Deutschland - Aktueller Stand und konzeptionelle Eckpunkte’](#), German Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*), p. 35.

<sup>6</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [‘Eltern und pflegende Angehörige vor Diskriminierung schützen! Zur Vereinbarkeit von Fürsorgepflichten und Beruf’](#), symposium documentation, 24 May 2022.

<sup>7</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [‘Antidiskriminierungsbeauftragte stellt Jahresbericht vor’](#), press release, 16 August 2022.

<sup>8</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [‘Jahresbericht 2021’](#), June 2022.

The study **“Protection Against Discrimination and Promotion of Diversity in the Workplace”** (*Der Schutz vor Diskriminierung und die Förderung personaler Vielfalt im Arbeitsleben*) assesses to what extent measures to foster diversity and protect against discrimination have been implemented in companies, public administrations and the third sector about 15 years after the introduction of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz, AGG*) and the founding of the Diversity Charter.<sup>9</sup> The first part of the study consisted of a survey of ten experts from different fields (trade unions, employers, occupational health and safety, anti-discrimination associations, science, etc.) who were asked to give their assessment of existing risks of discrimination and the diversity of personnel in companies, administrations and organisations. The results of this survey served as a basis for the formulation of an interview guide for the main survey (32 leading company representatives interviewed; as well as nine interviews with representatives from administrations and organisations). Employers were asked how they perceived risks of discrimination in working life and which risks occur more frequently than others. They identified equal opportunities for women and men and measures for staff with disabilities as the most important approaches when it comes to ensuring diversity in the companies. Other diversity dimensions such as sexual orientation were rarely named by the employers (particularly by small companies).<sup>10</sup> However, this does not necessarily mean that discrimination based on this dimension does not take place.

On 29 March 2022, a response from the Federal Ministry of the Interior to a written question by Ulla Schauws (*Bündnis 90/Die Grünen*) illustrated the extent of LGBTIQ-hostile hate crime in Germany. In 2021, 1,051 hate-motivated crimes against lesbian, gay, bisexual, transgender and intersex people were registered. Only a fraction of anti-LGBTIQ hate crime has so far been adequately recorded and classified by the police forces in the federal states. With the exception of Berlin and Bremen, no federal state regularly publishes the reported figures and separately reports anti-LGBTIQ criminal and violent offenses.<sup>11</sup>

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<sup>9</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [‘Protection against discrimination and promotion of diversity in the workplace’](#).

<sup>10</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [‘Protection against discrimination and promotion of diversity in the workplace’](#); Icks, A., Bijedić, T., Kay, R., Latzke, P., Merx, A., Mappala, C. (2022), *Der Schutz vor Diskriminierung und die Förderung personaler Vielfalt im Arbeitsleben*, pp. 68, 124.

<sup>11</sup> Lesbian and Gay Association (*Lesben- und Schwulenverband, LSVD*) (2022), [‘Jeden Tag drei Fälle von LSBTI-feindlicher Hasskriminalität über 1.000 Fälle im letzten Jahr’](#), press release, 7 April 2022; Germany, Federal Ministry of the Interior (*Bundesministerium des Inneren und für Heimat*) (2022), [‘Schriftliche Frage der Abgeordneten Ulla Schauws vom 18. März 2022’](#), 29 March 2022; Germany, Federal Ministry of the Interior (*Bundesministerium des Inneren und für Heimat*) (2022), [‘Anlage 1 zur Antwort auf die Schriftliche Frage 3/253 der Abgeordneten Ulla Schauws’](#), 31 January 2022; Germany, Federal Ministry of the Interior (*Bundesministerium des Inneren und für Heimat*) (2022), [‘Anlage 2 zur Antwort auf die Schriftliche Frage 3/253 der Abgeordneten Ulla Schauws’](#), 31 January 2022.

## 2 Racism, xenophobia and related intolerance

### 2.1 Data, research findings, studies, or surveys on experiences of ethnic discrimination, racism and hate crime

On 5 May 2022 the German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung, DeZIM*) published the first representative study that comprehensively illuminates contemporary forms of racism, including the perception and evaluation of everyday and structural racism, the persistence of racist knowledge and ideas as well as different ways of dealing with and reacting to racism.<sup>12</sup> The study titled "**Racist realities: How does Germany deal with racism?**" is part of the National Discrimination and Racism Monitor funded by the Commission of the Cabinet for Combating right-wing Extremism and Racism (*Kabinettsausschuss zur Bekämpfung von Rechtsextremismus und Rassismus*). The results presented in the report are based on a general population survey (Computer Assisted Telephone Interview, in short: CATI) on the topic of racism in Germany, which was conducted between April and August 2021 with 5,000 people.

While the study's aim is not to determine the how pronounced phenomena such as everyday racism, institutional racism or non-intentional racism actually are in Germany – this would require other survey designs and methodological approaches – the inaugural study sheds light on the extent to which the population is aware of these phenomena and ascribes relevance to them.

The study shows that the structural and institutional dimension of racism seems to be intuitively conscious to a large part of the population, as 90 % of the respondents consider racism part of everyday life in Germany and 22.2 % have experienced racism directly.<sup>13</sup> Also, racism entrenched in institutional structures is perceived by the population, as 65 % agree with the statement that there is racist discrimination in German authorities. Disadvantages that promote structural inequalities are particularly often classified as racist, with more than 80 % of the respondents naming racist exclusion mechanisms in school, work and housing. However, awareness of the problem is not equally pronounced for all forms of racism, with antisemitism and anti-Black racism being more readily recognised

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<sup>12</sup> German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM)*) (2022), *Racist realities - How does Germany deal with racism? (Rassistische Realitäten - Wie setzt sich Deutschland mit Rassismus auseinander? Auftaktstudie zum Nationalen Diskriminierungs- und Rassismusmonitor (NaDiRa))*, Berlin, 2022.

<sup>13</sup> Germany, Federal Government (*Bundesregierung*) (2022), '[Nationaler Diskriminierungs- und Rassismusmonitor – Viele Menschen sind zum Engagement gegen Rassismus bereit](#)', press release, 5 May 2022.

compared to anti-Asian, anti-Muslim and anti-Slavic racism or racism against Sinti\*zze and Rom\*nja.<sup>14</sup>

Certain ideas that form the basis of racism as an ideology are still widespread, with 49 % of respondents believing in the existence of human races.<sup>15</sup> Moreover, the study found diametrically opposing attitudes existing side by side. A significant part of the population is resistant or defensive to criticism of racism, and victims are accused of hypersensitivity. For instance, 52 % of respondents think claims are exaggerated and 44.8 % consider criticism of racism a restriction of freedom of speech. On the other hand, about 70 % of the population are willing to take action against racism through donations (37 %), participation in demonstrations (42 %) or intervening in the face of racist statements (82 %).<sup>16</sup> Commenting on the publication, Federal Government Commissioner for Anti-Racism, Reem Alabali-Radovan, said: "Germany is aware of its racism problem, with 90 % of respondents clearly stating that racism exists in Germany. The broad recognition is good news, because it is an important step for change. We are not stopping at recognition; now is the time to act!"<sup>17</sup>

The German Centre for Research on Integration and Migration further published a working paper on **institutional racism in the police which examined racist knowledge and its use**.<sup>18</sup> By combining semi-narrative guided interviews with police officers, critical discourse and situation analysis, it could be seen that background knowledge, used in the police to create supposed security of action, often goes hand in hand with racist classifications. Certain framework conditions, routines and practices of the (patrol) police also contribute to the (re-)production of racism, sometimes even unintentionally. These include uncertain expectations whilst in contact with the population and the high value placed on experience. The example of racial profiling shows how racist knowledge and its use leads to success in the sense of a self-fulfilling prophecy. The study also found that approaches to limit the (re-)production of racism in the police remain at the individual level while structural changes are predominantly absent.

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<sup>14</sup> German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM)*) (2022), [Racist realities - How does Germany deal with racism?](#) (*Rassistische Realitäten - Wie setzt sich Deutschland mit Rassismus auseinander? Auftaktstudie zum Nationalen Diskriminierungs- und Rassismusmonitor (NaDiRa)*), Berlin, 2022, p. 8.

<sup>15</sup> German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM)*) (2022), [Racist realities - How does Germany deal with racism?](#) (*Rassistische Realitäten - Wie setzt sich Deutschland mit Rassismus auseinander? Auftaktstudie zum Nationalen Diskriminierungs- und Rassismusmonitor (NaDiRa)*), Berlin, 2022, p. 6.

<sup>16</sup> German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM)*) (2022), [Racist realities - How does Germany deal with racism?](#) (*Rassistische Realitäten - Wie setzt sich Deutschland mit Rassismus auseinander? Auftaktstudie zum Nationalen Diskriminierungs- und Rassismusmonitor (NaDiRa)*), Berlin, 2022, pp. 9-10.

<sup>17</sup> German Commissioner for Migration, Refugees and Integration, German Commissioner for Anti-racism (*Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration. Die Beauftragte der Bundesregierung für Antirassismus*) (2022), '[Deutschland weiß um sein Rassismusproblem – jetzt ist Zeit zu handeln. Rassismusmonitor in Deutschland veröffentlicht Zahlen](#)', press release, 5 May 2022.

<sup>18</sup> Graevskaia, A. (2022), [Institutional racism in the police - racist knowledge and its use](#) (*Institutioneller Rassismus in der Polizei - Rassistisches Wissen und seine Nutzung*), NaDiRa Working Papers, Berlin, 30 August 2022.

On 16 August 2022, the **Federal Anti-Discrimination Agency published its annual report for 2021 titled "Equal Rights, Equal Opportunities"**. According to the published data, out of 5,617 cases in total, 2,080 cases (37 %) were related to racial discrimination.<sup>19</sup> It can furthermore be noted that after a significant increase in cases related to racial discrimination from 2018 (1,070) and 2019 (1,176) to 2020 (2,101), the case number remained equally high in 2021 (2,080).<sup>20</sup> The Agency reported a slight decrease in total cases compared to the previous year (6,383 cases), predominantly due to fewer Covid-19 pandemic related complaints (1,022 out of 5,617 cases).<sup>21</sup>

Right-wing extremism remains a serious issue in 2021. On 7 June 2022, the Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und der Heimat*) and the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) presented the annual **Report on Constitutional Protection** (*Verfassungsschutzbericht*).<sup>22</sup> In 2021, 33,476 politically motivated criminal offences with an extremist background (*Straftaten mit extremistischem Hintergrund*) were recorded, out of which 2,994 were acts of violence (*Gewalttaten*).<sup>23</sup> The number of recorded **right-wing extremists** increased from 33,300 in 2020 to 33,900 in 2021, out of which 13,500 are considered willing to use violence.<sup>24</sup> Furthermore, in May 2022 the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) under the auspices of the Central Office for Right-Wing Extremists in the Public Sector published a report on **"Right-wing extremists, 'Reichsbürger' and 'Selbstverwalter' in public security authorities"**. "Reich Citizens" and "self-governing citizens" are groups and individuals who reject the existence of the Federal Republic of Germany and its legal system, playing on racism, antisemitism and historical revisionism, including invoking the historical German Reich, conspiracy theory argumentation patterns or a self-defined natural law.<sup>25</sup> In the survey period from 1 July 2018 to 30 June 2021, 860 persons of concern were identified, while there were 110 persons at federal and 177 at state level for whom

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<sup>19</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [Equal rights, equal opportunities - annual report of the Federal Anti-Discrimination Agency 2021](#) (*Gleiche Rechte, Gleiche Chancen - Jahresbericht der Antidiskriminierungsstelle des Bundes 2021*), Berlin, 16 August 2022, p. 44.

<sup>20</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [Equal rights, equal opportunities - annual report of the Federal Anti-Discrimination Agency 2021](#) (*Gleiche Rechte, Gleiche Chancen - Jahresbericht der Antidiskriminierungsstelle des Bundes 2021*), Berlin, 16 August 2022, p. 45.

<sup>21</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [Equal rights, equal opportunities - annual report of the Federal Anti-Discrimination Agency 2021](#) (*Gleiche Rechte, Gleiche Chancen - Jahresbericht der Antidiskriminierungsstelle des Bundes 2021*), Berlin, 16 August 2022, p. 43.

<sup>22</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), ['Verfassungsschutzbericht 2021 vorgestellt - Steigende Zahl von Extremisten in fast allen Phänomenbereichen'](#), press release, 7 June 2022.

<sup>23</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [Constitution Protection Report 2021](#) (*Verfassungsschutzbericht 2021*), Berlin, 7 July 2022.

<sup>24</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [Constitution Protection Report 2021](#) (*Verfassungsschutzbericht 2021*), Berlin, 7 July 2022.

<sup>25</sup> Germany, Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) (2022), ["Reich Citizens" and "Self-governing Citizens"](#) ('Reichsbürger und Selbstverwalter').

aspirations to disrupt the free democratic order could be proven.<sup>26</sup> Memberships in right-wing extremist chat groups, politically motivated insults and contacts with right-wing extremist organisations were particularly frequent. Since the last survey period, in which 319 suspected cases were recorded, this number has more than doubled, which the authors attribute to improved methodologies and more differentiated survey questions.

The seriousness of right-wing extremist threats was once more illustrated on 7 December 2022, when an **unprecedented raid** with 3,000 officers led by the Federal Public Prosecutor General was carried out **against suspected members and supporters of a right-wing terrorist organisation from the "Reich Citizens" (Reichsbürger) milieu**.<sup>27</sup> The police searched about 160 properties and arrested several suspects.<sup>28</sup> A total of 54 suspects are being investigated in the case, 23 of whom are in pre-trial detention, while two others are being held in extradition custody in Austria and Italy respectively.<sup>29</sup> They planned, among other things, to storm the Reichstag building, to bring about civil war-like conditions by attacking the electricity supply, and to depose the federal government in order to then take power. For the moment of the "takeover", people would then have supposedly been selected for important ministerial posts, among them doctors, judges, former parliamentarians, retired soldiers and police persons.<sup>30</sup> The raid also brought to light 120-130 accessories who had signed declarations to secrecy under threat of punishment.<sup>31</sup>

In the week following the raid, the German Parliament's Legal Affairs Committee, Interior Committee and the Plenary held special sessions, in which members of parliament discussed the initial political consequences. Federal Minister of the Interior, Nancy Faeser (SPD), proposed changing the disciplinary code from requiring proceedings in the administrative court to needing only administrative procedures to get rid of enemies of the constitution in security agencies more quickly, and to tighten weapons law.<sup>32</sup> However, the Federal Minister of Justice, Marco Buschmann (FDP), argued that current weapons law already allows for the

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<sup>26</sup> Germany, Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*) (2022), [Right-wing extremists, "Reichsbürger" and "Selbstverwalter" in security institutions - situation report](#) (*Rechtsextremisten, „Reichsbürger“ Und „Selbstverwalter“ in Sicherheitsbehörden - Lagebericht*), Berlin, May 2022.

<sup>27</sup> Tagesschau (2022), ['Nationwide raid on planned coup d'état'](#) ('Bundesweite Razzia wegen geplanten Staatsstreichs'), 7 December 2022.

<sup>28</sup> German Parliament (*Deutscher Bundestag*) (2022), ['Special session of the Legal Affairs Committee on the "Reich Citizens" raid'](#) ('Sondersitzung des Rechtsausschusses zu „Reichsbürger“-Razzia'), 12 December 2022.

<sup>29</sup> German Parliament (*Deutscher Bundestag*) (2022), ['Special session of the Interior Committee on the "Reich Citizens" raid'](#) ('Sondersitzung des Innenausschusses zu „Reichsbürger“-Razzia'), 13 December 2022

<sup>30</sup> ZDF (2022), ['Plans of Reichsbürger to overthrow the government: Federal Public Prosecutor General on raid'](#) ('Umsturzpläne von Reichsbürgern: Generalbundesanwalt zu Razzia'), 7 December 2022.

<sup>31</sup> ZDF (2022), ['After raid on coup plans - Faeser: "Reich Citizens" had many confidants'](#) ('Nach Razzia zu Umsturzplänen - Faeser: „Reichsbürger“ hatten viele Mitwisser'), 14 December 2022.

<sup>32</sup> Die Zeit (2022), ['Domestic Security: Special Sessions in the Bundestag on the Reich Citizens' Raid'](#) ('Innere Sicherheit: Sondersitzungen im Bundestag zur Reichsbürger-Razzia'), 12 December 2022.

consistent disarmament of “Reich citizens”.<sup>33</sup> Many speakers also criticised the AfD, accusing them of playing down the danger of the planned coup d’état.<sup>34</sup>

Politically motivated crimes as well as antisemitic crimes represent a compounded risk in 2021. Statistics of the Ministry of the Interior and for Home Affairs show that **politically motivated crimes** (*politisch motivierte Straftaten*) **increased by 23 %** to 55,048 offences, an all-time high since data collection was introduced in 2001.<sup>35</sup> Politically motivated acts of violence increased by 16 % to 3,889 offences. Forty-one percent of all victims of politically motivated violence were attacked by right-wing extremists. Of particular concern is the **significant increase in the number of antisemitic crimes by 29 %** to a peak of 3,027. Around 61 % of antisemitic offences involved incitement of the people (over 40 %), half of which were committed in the digital sphere. About half of the antisemitic crimes were committed in connection with the Covid-19 pandemic. However, Islamist-influenced antisemitism is also notable.<sup>36</sup>

This development is confirmed by the American Jewish Committee, which contracted the **Allensbach Institute for Public Opinion Polling** (*Institut für Demoskopie Allensbach, IfD*) to conduct a **representative study on antisemitism in Germany**.<sup>37</sup> Between 22 December 2021 and 18 January 2022, the IfD surveyed 1,600 German citizens and Muslims living in Germany (German citizens and non-citizens). According to the study, 60 % of the population see antisemitism in Germany as “rather” or “definitely” widespread (53 % of Muslims in Germany). Almost two-thirds of the German population are also convinced that the problem of antisemitism has increased over the past ten years, while around one in two Muslims in Germany thinks so. Significantly higher than among the population as a whole, Muslims see hatred of Israel as the main cause of hostility toward Jews (31 % versus 21 %). While the data do not show that antisemitic attitudes have increased sharply in the population, they confirm that a considerable portion of the German population shares antisemitic stereotypes and resentments. For instance, one in three believe that Jews exploit their status as victims of the genocide in World War II to their advantage, and 23 % believe that Jews have too much power in business and finance, in politics (18 %) or in the media (18 %).<sup>38</sup> The survey thus proves that antisemitism is not just a problem

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<sup>33</sup> Tagesschau (2022), [‘After “Reich Citizens” raid: What is known about the group so far’](#) (‘Nach „Reichsbürger“-Razzia. Was über die Gruppe bisher bekannt ist’), 17 December 2022.

<sup>34</sup> German Parliament (*Deutscher Bundestag*) (2022), [‘Debate after “Reich Citizens” raid: harsh criticism of the AfD’](#) (‘Aussprache nach „Reichsbürger“-Razzia: Harte Kritik an der AfD’), 14 December 2022.

<sup>35</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [‘Politisch motivierte Kriminalität erreichte im Jahr 2021 neuen Höchststand - Steigerung um mehr als 23 Prozent’](#), press release, 10 May 2022.

<sup>36</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [‘Politisch motivierte Kriminalität erreichte im Jahr 2021 neuen Höchststand - Steigerung um mehr als 23 Prozent’](#), press release, 10 May 2022.

<sup>37</sup> Allensbach Institute for Public Opinion Polling (*Institut für Demoskopie Allensbach, IfD*) (2022), [‘Antisemitism in Germany - a representative survey’](#) (*Antisemitismus in Deutschland - Eine Repräsentativbefragung*), representative survey, 10 May 2022.

<sup>38</sup> Allensbach Institute for Public Opinion Polling (*Institut für Demoskopie Allensbach, IfD*) (2022), [‘Antisemitism in Germany - a representative survey’](#) (*Antisemitismus in Deutschland - Eine Repräsentativbefragung*), representative survey, 10 May 2022.

of the political fringes, but instead “deeply rooted” in the centre of society. At the same time antisemitism is more pronounced among right-wing extremists and religiously practicing Muslims.<sup>39</sup>

**The art festival Documenta Fifteen sparked a widespread antisemitism debate in Germany in June 2022.** From 18 June to 25 September, under the artistic direction of the Jakarta-based artists’ collective ruangrupa, the collective Taring Padi displayed a banner titled “People’s Justice” (2002) which drew on antisemitic imagery (a soldier with a pig’s face and a Star of David, a figure with payot, rafted teeth and SS runes on their hat). Following intense critique by the Central Council of Jews in Germany (*Zentralrat der Juden*)<sup>40</sup>, Minister of State for Culture Claudia Roth and others, the work was first covered and then taken down.<sup>41,42</sup> Having allegedly ignored earlier warnings, the General Director of Documenta and Museum Fridericianum gGmbH, Dr. Sabine Schormann, resigned from her post.<sup>43</sup> As the debate calmed down, several other antisemitic displays were found, including drawings from 1988 depicting Israeli soldiers as mass murderers, and a video installation called “Tokyo Reels” was criticised for glorifying terrorism and reproducing Palestinian propaganda.<sup>44,45</sup> Claudia Roth called the events in Kassel a “chain of irresponsibility, where in the end no one wants to have been responsible.”<sup>46</sup> As a consequence, since September 2022 **the Anne Frank Educational Centre, the Documenta Institute and the Frankfurt University of Applied Science have been conducting a joint study to clarify the incidents, interviewing visitors, artists and experts as well as analysing national and international media coverage.** “We want to find out how it was debated, why it was so explosive, who the respective camps are. [...] One of the questions to be explored is why the debate became so emotional so quickly,” says Mendel, Head of the Anne Frank Educational Centre.

The Federal Criminal Police Office (Bundeskriminalamt BKA) also registered 4,000 **anti-Russian or anti-Ukrainian crimes in Germany** in connection with the war in Ukraine,<sup>47</sup> ranging from insults and threats to physical attacks and damage to

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<sup>39</sup> Tagesspiegel (2022), [‘New Allensbach Study – Antisemitism Widespread in Germany’](#) (‘Neue Allensbach-Studie - Antisemitismus in Deutschland weit verbreitet’), 10 May 2022.

<sup>40</sup> Central Council of Jews in Germany (*Zentralrat der Juden*) (2022), [‘Presseerklärung zu Antisemitismus auf der Documenta’](#), press release, 20 June 2022.

<sup>41</sup> Documenta Fifteen (2022), [‘Statement by Taring Padi on Dismantling “People’s Justice”](#)’, press release, 24 June 2022.

<sup>42</sup> Documenta Fifteen (2022), [‘Ruangrupa and the Artistic Team on Dismantling “People’s Justice”](#)’, press release, 23 June 2022.

<sup>43</sup> Documenta Fifteen (2022), [‘Documenta General Director - Documenta Has Taken Appropriate Measures Following Allegations’](#), press release, 12 July 2022.

<sup>44</sup> Central Council of Jews in Germany (*Zentralrat der Juden*) (2022), [‘Umgang mit Antisemitismus auf documenta macht fassungslos’](#), press release, 28 July 2022.

<sup>45</sup> Central Council of Jews in Germany (*Zentralrat der Juden*) (2022), [‘Zur Presserklärung der unterzeichnenden Mitglieder des Gremiums zur fachwissenschaftlichen Begleitung der documenta fifteen’](#), press release, 12 September 2022.

<sup>46</sup> BR24 (2022), [‘Claudia Roth on documenta: “I should have been louder”](#)’ (‘Claudia Roth zur documenta: “Ich hätte lauter sein müssen”’), 10 August 2022.

<sup>47</sup> Mediendienst Integration (2022), [‘Mediendienst Research: Fewer crimes related to the Ukraine war’](#) (‘Mediendienst-Recherche: Weniger Straftaten mit Bezug zum Ukraine-Krieg’), 25 November 2022.



property – the majority of which are anti-Russian motivated.<sup>48</sup> While the Federal Criminal Police President Holger Münch counted around 200 such crimes a week in March,<sup>49</sup> by end of May the numbers decreased to a lower double-digit range.<sup>50</sup> Whereas the interior ministries of Rhineland-Palatinate and Baden-Württemberg confirmed the existence of the phenomenon, the Saxon State Criminal Police Office (*Landeskriminalamt*) established a specialised organisation to assess and manage the new situation.<sup>51</sup> However, the federal Ministry of the Interior and for Home Affairs cautioned against possible false reports and exaggerated accounts: the narrative of a supposedly anti-Russian West were part of Russian disinformation.<sup>52</sup>

## **2.2 Legal and policy developments or measures relating to the application of the Framework Decision on Racism and Xenophobia and the Racial Equality Directive**

On 28 May 2022, the Federal Government of Germany adopted the **Act amending the General Equal Treatment Law (*Allgemeines Gleichbehandlungsgesetz AGG*) to ensure the independence of the Federal Anti-Discrimination Agency**.<sup>53</sup> The reform encompasses expanding opportunities for affected people to assert their rights by extending the time frame for complaints from two to six months and by giving associations the right to take legal action. It also clarified that the German Parliament elects the Independent Federal Anti-Discrimination Commissioner for a period of 5 years with the possibility of one re-election. The newly elected independent Government Commissioner for Anti-Discrimination, Ferda Ataman, called on the German government to implement the reform of the General Equal Treatment Law swiftly and comprehensively to meet international standards.<sup>54</sup><sup>55</sup> Moreover, the Federal Anti-Discrimination Agency introduced its

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<sup>48</sup> RedaktionsNetzwerk Deutschland (2022), '[9000 politically motivated crimes related to Corona in 2021 - 200 assaults against Russians and Ukrainians per week](#)' ('9000 politisch motivierte Straftaten mit Corona-Bezug in 2021 – 200 Übergriffe gegen Russen und Ukrainer pro Woche'), 28 March 2022.

<sup>49</sup> Tagesschau (2022), '[Ukraine war - BKA reports hundreds of crimes in Germany](#)' ('Ukraine-Krieg - BKA meldet Hunderte Straftaten in Deutschland'), 28 March 2022.

<sup>50</sup> Mediendienst Integration (2022), '[Mediendienst Research: Fewer crimes related to the Ukraine war](#)' ('Mediendienst-Recherche: Weniger Straftaten mit Bezug zum Ukraine-Krieg'), 25 November 2022.

<sup>51</sup> Tagesschau (2022), '[Russians in Germany - Authorities register hostility](#)' ('Russen in Deutschland - Behörden verzeichnen Anfeindungen'), 5 March 2022.

<sup>52</sup> Germany, Federal Ministry of the Interior and for Home Affairs (Bundesministerium des Innern und für Heimat) (2022), '[FAQ - Desinformation im Kontext des russischen Angriffskrieges gegen die Ukraine](#)', May 2022.

<sup>53</sup> Germany, Federal Government (*Bundesregierung*) (2022), '[Act amending the General Equal Treatment Law](#)' (*Gesetz zur Änderung des Allgemeinen Gleichbehandlungsgesetzes*), BGBl. I 2022, Nr. 17, 27 May 2022.

<sup>54</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), '[Antidiskriminierungsbeauftragte stellt Jahresbericht vor](#)', press release, 16 August 2022.

<sup>55</sup> German Parliament (*Deutscher Bundestag*) (2022), '[Zustimmung für Änderung des AGG](#)', press release, 27 April 2022.

first Commissioner for Anti-Ziganism, lawyer Dr. Mehmet Daimagüler, who took office on 1 May 2022.<sup>56</sup>

In response to the rise in right-wing extremism, racism and antisemitism, the federal German coalition parties agreed in their coalition contract to adopt a **Democracy Promotion Act** (*Demokratiefördergesetz*). The Democracy Promotion Act is intended to create a legal mandate for the federal government in the area of democracy promotion, diversity shaping and extremism prevention; to ensure appropriate funding; and to establish eligibility requirements for demand-driven, reliable and longer-term support.<sup>57</sup> To this end, the Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und der Heimat*) and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) jointly presented a discussion paper on 25 February 2022 and started a broad participation process to co-develop the act.<sup>58</sup> On 4 May 2022, the participation process culminated in a joint conference, after 170 umbrella organisations, specialist organisations and academics had submitted their comments on the draft act.<sup>59</sup> Despite a broad consensus on the need to strengthen democratic initiatives, civil society actors called for more in-depth participation and criticised the continued fragmentation of their work due to projectized funding such as the “Demokratie leben!” programme.<sup>60</sup><sup>61</sup> The Draft Democracy Promotion Act was approved by the Federal Cabinet on 14 December 2022 and is set to enter into force in 2023.<sup>62</sup><sup>63</sup>

On 23 February 2022, the federal cabinet appointed Minister of State for Integration, Reem Alabali-Radovan, as the **first Federal Government Commissioner for Anti-Racism** (*Beauftragte der Bundesregierung für Antirassismus*) and thereby fulfilled a mandate from the coalition agreement

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<sup>56</sup> Germany, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*) (2022), [Equal rights, equal opportunities - annual report of the Federal Anti-Discrimination Agency 2021](#) (*Gleiche Rechte, Gleiche Chancen - Jahresbericht der Antidiskriminierungsstelle des Bundes 2021*), Berlin, 16 August 2022.

<sup>57</sup> Germany, Federal Ministry of Family, Seniors, Women and Youth & Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium für Familie, Senioren, Frauen und Jugend* and *Bundesministerium des Innern und für Heimat*) (2022), [Discussion Paper from BMFSFJ and BMI on the Democracy Promotion Act](#) (*Diskussionspapier von BMFSFJ und BMI für ein Demokratiefördergesetz*), discussion paper, February 2022.

<sup>58</sup> Germany, Federal Ministry of Family, Seniors, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [BMFSFJ - Ministerien legen Diskussionspapier zu Demokratiefördergesetz vor](#), [press release](#), 25 February 2022.

<sup>59</sup> Germany, Federal Ministry of Family, Seniors, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [Beteiligungsverfahren zum Demokratiefördergesetz erfolgreich abgeschlossen](#), [press release](#), 4 May 2022.

<sup>60</sup> Germany, German Parliament (*Deutscher Bundestag*) (2022), [Experten uneins über geplantes Demokratiefördergesetz](#), [press release](#), 23 June 2022.

<sup>61</sup> Institute for Situational Approaches (*Institut für den Situationsansatz*) (2022), [Kompetenznetzwerk - Aktuelles zum geplanten Demokratiefördergesetz](#), [press release](#), June 2022.

<sup>62</sup> Germany, Federal Ministry of Family, Seniors, Women and Youth & Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium für Familie, Senioren, Frauen und Jugend* and *Bundesministerium des Innern und für Heimat*) (2022), [Bundeskabinett beschließt Entwurf des Demokratiefördergesetzes](#), [press release](#), 14 December 2022.

<sup>63</sup> Germany, Federal Ministry of Family, Seniors, Women and Youth & Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium für Familie, Senioren, Frauen und Jugend* and *Bundesministerium des Innern und für Heimat*) (2022), [Draft Act on Strengthening Measures to Promote Democracy, Shape Diversity, Prevent Extremism and Provide Political Education](#) (*Entwurf eines Gesetzes zur Stärkung von Maßnahmen zur Demokratieförderung, Vielfaltgestaltung, Extremismusprävention und politischen Bildung*), 14 December 2022.

between SPD, Bündnis90/Grüne and FDP.<sup>64</sup> Assuming her new double-role, the commissioner announced upcoming initiatives will include a National Action Plan Against Racism, establishing a nationwide counselling centre, and developing a **Diversity Strategy for the federal administration**.<sup>65</sup> In addition to the diversity strategy in the National Action Plan on Integration, the coalition agreement of the 20th legislative period contains the mandate to introduce a holistic diversity strategy in the federal administration with concrete support measures, targets and measures for a change in culture. Together with the Federal Ministry of the Interior, the Integration Commissioner will develop the strategy in a broad participation process.<sup>66</sup> Developing anti-racist strategy concepts and procedures, the commissioner also launched the KommA (“Municipal alliances and strategies against racism and hate - strengthening decision-makers together”) model project to support ten selected model municipalities in building local alliances between administration, civil society and security authorities to counter hostility and threats against decision-makers and administrative staff.<sup>67</sup>

On 15 March 2022 the Minister of the Interior and for Home Affairs, Nancy Faeser, announced a 10-point **action plan against right-wing extremism** (*Aktionsplan gegen Rechtsextremismus*) together with the presidents of the Federal Office for the Protection of the Constitution (*Bundesamt für Verfassungsschutz*), Thomas Haldenwang, the Federal Criminal Police Office (*Bundeskriminalamt*), Holder Münch, and the Federal Agency for Civic Education (*Bundeszentrale für politische Bildung*), Thomas Krüger.<sup>68</sup> The package encompasses ten preventive and reactive measures: (1) de-radicalisation, (2) dismantling right-wing networks, (3) disarming right-wing extremists, (4) fighting digital hate speech, (5) removing persons with unconstitutional attitudes from public service, (6) debunking conspiracy theories and preventing radicalisation, (7) promoting prevention against extremism and strengthening democratic culture of debate, (8) strengthening political education, (9) media competencies dealing with disinformation, and (10) protection of elected officials and supporting victims of right-wing extremism.<sup>69</sup>

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<sup>64</sup> Press and Information Office of the German Government (*Presse- und Informationsamt der Bundesregierung*) (2022), ‘[Wir alle müssen Antirassisten sein!](#)’, press release, 23 February 2022.

<sup>65</sup> Germany, Minister of State for Integration, Federal Government Commissioner for Anti-Racism (Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, Die Beauftragte der Bundesregierung für Antirassismus) (2022), ‘[„Wir alle müssen Antirassisten sein“ - Das Bundeskabinett hat heute Staatsministerin für Integration Reem Alabali-Radovan zur Beauftragten der Bundesregierung für Antirassismus ernannt](#)’, press release, 23 February 2022.

<sup>66</sup> Germany, Minister of State for Integration, Federal Government Commissioner for Anti-Racism (Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, Die Beauftragte der Bundesregierung für Antirassismus) (n.n.), ‘[Ganzheitliche Diversity-Strategie - Mehr Vielfalt im öffentlichen Dienst](#)’, press release.

<sup>67</sup> Germany, Minister of State for Integration, Federal Government Commissioner for Anti-Racism (Die Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration, Die Beauftragte der Bundesregierung für Antirassismus) (2022), ‘[Kommunale Allianzen und Strategien gegen Rassismus und Hass](#)’, press release, 28 December 2022.

<sup>68</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), ‘[Rechtsextremismus bekämpfen: Mit Prävention und Härte - Bundesinnenministerin Nancy Faeser stellt den Aktionsplan gegen Rechtsextremismus vor](#)’, press release, 15 March 2022.

<sup>69</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), *Action plan against right-wing extremism. Combating right-wing extremism holistically - with prevention and a firm hand (Aktionsplan gegen Rechtsextremismus. Rechtsextremismus ganzheitlich bekämpfen – mit Prävention und harter Hand)*, Berlin, 15 March 2022.

On behalf of the Federal Ministry of the Interior and for Home Affairs, the Research Institute for Social Cohesion (*Forschungsinstitut Gesellschaftlicher Zusammenhalt, FGZ*) is conducting a **comprehensive study on "Racism as a threat to social cohesion in the context of selected social-institutional areas"** (*Rassismus als Gefährdung des gesellschaftlichen Zusammenhalts im Kontext ausgewählter gesellschaftlich-institutioneller Bereiche*). Since 1 January 2022, the FGZ has been analysing racism in public authorities at federal, state and local level, covering housing and employment services, the activities of health and immigration authorities, interaction between police and citizens, the prison system, extremism prevention, and sports clubs. The study is a central project of the final report of the Commission of the Cabinet for Combating right-wing Extremism and Racism (*Kabinettsausschuss zur Bekämpfung von Rechtsextremismus und Rassismus*) and will be carried out in close cooperation with the National Discrimination and Racism Monitor. Divided into 23 individual projects at eight FGZ locations in Germany, the scientists will finalise the study by 2024. A central question will be the extent to which the understanding of racism has changed in recent years and what implications arise for racism-sensitive work by public authorities. In addition to individual attitudes, discursive practices and employee behaviour, work routines and institutional settings will be examined for their susceptibility to racist prejudice and inequality-reinforcing attitudes. This will shed light on how administrative procedures in an organisation systematically favour or (re-)produce unequal treatment. The systemic character of the study was well-received by civil society organisations. In particular, the European Commission against Racism and Intolerance welcomed research into police checks but criticised the respective sub-study for lacking explicit references to racial profiling and for only being carried out in Berlin and Frankfurt, rather than at federal or Länder level.<sup>70</sup>

In an agreed debate on combating antisemitism at the German parliament on 9 November 2022, Federal Minister of the Interior and For Home Affairs, Nancy Faeser, launched the **National Strategy against Antisemitism and for Jewish Life** in line with the first European Union Strategy to Combat Anti-Semitism and Promote Jewish Life.<sup>71,72</sup> According to the strategy, researching, preventing and combating antisemitism as well as promoting Jewish life is to be conceived as a cross-sectional task across political fields and levels in a holistic and networked approach. The goal is to create a compact strategy that abstracts from individual measures and systematically includes the perspective of those affected.<sup>73</sup> The strategy, furthermore, maps the relevant fields of action and their connections,

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<sup>70</sup> Council of Europe, European Commission against Racism and Intolerance (ECRI) (2022), [ECRI conclusions on the implementation of the recommendations in respect of Germany - Subject to interim follow-up](#), 20 September 2022.

<sup>71</sup> German Parliament (*Deutscher Bundestag*) (2022), ['Agreed debate on combating antisemitism'](#) ('Vereinbarte Debatte zur Bekämpfung des Antisemitismus'), 9 November 2022.

<sup>72</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), ['Parliamentary debate on the topic "Combating anti-Semitism - remembering means acting". Speech by the Federal Minister of the Interior and for Home Affairs, Nancy Faeser'](#) (Bundestagsdebatte zum Thema „Antisemitismus bekämpfen – Erinnern heißt handeln“

Rede der Bundesministerin des Innern und für Heimat Nancy Faeser'), 9 November 2022.

<sup>73</sup> Germany, Federal Government (*Bundesregierung*) (2022), [National Strategy against Antisemitism and for the Promotion of Jewish Life](#) (*Nationale Strategie gegen Antisemitismus und für jüdisches Leben*), November 2022.

identifies interfaces between political levels and actors and enables a continuous review of existing policies and approaches to combating the problem.<sup>74</sup> The five outlined areas of action are: 1) data collection, research and the current state of affairs; 2) education as antisemitism prevention; 3) commemorative culture, historical awareness and remembrance; 4) fight against antisemitism and security; and 5) Jewish presence and history.

Following the infringement procedures initiated against Germany by the European Commission in December 2021 for incorrect implementation of the EU Framework Decision on Racism,<sup>75</sup> the German parliament on 20 October 2022 passed an **expansion of the incitement to hatred clause regulated by §130 of the German Penal Code (StGB)**.<sup>76</sup> A new paragraph § 130 (5) StGB will in future criminalise the public approval, denial and gross trivialisation of genocide, crimes against humanity and war crimes if the act is committed in a manner likely to incite hatred or violence and to disturb the public peace. In future, this could also include statements made during a demonstration. By including statements made at an assembly, the government coalition goes slightly beyond the minimum requirements of the EU Framework Decision to avoid contradictions within the judicial system.<sup>77</sup> With this expansion it could be possible, for instance, that when people from Ukraine are being incited at pro-Putin rallies, criminal offences will be committed on the basis of the new provision. A further requirement of the new offence is that the conduct made in public must be directed against a national, racial, religious or ethnic group, against parts of the population or against an individual because of his or her membership of one of these groups. Furthermore, the endorsement, denial or gross trivialisation must be made in a manner "likely to incite hatred or violence against such a person or majority of persons and to disturb the public peace".<sup>78</sup>

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<sup>74</sup> Germany, Federal Government (*Bundesregierung*) (2022), '[Nationale Strategie gegen Antisemitismus](#)', press release, 29 August 2022.

<sup>75</sup> European Commission (2021), '[December infringements package: key decisions - Combating racism and xenophobia: Commission calls on GERMANY, HUNGARY and LUXEMBOURG to fully and correctly transpose EU law criminalising hate speech and hate crimes](#)', 2 December 2021.

<sup>76</sup> Legal Tribune Online (2022), '[Government coalition expands incitement of the people paragraph: Public trivialisation of war crimes to be punishable in future](#)' ('Ampel weitet Volksverhetzungsparagrafen aus: Öffentliche Verharmlosung von Kriegsverbrechen künftig strafbar'), 21 October 2022.

<sup>77</sup> Beck-aktuell (2022), '[Legal Affairs Committee decides on addition to the offence of incitement to hatred](#)' ('Rechtsausschuss beschließt Ergänzung des Straftatbestands der Volksverhetzung'), 19 October 2022.

<sup>78</sup> Legal Tribune Online (2022), '[Government coalition expands incitement of the people paragraph: Public trivialisation of war crimes to be punishable in future](#)' ('Ampel weitet Volksverhetzungsparagrafen aus: Öffentliche Verharmlosung von Kriegsverbrechen künftig strafbar'), 21 October 2022.

### 3 Roma equality and inclusion

#### 3.1 Policy developments in regards to the implementation of national action plans

Development regarding the implementation of the action plans	
Has the Member State adopted one or several action plan(s) for the implementation of the strategy (separately from the strategic framework? If yes, please provide a hyperlink.	Yes Germany, Federal Ministry of the Interior and for Home Affairs ( <i>Bundesministerium des Innern und für Heimat</i> ) (2022), <u><a href="#">Nationale Strategie „Antiziganismus bekämpfen, Teilhabe sichern!“ zur Umsetzung der EU-Roma-Strategie 2030 in Deutschland.</a></u>
How were Roma and Traveller civil society organisations consulted for the development of the action plan (please check with the competent national authorities and the most significant Roma organisations)?	The German implementation strategy was developed in the course of 2021 under the leadership of the Federal Ministry of the Interior and For Home Affairs and was adopted by the Federal Government in February 2022. In this process, umbrella organisations and organisations of Sinti and Roma representing both the national minority and immigrant Roma are consulted. The written consultation was launched in August 2021. An oral hearing of civil society representatives also took place in September 2021. The NGOs Central Council of German Sinti and Roma ( <i>Zentralrat Deutscher Sinti und Roma</i> ), Sozialfabrik, and Amaro Drom as part of the Roma civil monitor published their evaluation of the national strategy in 2022. <sup>79</sup> The report states that, according to Sinti and

<sup>79</sup> Central Council of German Sinti and Roma (*Zentralrat Deutscher Sinti und Roma*), Sozialfabrik & Amaro Drom (2022), [Civil society monitoring report on the quality of the national strategic framework for Roma equality, inclusion, and participation in Germany](#), Brussels, EU Commission Directorate-General for Justice and Consumers.

	<p>Roma organisations, the disadvantaged situation that many Sinti and Roma face in education, employment, housing, and health sectors is rooted in antigypsyism. According to the report there is an urgent need to counter widespread antigypsyism which hampers their equal treatment and participation in society. The problem with the approach of the German government is therefore that there are no structural and institutional conditions that would guarantee that disadvantaged Sinti and Roma have equal access to inclusion programmes because racism against Roma and Sinti is not recognised as a structural and institutional problem. Disadvantaged Sinti and Roma would face discrimination hampering them from exercising their civil and social rights.<sup>80</sup></p>
<p>Was the Equality Body and the NHRI and the Ombuds institution in your country consulted in the development of the action plan (please check with the competent national authority, the Equality body, NHRI and Ombuds institution)?</p>	<p>The Federal Anti-Discrimination Agency (ADS) has been involved in the development of the strategy and plans to support its implementation through research and a dialogue process on the collection of equality data.<sup>81</sup> In the view of the ADS, a prerequisite for this is the budgeting of the necessary funds. The ADS will also cooperate with the new Reporting and Information Centre on Antiziganism (MIA) through training and in legal case assessment.<sup>82</sup> According to information from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth in September 2022, an advisory group consisting of representatives of self-organisations, academia and practice, as well as a federal-state commission are currently being established for the further development of the national implementation strategy and the structural integration of representatives of self-organisations and the federal states.<sup>83</sup></p>

<sup>80</sup> Roma Civil Monitor, [Roma Civil Monitoring. Countries – Germany](#).

<sup>81</sup> Germany, Federal Anti-Discrimination Agency (Antidiskriminierungsstelle des Bundes) (2022), [Jahresbericht 2021](#), June 2022.

<sup>82</sup> The information was provided by email by the Federal Antidiscrimination Agency (*Antidiskriminierungsstelle des Bundes*).

<sup>83</sup> The information was provided by email by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministeriums für Familie, Senioren, Frauen und Jugend*).

Does the national strategic framework and the action plan foresee regular monitoring and review? If yes, who will conduct this.	The German implementation strategy mentions various measures; it provides for increased research on antiziganism, consultations and cooperation with relevant actors such as self-organisations in particular. <sup>84</sup> In the view of the Federal Anti-Discrimination Agency, the national strategy is often too vague in its description of goals and definition of criteria for success. It therefore remains to be seen to what extent the measures mentioned (and those to follow) are suitable for long-term success. <sup>85</sup> The German government has announced that it will report on the progress of the implementation of the EU Roma Strategy 2030 at regular intervals in future. <sup>86</sup>
<b>Implications of the war in Ukraine on the situation of Roma</b>	
Have Roma from Ukraine entered your country?	Yes
If Roma from Ukraine entered your country how was this communicated in the media?	Roma are repeatedly stigmatised in the media. Antiziganistic narratives are also spread in the current media coverage of Roma who have fled from Ukraine to Germany in order to receive protection here. <sup>87</sup>
Is there any evidence (articles, reports, analyses) of the impact of the economic implications of the war (inflation, food or energy prices etc.) on Roma? If yes, provide reference.	No

<sup>84</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [Nationale Strategie „Antiziganismus bekämpfen, Teilhabe sichern!“ zur Umsetzung der EU-Roma-Strategie 2030 in Deutschland](#).

<sup>85</sup> The information was provided by email by the Federal Antidiscrimination Agency (*Antidiskriminierungsstelle des Bundes*).

<sup>86</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [Nationale Strategie „Antiziganismus bekämpfen, Teilhabe sichern!“ zur Umsetzung der EU-Roma-Strategie 2030 in Deutschland](#), pp. 79 f.

<sup>87</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), [‘Melde- und Informationsstelle Antiziganismus \(MIA\) verurteilt die Diskriminierung geflüchteter ukrainischer Roma’](#), press release, 1 July 2022; Migazin (2022), [‘Stephan Müller im Gespräch. Wenn Roma Hilfsgüter in die Ukraine bringen, ist das keine Nachricht’](#), 7 September 2022.



### 3.2 Legal and policy developments or measures directly or indirectly addressing Roma/Travellers equality and inclusion

In March 2022, the Federal Government appointed a Federal Government Commissioner against Antiziganism (*Antiziganismusbeauftragter der Bundesregierung*)<sup>88</sup> for the first time. The Commissioner is based in the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. He is responsible for coordinating the Federal Government's measures against antiziganism.<sup>89</sup>

On the occasion of his appointment, the Commissioner stated: "The fight against antiziganism must be tackled across all ministries and at all levels, at the federal level as well as in the Länder. Since many measures are the responsibility of the Länder, I will advocate for the establishment of a permanent Federal-Länder Commission. The challenges can only be overcome together with the Sinti and Roma communities. I see the report of the Independent Commission on Antiziganism as an important resource for my work. Particularly close to my heart is the establishment of a commission to come to terms with the injustice after 1945. The murder of hundreds of thousands of Sinti and Roma under National Socialism went largely unpunished. Their exclusion and discrimination did not end in 1945 either, but continued in post-war Germany and continues to this day. An honest confrontation with this part of our history and present is overdue."<sup>90</sup>

The Federal Government also explained the task of the Commissioner as follows: "The Federal Government Commissioner on Antiziganism supports the concerns of the Sinti and Sintizze as well as Roma and Romanja in Germany as a contact person in the Federal Government. He is to coordinate measures against antiziganism with the federal ministries involved and further develop and implement the National Strategy 'Fighting Antiziganism, Securing Participation!' This also includes the establishment of a National Coordination Unit for the implementation of the EU Roma Strategy 2030 as well as the development of a civil society monitoring and information unit to collect data on antiziganist attacks. In addition, the

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<sup>88</sup> Germany, Federal Ministry of Family, Seniors, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Antiziganismusbeauftragter der Bundesregierung](#)'.

<sup>89</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Bundesregierung beruft erstmals Antiziganismus-Beauftragten](#)', press release, 9 March 2022.

<sup>90</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Bundesregierung beruft erstmals Antiziganismus-Beauftragten](#)', press release, 9 March 2022.

Antiziganism Commissioner acts as the Federal Government's central point of contact for the Sinti and Sintizze as well as Roma and Romanja communities."<sup>91</sup>

On 5 July 2022, the nationwide Antiziganism Reporting and Information Centre (*Melde- und Informationsstelle Antiziganismus*, MIA) in Berlin<sup>92</sup> was officially launched with a kick-off event.<sup>93</sup> This is a civil society project that has been funded by the Federal Ministry of the Interior since 2021. The tasks and goals of the MIA include a systematic recording of antiziganist incidents. The office has created a structure intended to deepen knowledge about the manifestation of antiziganism in order to identify needs for legal accompaniment, counselling and support as well as the need for action by government agencies to prevent or end discrimination.

The task of the MIA includes recording, documenting and evaluating antiziganist incidents uniformly throughout the country. Hate crimes, insults and discrimination by individuals or institutions are recorded. A special focus will be the recording of antiziganist incidents in social media and on the internet. An initial report prepared by MIA on discrimination against Roma refugees from Ukraine<sup>94</sup> underlines that antiziganism is widespread, especially in official authorities, but also in many aid organisations.<sup>95</sup>

The MIA wants to draw attention to existing deficits in the regulatory system and record the dark field of antiziganist incidents in Germany to a greater extent, thus making a significant contribution to the establishment and expansion of equality and protection against discrimination. The goals are to raise awareness about the manifestations and extent of antiziganism in society, to establish adequate counselling services for those affected and to raise awareness among policy-makers and the public. The knowledge gained is to be used to implement and expand further measures to combat antiziganism.<sup>96</sup>

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<sup>91</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Bundesregierung beruft erstmals Antiziganismus-Beauftragten](#)', press release, 9 March 2022.

<sup>92</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), '[Home – Melde- und Informationsstelle Antiziganismus \(MIA\)](#)'.

<sup>93</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), '[Die bundesweite Melde- und Informationsstelle Antiziganismus \(MIA\) startet heute in Berlin](#)', press release, 5 July 2022.

<sup>94</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), '[Situation report on Roma displaced from Ukraine in Germany](#) (*Zur Lage der aus der Ukraine geflüchteten Roma in Deutschland*), 2022.

<sup>95</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), '[Bericht zur Lage der aus der Ukraine geflüchteten Roma in Deutschland](#)', press release, 7 July 2022.

<sup>96</sup> See on all this: Melde- und Informationsstelle Antiziganismus (MIA), '[Die bundesweite Melde- und Informationsstelle Antiziganismus \(MIA\) startet heute in Berlin](#)', press release, 5 July 2022.

The office also has locations in Berlin, Saxony and Rhineland-Palatinate,<sup>97</sup> with more to follow. The reporting office in Saxony, which is located at Romano Sumnal e.V., published a report<sup>98</sup> in August 2022 that pointed to some antiziganist incidents directed at Roma who had fled Ukraine in Saxony.<sup>99</sup> The Berlin site, based at Amaro Foro e.V., published a report in March 2022 documenting antiziganist incidents in Berlin in 2021.<sup>100</sup>

In January 2022, the Schleswig-Holstein state parliament decided<sup>101</sup> to conduct a research project on the history of the German Sinti and Roma in Schleswig-Holstein, in particular on persecution and expulsion under National Socialism.<sup>102</sup>

The Saarland state government concluded a framework agreement with the Landesverband Deutscher Sinti und Roma Saarland e.V. in April 2022. This is the eighth federal state to conclude an administrative agreement with an association representing the interests of the Sinti and Roma. The framework agreement is initially valid for a period of two years, after which it is to be examined whether the framework agreement will be transferred into an interstate agreement.<sup>103</sup>

In June 2022, the Brandenburg state parliament passed an amendment to the state constitution with the required 2/3 majority. The resolution provides for amendments to the constitution, according to which the fight against antisemitism and antiziganism have been included as state goals.<sup>104</sup>

The National Discrimination and Racism Monitor (*Nationaler Diskriminierungs- und Rassismusmonitor*, NaDiRa) at the German Centre for Integration and Migration Research (DeZIM Institute) published the results of a short study on antiziganism in schools in 2022 and emphasised with regard to practice that educational recommendations are of central importance for the further educational path and professional success of pupils. In order to prevent students from being

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<sup>97</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), '[Melde- und Informationsstelle Antiziganismus \(MIA\) - Standorte](#)'.

<sup>98</sup> Melde- und Informationsstelle Antiziganismus (MIA) Sachsen (2022), '[Report on discrimination of Rom\\*nja displaced from Ukraine in Saxony](#)' (*Bericht zur Diskriminierung der aus der Ukraine geflüchteten Rom\*nja in Sachsen*), August 2022.

<sup>99</sup> Melde- und Informationsstelle Antiziganismus (MIA) (2022), '[MIA Sachsen, Bericht zur Lage aus der Ukraine geflüchteter Roma in Sachsen veröffentlicht](#)', press release, 29 August 2022.

<sup>100</sup> Amaro Foro, Dokumentationsstelle Antiziganismus, DOSTA (2022), '[Documentation of antiziganist incidents. Factsheet and short report 2021](#)' (*Dokumentation antiziganistischer Vorfälle. Factsheet und Kurzbericht 2021*), 30 March 2022.

<sup>101</sup> Germany, Schleswig-Holstein Parliament (*Schleswig-Holsteinischer Landtag*) (2022), '[Plenarprotokoll 140. Sitzung](#)', 27 January 2022.

<sup>102</sup> Germany, Schleswig-Holstein Parliament (*Schleswig-Holsteinischer Landtag*) (2022), '[Antrag der Fraktionen von SPD, CDU, Bündnis 90 / Die Grünen, FDP und der Abgeordneten des SSW: Geschichte der Sinti und Roma in Schleswig-Holstein aufarbeiten](#)', Drucksache 19/3558, 26 January 2022.

<sup>103</sup> Germany, State Chancellery of Saarland (*Staatskanzlei Saarland*) (2022), '[Rahmenvereinbarung zwischen der saarländischen Landesregierung und dem Landesverband Deutscher Sinti und Roma geschlossen](#)', press release, 13 April 2022.

<sup>104</sup> Germany, State Parliament of Brandenburg (*Landtag Brandenburg*) (2022), '[Plenum beschließt Änderung der Landesverfassung](#)', press release, 23 June 2022.

discriminated against at this important point, university teacher training should deal more with educational justice in a migration society. In this regard, the existing curricula should urgently be examined for their effectiveness.<sup>105</sup>

The National Discrimination and Racism Monitor (NaDiRa) also published a study<sup>106</sup> on antiziganist attitudes in society in 2022. The results of the study are used, for example, in university teacher training by forming the basis for a lecture hour (90 minutes) on the topic of antiziganism, which is part of the introduction to political science. In addition, a joint project "Tools for participation of Sinti and Roma for school and administration" is planned, which also builds on the results of the study.<sup>107</sup>

Randjelović et al. (2022) also published an empirical study on racism and discrimination against Rom\*nja and Sinti\*zze in Germany, based on group and individual interviews.<sup>108</sup> The study comes to the conclusion that combating racism against Sinti\*zze and Rom\*nja necessarily requires exposing individual as well as structural racism, and recognising the historically grown and present anchoring of this specific racism in all areas of society. The violence emanating from it must be publicly denounced as a violation of the principles of freedom, democracy, respect for human rights, fundamental freedoms and the rule of law. Such violence should be consistently prosecuted under criminal law, and sustainable counter measures need to be developed.

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<sup>105</sup> Civitillo, S., Ialuna, F., Jugert, P. (2022), [Antiziganism at school](#) (*Antiziganismus in der Schule*), German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM)*), NaDiRa short studies, 2022.

<sup>106</sup> Pickel, S., Stark, T. (2022), [Recongning antiziganism as distinct form of racism against Sinti\\*zze and Rom\\*nja](#) (*Antiziganismus als eigenständige Form des Rassismus gegenüber Sinti\*zze und Rom\*nja. Ergebnisse einer Pilotstudie zur mehrdimensionalen Erfassung antiziganistischer Einstellungen in der Mehrheitsgesellschaft*), NaDiRa Working Papers, Berlin, 19 August 2022.

<sup>107</sup> German Centre for Research on Integration and Migration (*Deutsches Zentrum für Integrations- und Migrationsforschung (DeZIM)*) (2022), '[Der Nationale Diskriminierungs- und Rassismusmonitor \(NaDiRa\) - Antiziganismus messen](#)', 2022.

<sup>108</sup> Randjelović, I., Gerstenberger, O., Fernández Ortega, J., Kostić, S., Attia, I. (2022) [Unter Verdacht – Rassismuserfahrungen von Rom:nja und Sinti:zze in Deutschland](#), Wiesbaden, Springer VS Wiesbaden.

## 4 Asylum, borders, visas, migration and integration

### 4.1 National legal framework on criminalisation of 'humanitarian assistance' and domestic transposition of sanctions

<b>EUMS</b>	<b>Implementation of Article 3 of <a href="#">Directive 2002/90/EC</a></b>	
	<b>How has your EUMS implemented Article 3 of Directive 2002/90/EU</b>	<p><b>Hyperlinked legal provision in EN and national language</b></p> <p>Section 96 paragraph 1 number 1b in conjunction with section 95 paragraph 1 number 3 or section 95 paragraph 2 number 1a of the German Residence Act</p> <p>Act on the Residence, Economic Activity and Integration of Foreigners in the Federal Territory - Residence Act, <a href="#">Section 96 (Smuggling foreigners into the federal territory)</a>.</p> <p>Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet 1) (Aufenthaltsgesetz - AufenthG), <a href="#">§ 96 AufenthG (Einschleusen von Ausländern)</a>.</p> <p>Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet 1) (Aufenthaltsgesetz - AufenthG), <a href="#">§ 95 AufenthG (Strafvorschriften)</a>.</p>
	<b>Cases [incident numbers] of criminalisation of humanitarian assistance</b>	
	<b>Number of cases recorded by the police in 2022</b>	<b>Number and details of cases (if available)</b> No information available.

	<b>Number of investigations initiated in 2022</b>	<b>Number and details of cases (if available)</b> No information available.
	<b>Number of court decisions taken in 2022</b>	<ul style="list-style-type: none"> <li>• <b>Number and type of court decisions, information if decision is final.</b></li> <li>• <b>Type of penalties imposed according to Article 1 2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence</b></li> <li>• <b>Describe in max three-four sentences the key court decisions in 2022 and add hyperlink to decision (if available)</b></li> </ul> <p>No case found.</p>

## 4.2 Use of the large-scale IT Systems in the area of asylum, migration and border control

Since 2017, the German Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) has been using various means of new technology in asylum procedures.<sup>109</sup>

The asylum authorities extract data from mobile devices when the asylum seeker cannot present a valid passport or other proof of identity.<sup>110</sup> By using specific software the extracted data is processed into a results report. This report is stored and

<sup>109</sup> Germany, Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) (2017), 'Lob für technische Systeme zur Identitätsprüfung', press release, 7 December 2017.

<sup>110</sup> German Bundestag (*Deutscher Bundestag*) (2022), '[Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Bünger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Sicherstellung und Auswertung von Smartphones in asyl- und aufenthaltsrechtlichen Verfahren](#)', Drucksache 20/615, 7 February 2022, p. 1.

can be used in the asylum procedure to get information about the country of origin and the identity of the asylum seeker. In 2021, data from 14,104 devices was extracted. The documentation of the results confirmed the identity of the applicants in around 30 % of the cases and disproved it in around 4 % of cases. In around 66 % of the cases, no usable findings could be obtained.<sup>111</sup> These figures are similar to those of previous years.<sup>112</sup> In 2021, the Berlin Administrative Court (*Verwaltungsgericht Berlin*) decided in a case of an Afghan woman that extracting and analysing data from her mobile phone was unlawful.<sup>113</sup> When the authorities have other less invasive means in order to get information about the identity of the asylum seeker, the extraction of mobile phone data is disproportionate and therefore not allowed. In this specific case, the woman was able to present an Afghan marriage and birth certificate.

For the same purpose, the *Bundesamt für Migration und Flüchtlinge* also uses a special language software. A speech biometric test is meant to recognize the asylum seeker's dialect and to thereby give indications of his or her identity. The computer program compares recorded speech samples of the asylum seeker with an underlying language model. Thus probabilities for the spoken dialect are calculated and recorded in a result report. So far, the dialect recognition software can recognise the most important Arabic dialects and is consequently primarily used for Arabic-speaking asylum seekers. At the end of July 2022 the software was extended to the Dari, Persian and Pashto languages. A Kurdish language model is planned.<sup>114</sup> In the first half of 2022, in about 76 % of the cases the result of the dialect recognition evaluations supported the information the applicants had given on their identity. In about 24 % of the cases information on the identity could not be supported.<sup>115</sup> Through training

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<sup>111</sup> German Bundestag (*Deutscher Bundestag*) (2022), '[Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion der CDU/CSU. Identitätsklärung im Zusammenhang mit Migration und Integration](#)', Drucksache 20/496, 27 June 2022, p. 6.

<sup>112</sup> German Bundestag (*Deutscher Bundestag*) (2022), '[Antwort der Bundesregierung auf die Kleine Anfrage der Fraktion der CDU/CSU. Identitätsklärung im Zusammenhang mit Migration und Integration](#)', Drucksache 20/496, 27 June 2022, p. 6; German Bundestag (*Deutscher Bundestag*) (2022), '[Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Büniger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Sicherstellung und Auswertung von Smartphones in asyl- und aufenthaltsrechtlichen Verfahren](#)', Drucksache 20/615, 7 February 2022, p. 1.

<sup>113</sup> Germany, Berlin Administrative Court (*Verwaltungsgericht Berlin*), [9 K 135/20 A](#), 1 June 2021.

<sup>114</sup> German Bundestag (*Deutscher Bundestag*) (2022), '[Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Büniger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz von Dialekterkennungssoftware im Bundesamt für Migration und Flüchtlinge](#)', Drucksache 20/3238, 31 August 2022, p. 8.

<sup>115</sup> German Bundestag (*Deutscher Bundestag*) (2022), '[Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Büniger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz von Dialekterkennungssoftware im Bundesamt für Migration und Flüchtlinge](#)', Drucksache 20/3238, 31 August 2022, p. 6.

of the language models the Arabic dialects currently achieve a recognition rate of around 85 %, the recently introduced Persian and Dari language model achieve a recognition rate of 73.07 %, and Pashto a recognition rate of 77.7 %.<sup>116</sup>

The use of the software is steadily growing. In 2020 it was used 9,923 times, in 2021 as much as 15,052 times. In the first half of 2022 the authorities relied on the technology 7,808 times.<sup>117</sup> The data is stored for 10 years after the final decision of the asylum claim.<sup>118</sup>

In the context of border controls at the airports and the implementation of the Regulation (EU) 2017/2226<sup>119</sup> the German federal police use fully automatic self-service systems in order to register biometric data of third country travellers who enter the EU.<sup>120</sup>

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<sup>116</sup> German Bundestag (*Deutscher Bundestag*) (2022), [‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Büniger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz von Dialekterkennungssoftware im Bundesamt für Migration und Flüchtlinge’](#), Drucksache 20/3238, 31 August 2022, p. 10.

<sup>117</sup> German Bundestag (*Deutscher Bundestag*) (2022), [‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Büniger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz von Dialekterkennungssoftware im Bundesamt für Migration und Flüchtlinge’](#), Drucksache 20/3238, 31 August 2022, p. 2.

<sup>118</sup> German Bundestag (*Deutscher Bundestag*) (2022), [‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Clara Büniger, Nicole Gohlke, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz von Dialekterkennungssoftware im Bundesamt für Migration und Flüchtlinge’](#), Drucksache 20/3238, 31 August 2022, p. 10.

<sup>119</sup> Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 767/2008 and (EU) No 1077/2011, [OJ 2017 L327/20](#).

<sup>120</sup> Netzpolitik.org (2020), [‘Entry-exit system: federal police buy new biometric control technologies’](#) ('Einreise-/Ausreisensystem: Bundespolizei kauft neue biometrische Kontrolltechnologien'), 5 January 2020.



## 5 Information society, privacy and data protection

### 5.1 Initiatives in the use of artificial intelligence in both private and public sectors

Actor	Type	Description	Are Human Rights issues mentioned? (yes/no)	Reference
Government (DE)	Other (Answer to parliamentary request)	<p>In January 2022, the Federal Government answered a request by the Left Party in parliament and provided an overview on 79 AI applications which are currently in use at federal ministries and federal authorities.</p> <p>The Left Party in parliament submitted a follow-up request for further details to the Federal Government. Asked how AI applications deployed by the Federal Office for Migration and Refugees will be treated if they would be classified as high-risk applications</p>	No	<p>German Parliament (<i>Deutscher Bundestag</i>) (2022), '<a href="#">Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Anke Domscheit-Berg, Dr. Petra Sitte, Nicole Gohlke, weiterer Abgeordneter und der Fraktion DIE LINKE. Künstliche Intelligenz im Geschäftsbereich der Bundesregierung</a>', Drucksache 20/430, 14 January 2022.</p> <p>German Parliament (<i>Deutscher Bundestag</i>) (2022), '<a href="#">Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Anke</a></p>

		under the EU AI Act, the Federal Government simply replied that AI systems are being deployed in line with applicable law – and systems would be adapted in case of legal changes. Apart from this, the replies to both parliamentary requests did not entail any debate in committees or the plenary of the German Bundestag.		<u>Domscheit-Berg, Dr. Petra Sitte, Nicole Gohlke, weiterer Abgeordneter und der Fraktion DIE LINKE. Künstliche Intelligenz im Geschäftsbereich der Bundesregierung (Nachfrage zur Antwort der Bundesregierung auf die Kleine Anfrage auf Bundestagsdrucksache 20/430)</u> , Drucksache 20/3020, 5 August 2022.
Government (DE)	Other (national strategy)	On 31 August 2022, the German government adopted its Digital Strategy ( <i>Digitalstrategie</i> ). The strategy aims at improving the framework for digitalisation, and provides an overview of the key actions in digital policy taken by the government and lists all objectives that shall be achieved by 2025. The strategy	Yes.  The strategy emphasises that AI has to be seen as human-centric technology and that processes have to be established which help to understand and manage the risks for individuals and society. According to the strategy, the government will support an EU AI Act which is innovation-friendly	Germany, Federal Government ( <i>Die Bundesregierung</i> ) (2022), <u>Digital strategy. Creating digital value together</u> ( <i>Digitalstrategie. Gemeinsam digitale Werte schöpfen</i> ), Berlin, 31 August 2022. See also the <u>dedicated website of the digital strategy</u> .

		<p>highlights three central projects: 1) the development of efficient and sustainable network infrastructures, and the availability of data and tools, 2) secure and user-friendly digital identities and modern public registers, and 3) uniform international technical norms and standards. Artificial intelligence is seen as a priority issue. Thus, education and training in AI is to be promoted; development of AI applications and its usage by small and medium enterprises and start-ups are funded and thresholds for adaption will be lowered.</p>	<p>while warranting the protection of fundamental rights and a high level of security.</p>	
Parliament (DE)	Other (meetings and expert hearings)	<p>The EU AI Act was the topic of debates in the Digital Committee of the national parliament several times. On 16 March 2022, the Committee discussed</p>	<p>Though it is very likely that human or fundamental rights were mentioned during the debate in March 2022, it is not known if this actually happened</p>	<p>German Parliament (<i>Deutscher Bundestag</i>) (2022), '<a href="#">EU regulation on artificial intelligence discussed</a>' ('EU-Verordnung zu Künstlicher Intelligenz</p>

		<p>the government’s report of the state of negotiations with regard to the AI Act. Biometric identification in public space was a key issue but also details of how to monitor the implementation of the regulation and the market were discussed. The Committee held a public hearing on the AI Act on 26 September 2022 with eight experts invited from interest groups, NGOs, trade unions and academia. Questions for the experts related to the risks of “sandbox testing” high-risk applications in the public sector; rights to information and complaints; warranties against racial or gender discrimination; governance and oversight; separate regulation of the use of AI by the police etc.</p>	<p>as the committee meetings are usually non-public and the parliament’s press office only published brief summaries (see reference in righthand column).</p>	<p>diskutiert’), 17 March 2022.</p> <p>German Parliament (<i>Deutscher Bundestag</i>) (2022), ‘<u>Consultation on the EU Regulation on Artificial Intelligence</u>’ (‘Anhörung zur EU-Verordnung zu Künstlicher Intelligenz’), 26 September 2022.</p> <p>German Parliament (<i>Deutscher Bundestag</i>) (2022), ‘<u>EU regulation on artificial intelligence controversial</u>’ (‘EU-Verordnung zu Künstlicher Intelligenz umstritten’), 27 September 2022.</p> <p>More information on the expert hearing, including the submissions of the experts can be found <a href="#">here</a>.</p>
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		<p>The outcomes of the hearing will be summarised in our December submission.</p> <p>The experts' opinions on the proposed AI Act varied greatly. Some criticised the wide definition of AI as encompassing almost any kind of software and warned against risks of overregulation that would inhibit innovation. Other experts welcomed the proposal as a good approach balancing business interests and societal concerns. Experts from NGOs called for a broader approach which would not only focus on the developers and suppliers of AI but also on its users. Moreover, they warned against the risks of facial recognition and</p>		
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		predictive policing software.		
Data Protection Authority (DE)	Report	In September 2021, the Federal Data Protection Commissioner published a discussion paper with seven propositions, thus launching a public consultation process on the use of AI in law enforcement. On 4 April 2022, the Commissioner concluded this process by publishing a consultation report with a summary and analysis of its findings. The report recommends that the legislator commission a comprehensive and interdisciplinary analysis to understand the implications of the use of AI in law enforcement and to adopt specific legislation to ensure general data protection principles are respected. The	Yes, the right to privacy and data protection are mentioned as well as non-discrimination.	Germany, Federal Commissioner for Data Protection and Freedom of Information ( <i>Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit</i> ) (2022), <u>Report on the Public Consultation Procedure of the Federal Commissioner for Data Protection and Freedom of Information on the Subject: Use of Artificial Intelligence in the Field of Law Enforcement and Security</u> ( <i>Bericht über das öffentliche Konsultationsverfahren des Bundesbeauftragten für den Datenschutz und die Informationsfreiheit zum Thema: Einsatz von Künstlicher Intelligenz im Bereich der Strafverfolgung und</i>

		Commissioner highlights the need for transparent and explainable AI which does not undermine the protection of the core area of private life ( <i>Kernbereich privater Lebensgestaltung</i> ). To this end, effective oversight by data protection authorities and prior data protection assessments are warranted.		<i>der Gefahrenabwehr</i> ), Bonn, 23 March 2022.  Germany, Federal Commissioner for Data Protection and Freedom of Information ( <i>Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit</i> ) (2022), ' <u>BfDI legt Konsultationsbericht zu KI vor</u> ', press release, 4 April 2022.
Data Protection Authority (DE)	Report	AI is one of three “key topics” of the Federal Data Protection Commissioner’s annual report 2021, which was published on 5 April 2022. The Commissioner highlights the need for human-centric and rights-oriented AI and reports on his activities at the national and international level with regard to AI. Among other things, he calls for the legal regulation	Yes, human and fundamental rights are mentioned – in addition to the right to data protection the Commissioner also mentions the freedoms of assembly, expression and association.	Germany, Federal Commissioner for Data Protection and Freedom of Information ( <i>Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit</i> ) (2022), <u>Activity report 2021 (Tätigkeitsbericht 2021)</u> , Bonn, 2021.

		of the use of AI in employment contexts and for a very careful consideration of the use of AI for biometric analyses and its implications for the freedoms of assembly, expression and association.		
NGO funded by Equality Body	Report	On 20 June 2022, the NGO Algorithm Watch published a guidebook for anti-discrimination counselling on automated decision-making systems (ADM) which was funded by the Federal Anti-Discrimination Agency ( <i>Antidiskriminierungsstelle des Bundes</i> ). The guidebook provides a general introduction to ADM and risks of discrimination, case studies, checklists and contacts to support the work of anti-discrimination counselling services.	Yes, the focus is on non-discrimination.	Wulf, J. (2022), <u>Automated decision-making systems and discrimination: Understanding causes, recognizing cases, supporting those affected - A guidebook for anti-discrimination counselling</u> , Berlin, Algorithm Watch.



Parliament (DE)	Report	<p>In September 2022, the Office for Technology Assessment (<i>Büro für Technikfolgenabschätzung</i> - TAB) of the German Bundestag published a report on the use of AI and “distributed ledger technology” (DLT) such as “blockchain”-solutions by public administration in Germany. The reports finds that AI is currently not a major issue in this field – in particular in comparison to other European countries. Rather, projects are often labelled as “AI” although they actually use conventional IT technology. The report concludes that, if AI should become more widely used, several obstacles would need to be addressed, namely the availability of good and transparent AI models, expertise and</p>	<p>Yes, the focus of the report’s conclusion is on data protection and the conformity of AI with the GDPR but also the risk of discriminatory effects are mentioned.</p>	<p>German Parliament (<i>Deutscher Bundestag</i>) (2022), <u>Artificial intelligence and distributed ledger technology in public administration. Report of the Committee on Education, Research and Technology Assessment (18th Committee) pursuant to section 56a of the Rules of Procedure (<i>Künstliche Intelligenz und Distributed-Ledger-Technologie in der öffentlichen Verwaltung. Bericht des Ausschusses für Bildung, Forschung und Technikfolgenabschätzung (18. Ausschuss) gemäß § 56a der Geschäftsordnung</i>), Drucksache 20/3651, 26 September 2022.</u></p>
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		training of staff and regulatory issues related to data protection and data ownership.		
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## 5.2 Legal and policy initiatives on data protection and private life

### Data retention

On 20 September 2022, the CJEU ruled that the German legislation of 10 December 2015 providing for general and indiscriminate retention of telecommunication traffic and location data for ten or four weeks to prevent serious crime and threats to public security respectively violates EU law.<sup>121</sup> Anticipating the forthcoming CJEU decision, the ruling coalition government had agreed in November 2021 “to develop data retention regulation in such a way that data can be stored in a legally secure manner on an ad hoc basis and by judicial order”.<sup>122</sup> However, in the wake of the CJEU decision the Federal Minister of the Interior and Community (*Bundesministerin des Innern und für Heimat*) called for legislation that must use “what is permissible and urgently needed” and emphasised, with reference to the need to protect child rights, that the CJEU “has expressly ruled that IP addresses may be retained to tackle serious crime” and allows “special data retention rules for places such as airports or railway stations and for areas with a high incidence of crime”.<sup>123</sup> In contrast, the Federal Minister of Justice announced a legislative proposal which would abolish data retention and provide for a so-called “quick freeze” that would authorise targeted “freezing” of telecommunication metadata only in the case of reasonable suspicion.<sup>124</sup> The next months will show if and how these conflicting interests will be resolved.

<sup>121</sup> Court of Justice of the European Union (CJEU), C-793/19 and C-794/19, [SpaceNet and Telekom Deutschland v. Germany](#), 20 September 2022.

<sup>122</sup> SPD, Bündnis 90/Die Grünen, FDP (2021), [Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025](#), p. 87.

<sup>123</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), [“Implementing what is permissible and urgently needed”](#), press release, 20 September 2022.

<sup>124</sup> Germany, Federal Ministry of Justice (*Bundesministerium der Justiz*) (2022), [“FAQ zur Vorratsdatenspeicherung und “Quick-Freeze-Verfahren”](#)”, press release, 20 September 2022.

In late October, media reported on a first draft (*Referentenentwurf*) for revised legislation by the Federal Ministry of Justice. Accordingly, the Ministry aims to introduce the “quick freeze” solution which requires judicial approval for both an order issued to telecommunication service providers to “freeze” IP addresses, location data and communication metadata for one month in the aftermath of a serious crime and an order to release “frozen” data related to specific suspects to law enforcement authorities.<sup>125</sup> The draft was criticised by conservative politicians and state ministers for justice as well as by the German Federation of Judges, which also represents the interests of public prosecutors as it does not provide for any mandatory general data retention of IP addresses.<sup>126</sup> However, at the biannual meeting of the Conference of German State Ministers of Justice in November 2022 a narrow majority supported the proposal,<sup>127</sup> which is now under consideration by the other ministries of the federal government. In contrast, the Conference of German State Ministers of Interior adopted a resolution during their meeting in December declaring that the mandatory general data retention of IP addresses is “indispensable” and called on the Federal Minister of the Interior to take a stand for it.<sup>128</sup> The conflict also surfaced in the Federal Council (*Bundesrat*) where the Bavarian state government tabled a motion on 8 November 2022 calling for the mandatory general data retention of IP addresses. Whereas the Federal Council’s Legal Committee recommended rejecting the motion, the Committee on Home Affairs recommended the adoption by the plenary, which decided on 16 December to postpone the final decision and continue discussions in the committees.<sup>129</sup>

The Federal Data Protection Commissioner had welcomed the CJEU’s judgment immediately and pointed to “quick freeze” as an alternative to general data retention,<sup>130</sup> but so far he has not publicly commented on the draft “quick freeze” legislation. It is, however, very likely that the Federal Data Protection Commissioner is being consulted behind closed doors in line with

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<sup>125</sup> See among others: Dachwitz, I. and Meister, A. (2022), ‘[Quick Freeze: Buschmann legt Alternative zur Vorratsdatenspeicherung vor](#)’, Netzpolitik.org, 25 October 2022. The draft legislation can be found here: Germany, Federal Ministry of Justice (2022), [Draft Law on the Introduction of a Security Order for Traffic Data in the Code of Criminal Procedure \(Referentenentwurf des Bundesministeriums der Justiz. Entwurf eines Gesetzes zur Einführung einer Sicherungsanordnung für Verkehrsdaten in der Strafprozessordnung\)](#), October 2022.

<sup>126</sup> For a summary of reactions see: Legal Tribune Online (2022), ‘[Reactions to "Quick Freeze" Proposal: Coalition Struggle, Compromise or Blockade?](#)’ (‘Reaktionen auf „Quick Freeze“-Vorschlag: Koalitionsstreit, Kompromiss oder Blockade?’), 25 October 2022.

<sup>127</sup> Germany, 93rd Conference of Justice Ministers (93. Konferenz der Justizministerinnen und -minister) (2022), ‘[Beschluss: Rechtsprechung zur Vorratsdatenspeicherung ernst nehmen - Gefahrenabwehr- und Ermittlungsinstrumente grundrechtsschonend und verhältnismäßig ausgestalten](#)’, 10 November 2022.

<sup>128</sup> Germany, Standing Conference of State Ministers of the Interior (Ständige Konferenz der Innenminister und -senatoren der Länder) (2022), [Collection of decisions of the 218th meeting of the Standing Conference of the Ministers and Senators of the Interior of the Länder released for publication](#), Munich, 30 November 2022 to 02 Dezember 2022.

<sup>129</sup> Germany, Federal Council (*Bundesrat*) (2022), ‘[TOP 63 – Entschließung des Bundesrats „Sexuellen Kindesmissbrauch und Kinderpornografie u.a. bekämpfen - vom EuGH benannte Spielräume zur Speicherung von IP-Adressen zeitnah nutzen“](#)’, Drucksache 572/22, 16 December 2022.

<sup>130</sup> Germany, Federal Commissioner for Data Protection and Freedom of Information (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*) (2022), ‘[BfDI begrüßt EuGH-Urteil zur Vorratsdatenspeicherung](#)’, press release, 20 September 2022.

section 21 of the Common Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien*) which requires an early participation of federal commissioners on issues covered by their mandate.<sup>131</sup>

### **Law Enforcement Directive**

In spring 2022, the European Commission launched two infringement procedures against Germany due to insufficient implementation of the Law Enforcement Directive. The first procedure was launched on 6 April because the Law Enforcement Directive (LED) still has not been implemented for the Federal Police even four years after the deadline.<sup>132</sup> An attempt to revise the Federal Police Act failed in 2021 shortly before national elections were held; the new government is planning to revise the Federal Police Act.<sup>133</sup> The second infringement procedure was launched on 19 May as the Commission held that German police law does not provide the data protection authorities with effective corrective powers in the field of law enforcement.<sup>134</sup>

### **Online terrorist content**

On 27 July 2022, key provisions of the Act for the Implementation of Regulation (EU) 2021/784 (*Gesetz zur Durchführung der Verordnung (EU) 2021/784*) came into force. The remaining provisions will come into force on 1 November 2022.<sup>135</sup> The Implementation Act mainly concerns regulations on the responsibilities and powers of the German authorities involved as well as on the national specification of the Regulation's administrative offences provisions: The Implementation Act designates the Federal Criminal Police Office (*Bundeskriminalamt*) as the competent authority for issuing removal orders and the Federal Network Agency (*Bundesnetzagentur*) as the competent authority for monitoring and sanctioning hosting services. The act also regulates that the Federal Criminal Police Office may consult the federal states' media authorities (*Landesmedienanstalten*) for the assessment of individual online content. In addition, the act contains the sanctions provided for in the Regulation in the form of provisions for maximum fines of 4 % of the annual turnover of major internet platforms.

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<sup>131</sup> Germany, Federal Government (*Die Bundesregierung*) (2020), [Common Rules of Procedure of the Federal Ministries](#) (*Gemeinsame Geschäftsordnung der Bundesministerien*), 22 January 2020.

<sup>132</sup> European Commission (2022), '[April Infringement package. Key decisions](#)', 6 April 2022.

<sup>133</sup> SPD, Bündnis 90/Die Grünen, FDP (2021), [Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025](#), p. 87.

<sup>134</sup> European Commission (2022), '[May Infringement package. Key decisions](#)', 19 May 2022.

<sup>135</sup> Germany, [Act for the Implementation of Regulation \(EU\) 2021/784 of the European Parliament and the Council of 29 April 2021 on addressing the dissemination of terrorist content online and for the Amendment of other laws](#) (*Gesetz zur Durchführung der Verordnung (EU) 2021/784 des Europäischen Parlaments und des Rates vom 29. April 2021 zur Bekämpfung der Verbreitung terroristischer Online-Inhalte und zur Änderung weiterer Gesetze*), 21 July 2022.

## Intelligence law

At the beginning of 2022, the Independent Control Council (*Unabhängiger Kontrollrat*) established by the revision of the Federal Intelligence Service Act (*Bundesnachrichtendienstgesetz*) in 2021, became officially operational. The Council replaced the former Independent Body (*Unabhängiges Gremium*) as body for the oversight of extraterritorial SIGINT activities of Germany's foreign intelligence agency, the Federal Intelligence Service (*Bundesnachrichtendienst*). The Council consists of two pillars: a quasi-judicial control body (six judges elected for twelve years) for ex ante approval of SIGINT and the administrative control body for ex post oversight.<sup>136</sup>

On 26 April 2022, the Federal Constitutional Court (*Bundesverfassungsgericht*) decided on the 2016 recast of the Bavarian Act on the Protection of the Constitution (*Bayerisches Verfassungsschutzgesetz*), i.e., the state act on the tasks and powers of the Bavarian domestic intelligence agency (*Bayerisches Landesamt für Verfassungsschutz*).<sup>137</sup> The Court held that the provisions for new or expanded powers of the intelligence agency to bug private apartments, to remotely search computers, to deploy IMSI catchers to locate persons' mobile phones by simulating cell phone towers, to request traffic data from telecommunication corporations, to operate covert agents, to shadow target persons and to transfer personal data to third parties violate fundamental rights, namely the right to informational self-determination, the right to the confidentiality and integrity of IT systems, the right to confidential communication and the right to the integrity of private homes. The judgment is seen as another landmark decision in the field of German intelligence law with implications for most of the German federal states and the federal law on domestic intelligence.<sup>138</sup> Which legislative consequences are to be drawn was discussed by a working group of the Permanent Conference of the German Interior Ministers (*Innenministerkonferenz*); the findings were published in September 2022.<sup>139</sup> The Bavarian act must be revised by 31 July 2023.

In another decision, the Federal Constitutional Court ruled on 28 September 2022 that data transfer provisions of the Federal Act on the Protection of the Constitution (*Bundesverfassungsschutzgesetz*), which governs the powers of the federal internal intelligence agency (*Bundesamt für Verfassungsschutz*) and its cooperation with the intelligence agencies of the federal states,

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<sup>136</sup> See the website of the [Independent Control Council](#).

<sup>137</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), [1 BvR 1619/17](#), 26 April 2022.

<sup>138</sup> See, e.g., Scientific Services of the German Parliament (Wissenschaftliche Dienste des Deutschen Bundestages) (2022), [Auswirkungen des Urteils des Bundesverfassungsgerichts vom 26. April 2022 zum Bayerischen Verfassungsschutzgesetz - Allgemeine Vorgaben und deren Anwendung auf das Bundesrecht](#), Ausarbeitung WD 3 - 3000 - 069/22, Berlin, 2022.

<sup>139</sup> Germany, Federal Ministry of the Interior and for Home Affairs (Bundesministerium des Innern und für Heimat) (2022), [Final report of the federal-state working group on the evaluation of the ruling of the Federal Constitutional Court of 26.4.2022 - 1 BvR 1619/17 - \(BayVSG\)](#) (Abschlussbericht der Bund-Länder-AG zur Auswertung des Urteils des Bundesverfassungsgerichts v. 26.4.2022 - 1 BvR 1619/17 – (BayVSG)), 21 September 2022.

violate the fundamental right of informational self-determination and the principle of separating information held by the police on the one hand and intelligence agencies on the other (*informationelles Trennungsprinzip*). Section 20 of the Federal Act on the Protection of the Constitution stipulate that personal data obtained by the intelligence agencies must be transferred to the police and prosecution authorities if necessary for the prevention or persecution of so-called crimes against the state (*Staatsschutzdelikte*). The Federal Constitutional Court held that the relevant provisions are too vague, disproportionate and lack logfiling regulations that would allow effective oversight. The federal legislator must now revise these provisions by 31 December 2023.<sup>140</sup>

### **Consequences of the revelations about Pegasus spyware**

Unlike in other European countries, the revelations about the (ab)use of the Pegasus spyware had only limited political fallout in Germany despite calls by journalist federations for an investigation<sup>141</sup> and media reports that both the Federal Criminal Police Office (*Bundeskriminalamt*) and the Federal Intelligence Service (*Bundesnachrichtendienst*) had purchased Pegasus.<sup>142</sup> In September 2021, then Chancellor Angela Merkel claimed that German authorities act on a legal basis, and the Home Affairs Committee of the German Bundestag was briefed by representatives of the government and the Federal Criminal Police Office on a confidential basis about several uses of the spyware for counterterrorism operations and investigations of other serious crimes.<sup>143</sup> Although Members of Parliament warned of the risks and despite a complaint submitted by the NGO Gesellschaft für Freiheitsrechte to the Federal Data Protection Commissioner<sup>144</sup> neither the parliament nor data protection authorities launched an in-depth investigation into the use of Pegasus by German authorities.

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<sup>140</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2022), [1 BvR 2354/13](#), 28 September 2022. An English press release can be found here: Germany, Federal Constitutional Court (*Bundesverfassungsgericht*) (2022), [‘Constitutional complaint challenging the sharing of personal data collected by domestic intelligence services through covert methods successful’](#), press release, 3 November 2022.

<sup>141</sup> Holland, M. (2021), [‘Spyware Pegasus: Journalists’ associations demand action after spying allegations’](#) (‘Spyware Pegasus: Journalistenverbände fordern Handeln nach Ausspäh-Vorwürfen’, *heise online*, 19 July 2021.

<sup>142</sup> Flade, F. and Mascolo, G. (2021), [‘Federal Intelligence Service spies with Pegasus’](#) (‘Bundesnachrichtendienst spitzelt mit Pegasus’), *Tagesschau*, 8 October 2021.

<sup>143</sup> Stark, H. (2021), [‘BKA secretly purchased NSO spy software’](#) (‘BKA kaufte Heimlich NSO-Spähsoftware’), *Zeit Online*, 7 September 2021; Flade, F.; Mascolo, G., Obermaier, F. and Pinkert, R. (2021), [‘BKA uses “Pegasus” spy software’](#) (‘BKA verwendet Spionagesoftware „Pegasus“’), *Süddeutsche Zeitung*, 7 September 2021; *Süddeutsche Zeitung* (2021), [‘Merkel defends Pegasus’](#) (‘Merkel verteidigt Pegasus’), 9 September 2021.

<sup>144</sup> Gesellschaft für Freiheitsrechte (2021), [‘GFF reicht Datenschutz-Beschwerde ein. Einsatz des Pegasus-Trojaners durch BKA verletzt Grundrechte’](#), press release, 22 September 2021.

According to information from the Gesellschaft für Freiheitsrechte (GFF), the complaint was dismissed by the Federal Data Protection Commissioner without any explanation (Gesellschaft für Freiheitsrechte (GFF), personal communication via e-mail, 3 January 2023).

Answers of the Federal Government to written questions and parliamentary requests by opposition parties were very limited with reference to national security, if forthcoming at all. It was, however, admitted that the Central Office for Information Technology in the Security Sector (*Zentralstelle für Informationstechnik im Sicherheitsbereich*) has been in touch with the manufacturers of Pegasus, the NSO Group, since 2018 to evaluate whether its products could be used by German authorities, and that the Federal Office for Information Security (*Bundesamt für Sicherheit in der Informationstechnik*) had no information about the use of NSO Group products against government targets in Germany.<sup>145</sup> A motion aiming to prevent federal authorities from purchasing spyware software such as Pegasus tabled by the Left Party in early 2022<sup>146</sup> was debated controversially on 18 February 2022 in the plenary of the German Bundestag during its first reading and then referred to the Committees for Home Affairs, for Legal Affairs, for Human Rights and Humanitarian Aid and for Digital Issues for further consideration.<sup>147</sup>

### **Digital Services Act**

After the European Parliament adopted the Digital Services Act (DSA) on 5 July 2022 the debate on which institution should become the coordinator for digital services foreseen by the DSA became more vociferous. Whereas some propose designating the independent and plural state media authorities (*Landesmedienanstalten*),<sup>148</sup> the Federal Ministry for Digital and Transport (*Bundesministerium für Digitales und Verkehr*) seems to favour the Federal Network Agency (*Bundesnetzagentur*), which is, however, not independent from executive supervision in its current form.<sup>149</sup> Legislation on how to implement the DSA in Germany is yet to be tabled.

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<sup>145</sup> See, among others: German Parliament (*Deutscher Bundestag*) (2021), [‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Jan Korte, Sevim Dagdelen, Anke Domscheit-Berg, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz der Spionagesoftware „Pegasus“ in Deutschland’](#), Drucksache 19/32246, 1 September 2021; German Parliament (*Deutscher Bundestag*) (2021), [‘Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Martina Renner, Jan Korte, Nicole Gohlke, weiterer Abgeordneter und der Fraktion DIE LINKE. Einsatz von Produkten der Firma NSO Group Technologies durch deutsche Sicherheitsbehörden’](#), Drucksache 20/321, 17 December 2021.

<sup>146</sup> German Parliament (*Deutscher Bundestag*) (2022), [‘Antrag der Abgeordneten Martina Renner, Nicole Gohlke, Gökay Akbulut, Clara Bünger, Anke Domscheit-Berg, Dr. André Hahn, Jan Korte, Ina Latendorf, Petra Pau, Sören Pellmann, Dr. Petra Sitte und der Fraktion DIE LINKE. Kein Kauf und Einsatz von Spähsoftware durch Bundesbehörden’](#), Drucksache 20/683, 15 February 2022.

<sup>147</sup> German Parliament (*Deutscher Bundestag*) (2022), [‘1. Lesung: Einsatz von Spähsoftware durch Bundesbehörden’](#), 18 February 2022.

<sup>148</sup> Schumacher, Y. (2022), [‘Germany is looking for the Digital Services Coordinator - On the national implementation of the Digital Services Act’](#) (‘Deutschland sucht den Digital Services Koordinator – Zur nationalen Umsetzung des Digital Services Act’), *JuWiss Blog*, 18 August 2022.

<sup>149</sup> Klaus, T. (2022), [‘Federal Network Agency as No. 1 digital regulator?’](#) (‘Bundesnetzagentur als Digitalregulierer Nr. 1?’), *Tagesspiegel Background*, 14 July 2022.

## 6 Rights of the child

### 6.1 Measures addressing vulnerabilities of children living in poverty and developments regarding the national implementation of the EU Child Guarantee

Measures addressing vulnerabilities of children living in poverty and developments regarding the national implementation of the EU Child Guarantee.

<b>Legislative changes</b>	<p>In 2022, there were no relevant legislative changes regarding the national implementation of the <u>EU Child Guarantee</u>.</p> <p><b>Preceding relevant legislative developments addressing children and their families living in or at risk of poverty and social exclusion from 2019-2021 are the Strong-Families-Act (<i>Starke-Familien-Gesetz – StaFamG</i>)<sup>150</sup>, the Act on the Further Development of Quality and Participation in Child Day Care (<i>Gute-KiTa-Gesetz</i>)<sup>151</sup>, the Act on the Further Development of Quality and Participation in Child Day Care (<i>Gute-KiTa-Gesetz</i>)<sup>152</sup>, the Act on All-Day Support for Children of Primary School Age (<i>Ganztagsförderungsgesetz – GaFöG</i>)<sup>153</sup> and the reform of the Child and Youth Services through the Act to Strengthen Children and Youth (<i>Kinder- und Jugendstärkungsgesetz – KJSG</i>).<sup>154</sup></b></p>
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<sup>150</sup> Germany, [Act to strengthen families and their children in a targeted manner by redesigning the child supplement and improving benefits for education and participation](#) (Strong Families Act-StaFamG) (*Gesetz zur zielgenauen Stärkung von Familien und ihren Kindern durch die Neugestaltung des Kinderzuschlags und die Verbesserung der Leistungen für Bildung und Teilhabe (Starke-Familien-Gesetz–StaFamG)*), 29 April 2019.

<sup>151</sup> Germany, [Act on the Further Development of Quality and Participation in Child Day Care](#) (*Gesetz zur Weiterentwicklung der Qualität und zur Teilhabe in der Kindertagesbetreuung*), 19 December 2018.

<sup>152</sup> Germany, [Act on the Further Development of Quality and Participation in Child Day Care](#) (*Gesetz zur Weiterentwicklung der Qualität und zur Teilhabe in der Kindertagesbetreuung*), 19 December 2018.

<sup>153</sup> Germany, [Act on the All-Day Support of Children of Primary School Age](#) (*Gesetz zur ganztägigen Förderung von Kindern im Grundschulalter (Ganztagsförderungsgesetz – GaFöG)*), 2 October 2021.

<sup>154</sup> Germany, [Act to Strengthen Children and Young People](#) (*Gesetz zur Stärkung von Kindern und Jugendlichen (Kinder- und Jugendstärkungsgesetz – KJSG)*), 3 June 2021.



<p><b>Policy changes</b></p>	<p>After a first digital kick-off in May 2022<sup>155</sup>, on 19 September 2022 the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth organised an inaugural event for <b>drafting the National Action Plan “New Opportunities for Children in Germany”</b> (<i>Nationaler Aktionsplan „Neue Chancen für Kinder in Deutschland“</i>). With this National Action Plan, the Federal Government is implementing the recommendation of the European Council to introduce a European Child Guarantee,<sup>156</sup> which was adopted by all member states of the European Union in 2021. Ekin Deligöz, Parliamentary State Secretary at the Federal Minister for Family Affairs and appointed as coordinator of the National Action Plan in May 2022,<sup>157</sup> invited around 160 representatives from federal, state, local political level and civil society to Berlin. In workshops it was discussed how disadvantaged children and families can be given easier access to offers in the areas of care, education, housing, health care and nutrition in the long term. The results form the basis for the schedule of the National Action Plan with a term until 2030.<sup>158</sup> In February 2022 17 civil society organisations and associations provided the decision-makers in question with recommendations for the development of an overall strategy for the implementation of the EU Child Guarantee in Germany and the National Action Plan from a child rights perspective.<sup>159</sup> On 16 November 2022, Ekin Deligöz gave a keynote speech at an event organised by the Federal Ministry for Family Affairs together with the Observatory for Sociopolitical Developments in Europe on the subject of “Strong Children for a Strong and Fair Europe” in the European House in Berlin. The event was the third and last in a series of events on the implementation of the Action Plan on the European Pillar of Social Rights (ESSR). The event focussed on the exchange of ideas between European and national stakeholders from politics and civil society on the projects of the</p>

<sup>155</sup> Bundesforum Familie (2022), ‘05./06. Mai 2022, online: [„Neue Chancen für Kinder in Deutschland“ Digitales Kick-Off des BMFSFJ](#)’, 2022.

<sup>156</sup> Council Recommendation (EU) 2021/1004 of 14 June 2021 establishing a [European Child Guarantee](#), OJ 2021 L 223.

<sup>157</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), ‘[Ekin Deligöz zur Nationalen Kinderchancen-Koordinatorin ernannt](#)’, press release, 5 May 2022.

<sup>158</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), ‘[Kinder und Jugendliche vor Armut schützen](#)’, press release, 19 September 2022.

<sup>159</sup> Netzwerk zur Umsetzung der UN-Kinderrechtskonvention National Coalition Deutschland (2022), ‘[Implementation of the European Child Guarantee in Germany - Key Issues for the National Action Plan from a Children’s Rights perspective](#)’, 10 February 2022.

	<p>Action Plan and political approaches of the member states, as well as the implementation of the EU Child Guarantee.<sup>160</sup></p> <p>A major current political project is the <b>introduction of a guaranteed basic child allowance (<i>Kindergrundsicherung</i>)</b> to tackle the problem of child poverty and social exclusion of children and young people living in or at risk of poverty in Germany. The government parties have specified and agreed on central aspects, such as the bundling of a large number of family policy benefits and services (child benefit, child supplement, standard rate SGB II/XII, parts of the education and participation package); simple, unbureaucratic and automatic benefit payment; the recalculation of the socio-cultural subsistence level; and the prospective systematic inclusion of the child tax allowance in their coalition agreement.<sup>161</sup></p> <p>In March 2022, an Interministerial Working Group (IMA) for the conception of the basic child allowance made up of representatives from six ministries started its work.<sup>162</sup> The participating ministries, under the leadership of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, were the Federal Ministry of Finance, the Federal Ministry of Justice, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Education and Research, and the Federal Ministry for Living, Urban Development and Building Industry. The goal of the project is the overarching redesign of financial support for children and their families on the basis of evaluation results.<sup>163</sup> The Interministerial Working Group is planning a final report by the end of</p>
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<sup>160</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Ekin Deligöz: Kinderarmut in der Europäischen Union bekämpfen](#)', press release, 16 November 2022.

<sup>161</sup> SPD, Bündnis 90/Die Grünen, FDP (2021), [Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025](#), pp. 79-79.

<sup>162</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Interministerielle Arbeitsgruppe Kindergrundsicherung konstituiert sich](#)', press release, 28 March 2022.

<sup>163</sup> For example: Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) and Federal Ministry of Finance (*Bundesministerium der Finanzen*) (2014), [Overall Evaluation of Marriage- and Family-Related Measures and Services in Germany](#) (*Gesamtevaluation der ehe- und familienbezogenen Maßnahmen und Leistungen in Deutschland*), 7 October 2014.

	<p>2023, which is intended to define the main features of the basic child allowance.<sup>164</sup></p> <p>A measure taken in November 2022 by the German government in the context of the energy crisis relating to children or families is the Natural Gas and Heat Emergency Aid Act (<i>Erdgas-Wärme-Soforthilfegesetz</i>) with which private households and smaller companies are provided a one-time down payment for gas and heating in December 2022.<sup>165</sup> Price caps for electricity and gas are being discussed and will reach families in 2023.<sup>166</sup></p> <p>In light of the war in Ukraine in 2022, access to education for migrant and refugee children became a political field of urgency again. It was striking, however, that whereas access to regular schools for refugee children of Ukrainian nationality was supported by the Conference of Ministers of Education (<i>Kultusministerkonferenz</i>) immediately in May and June 2022,<sup>167</sup> existing hurdles for other refugee children to access school remained in place.<sup>168</sup></p> <p>In the context of the further development of the Government's child and youth strategy (<i>Kinder- und Jugendstrategie der Bundesregierung</i>) the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth invited relevant groups to a kick-off event for the <b>National Action Plan "Children and Youth Participation"</b> (<i>Nationaler Aktionsplan „Kinder- und Jugendbeteiligung“</i>)</p>
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<sup>164</sup> Germany, Federal Government (*Bundesregierung*) (2022), '[Interministerial working group for the conception of the basic child allowance](#)' ('Aufakterklärung der Interministerielle Arbeitsgruppe zur Konzeption der Kindergrundsicherung'), 29 March 2022.

<sup>165</sup> Germany, [Act on the adoption of the economic plan of the ERP Special Fund for the Year 2023 and on Emergency Assistance for End consumers of piped natural gas and customers of heat](#) (*Gesetz über die Feststellung des Wirtschaftsplans des ERP-Sondervermögens für das Jahr 2023 und über eine Soforthilfe für Letztverbraucher von leitungsgebundenem Erdgas und Kunden von Wärme (Erdgas-Wärme-Soforthilfegesetz (EWSG))*), 19 November 2022.

<sup>166</sup> Germany, Federal Government (*Bundesregierung*) (2023), '[Basic supply at lower prices. Gas and electricity price brake](#)' ('Basisversorgung zu günstigeren Preisen. Gas- und Strompreisbremse'), 1 January 2023.

<sup>167</sup> Conference of Ministers of Education (*Kultusministerkonferenz*) (2022), [resolutions](#) from May and June 2022: '[Beschulung der schutzsuchenden Kinder und Jugendlichen aus der Ukraine im Schuljahr 2022/2023](#)'; '[Zum Umgang mit \(schulpflichtigen\) geflüchteten Kindern und Jugendlichen aus der Ukraine](#)'; '[Informationen zur Anerkennung von Bildungsnachweisen](#)'.

<sup>168</sup> For example see: Wrase, M. and, Haschemi Yekani, M. (2019), [The right to education and access to mainstream schooling for refugee children and adolescents in reception facilities of the federal states](#) (Das Recht auf Bildung und Zugang zur Regelschule für geflüchtete Kinder und Jugendliche in Aufnahmeeinrichtungen der Bundesländer), legal report, Berlin, Paritätischer Gesamtverband, 28 October 2019.

	<p>on 13 and 14 November 2022. The hosts are planning a participatory process by involving various professional perspectives as well as children or youth (14 years and older).<sup>169</sup></p> <p>Another political development to strengthen childrens participation is the aim of <b>lowering the voting age to 16 for European elections</b>. According to the Federal Government the current minimum voting age of 18 for the right to vote in elections to the European Parliament excludes people from the right to vote who assume responsibility in numerous places in society and who can and want to get involved in the political process. Therefore, the three government parties presented the "Draft of a sixth law amending the European Elections Act" (<i>Entwurf eines Sechsten Gesetzes zur Änderung des Europawahlgesetzes</i>) on 20 September 2022.<sup>170</sup></p> <p>The minimum voting age for the right to vote in elections to the European Parliament will be lowered in Germany from the current 18 to 16 years. On 10 November 2022, the German Bundestag approved the draft law to amend the European Elections Act presented by the coalition parties.<sup>171</sup></p>
<p><b>Other measures or initiatives</b></p>	<p>The post-Covid action programme for children initiated by the Federal Government "Aktionsprogramme, Aufholen nach Corona für Kinder und Jugendliche" is aimed at helping children close learning gaps and funding recreational activities. Two billion euros in total were invested in various projects in 2021 and 2022 for this purpose. Measures taken during the Covid-19 pandemic in 2021 addressing the specific vulnerabilities of children living in poverty in the short term in 2022 include the federal programme "Sprach-Kitas", which supports language education in day-care centres, the project "Corona Auszeit für Familien", which makes affordable holidays available to lower-income families and the programme "AUF!leben - Zukunft ist jetzt"<sup>172</sup>,</p>

<sup>169</sup> Website of the Federal Government's [child and youth strategy](#).

<sup>170</sup> German Parliament (*Deutscher Bundestag*) (2022), [Draft Act of the parliamentary groups SPD, BÜNDNIS 90/DIE GRÜNEN and FDP Draft of a Sixth Act Amending the European Election Act \(Gesetzentwurf der Fraktionen SPD, BÜNDNIS 90/DIE GRÜNEN und FDP Entwurf eines Sechsten Gesetzes zur Änderung des Europawahlgesetzes\)](#), Drucksache 20/3499, 20 September 2022.

<sup>171</sup> German Parliament (*Deutscher Bundestag*) (2022), [Resolution recommendation and report of the Committee on the Interior and Home Affairs \(4th Committee\) on the Draft Act by the SPD, Alliance 90/The Greens and FDP parliamentary groups \(printed paper 20/3499, Draft Sixth Law Amending the European Elections Act\) \(Beschlussempfehlung und Bericht des Ausschusses für Inneres und Heimat \(4. Ausschuss\) zu dem Gesetzentwurf der Fraktionen SPD, BÜNDNIS 90/DIE GRÜNEN und FDP \(Drucksache 20/3499, Entwurf eines Sechsten Gesetzes zur Änderung des Europawahlgesetzes\)\)](#), Drucksache 20/4362, 9 November 2022.

<sup>172</sup> Website of the programme: '[Auf!leben. Zukunft ist jetzt](#)'.

which is aimed at providing children and young people with additional opportunities for social learning and social bonding outside schools.<sup>173</sup>

As an interim measure before the basic child allowance is implemented, the Federal Government planned an immediate bonus (*Sofortzuschlag*) to bridge the time for children who are entitled to benefits under SGB II, SGB XII or child supplement (*Kinderzuschlag*). In March 2022, the Federal Government presented the "draft law to regulate an immediate supplement for children and a one-off payment to adult beneficiaries of the social minimum security systems on the occasion of the COVID-19 pandemic" (*Entwurf eines Gesetzes zur Regelung eines Sofortzuschlages für Kinder und einer Einmalzahlung an erwachsene Leistungsberechtigte der sozialen Mindestsicherungssysteme aus Anlass der COVID-19-Pandemie*). Shortly thereafter, the German Bundestag and the Federal Council (*Bundesrat*) agreed.<sup>174</sup> The immediate bonus (*Sofortzuschlag*) of 20 euros has been paid since July 2022 to children affected by poverty.<sup>175</sup>

The Federal Council is consulting a Second Act on the Further Development of Quality and Participation in Child Day Care (*Zweites Gesetz zur Weiterentwicklung der Qualität und zur Teilhabe in der Kindertagesbetreuung - KiTa-Qualitätsgesetz*). Further development of the so-called "Gute-KiTA-Gesetz" based on the results of its monitoring and evaluation with the aim of introducing nationwide standards.<sup>176</sup>

The Federal Minister of Family Affairs, Senior Citizens, Women and Youth appointed an expert commission to draft the 17th Children and Youth Report of the Federal Government (*17. Kinder- und Jugendbericht der Bundesregierung*). The main focus of the 17<sup>th</sup> report is to give an overview

<sup>173</sup> For an overview see: Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2021), '[Aktionsprogramm „Aufholen nach Corona für Kinder und Jugendliche“](#)', 13 September 2021.

<sup>174</sup> Germany, [Act regulating an immediate supplement and a one-time payment in the social minimum security systems and amending the Fiscal Equalization Act and other laws](#) (*Gesetz zur Regelung eines Sofortzuschlages und einer Einmalzahlung in den sozialen Mindestsicherungssystemen sowie zur Änderung des Finanzausgleichsgesetzes und weiterer Gesetze*), 23 May 2022.

<sup>175</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Sofortzuschlag wird ab sofort ausgezahlt](#)', press release, 1 July 2022.

<sup>176</sup> For more information on the legislative process: Germany, [Second Act on the Further Development of Quality and Participation in Child Day Care \(KiTa Quality Act\)](#) (*Zweites Gesetz zur Weiterentwicklung der Qualität und zur Teilhabe in der Kindertagesbetreuung (KiTa-Qualitätsgesetz)*), 1 January 2023.

	<p>of child and youth welfare, identify possible gaps, and the living situation of the younger generation.<sup>177</sup></p> <p>Further initiatives to promote children’s rights in 2022 were the publication of the legal study “Discrimination against and because of children” (<i>Diskriminierung von und wegen Kindern</i>) by the Federal Anti-Discrimination Agency (<i>Antidiskriminierungsstelle des Bundes</i>)<sup>178</sup> and the celebration of the World Children’s Day on 20 September in Germany according to the principle “Together for children’s rights”.</p>
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## 6.2 Legal and policy developments or measures in relation to child-friendly procedures for children as victims, witness or suspects/accused in criminal proceedings.

<p><b>Legislative changes</b></p>	<p>In 2022 there were no relevant reforms or <b>any new laws</b> for children in criminal proceedings.</p> <p>With the Act on <b>Combating</b> Sexual Violence Against Children (<b><i>Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder</i></b>)<sup>179</sup> from June 2021 there were criminal law reforms of relevance for children and amendments in other acts affecting legal procedures for children. For instance, it amends the Juvenile Court Act (<b><i>Jugendgerichtsgesetz -JGG</i></b>) to require that youth court judges possess knowledge in the fields of criminology, education, social education and youth psychology (§37, JGG, as amended). In the Jurisdiction Act (<b><i>Gerichtsverfassungsgesetz</i></b>) it is added that “judges in family matters should have</p>
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<sup>177</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), ‘[Kommission beginnt Arbeit am 17. Kinder- und Jugendbericht](#)’, press release, 15 June 2022.

<sup>178</sup> Janda, C. and Wagner, M. (2022) *Discrimination against and because of children. A legal consideration of young age* (*Diskriminierung von und wegen Kindern. Eine rechtliche Betrachtung des jungen Alters*), Berlin, Federal Anti-Discrimination Agency (*Antidiskriminierungsstelle des Bundes*).

<sup>179</sup> Germany, [Law to combat sexualized violence against children](#) (*Gesetz zur Bekämpfung sexualisierter Gewalt gegen Kinder*), 16 June 2021.

	<p>verifiable knowledge in the areas of family law, in particular child law, family procedural law and the parts of child and youth welfare law necessary for proceedings in family matters, as well as verifiable basic knowledge of psychology, in particular developmental psychology of <b>children</b>, and communication with children" (§ 23b). Amendments of the Act on the Procedure in Family Matters and in Non-Contentious Jurisdiction Matters (<b>Gesetz über das Verfahren in Familiensachen und in den Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG</b>) <b>cover</b> new measures for the suitability and qualification of legal counsels (<b>Verfahrensbeistände</b>) (§158a FamFG) and strengthening of the personal hearing of the child (§ 159 FamFG).</p>
<p><b>Policy developments</b></p>	<p>On 30 March 2022, Kerstin Claus was appointed as the new Independent Commissioner for Issues of Child Sexual Abuse (UBSKM) for a term of five years. Previously she was a member of the Council of Affected Persons (<i>Betroffenenrat</i>) and National Council.<sup>180</sup></p> <p>The National Council on Combating Sexual Violence Against Children and Young People (<i>Nationalen Rat gegen sexuelle Gewalt an Kindern und Jugendlichen</i>) recommended that the non-binding guidelines for the application of child-appropriate criteria in criminal proceedings (<i>Praxisleitfaden zur Anwendung kindgerechter Kriterien im Strafverfahren</i>)<sup>181</sup> published in 2021 be made available by justice administrations of the Federal States to participants in criminal proceedings.</p> <p>The guidelines do not include children in the role of the accused. The new study "Procedural safeguards for children as suspects or accused persons in criminal proceedings" by the Fundamental Rights Agency of the European Union (FRA) shows the need for improvement regarding age and maturity assessment and special training of all professionals involved – mandatory or preconditioned.<sup>182</sup> The German Association for Juvenile Courts and Juvenile</p>

<sup>180</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Kerstin Claus ist neue Missbrauchsbeauftragte der Bundesregierung](#)', press release, 3 March 2022.

<sup>181</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and Independent Commissioner for Issues of Sexual Child Abuse (*Bundesministerium für Familie, Senioren, Frauen und Jugend und USBKM*) (2021), '[Praxisleitfaden zur Anwendung kindgerechter Kriterien im Strafverfahren](#)', Berlin, July 2021.

<sup>182</sup> FRA (European Union Agency for Fundamental Rights) (2021), '[Social Fieldwork Research \(FRANET\), Procedural safeguards for children as suspects or accused persons in criminal proceedings](#)', Luxembourg, Publications Office of the European Union (Publications Office), pp. 12-14. For more information see: FRA (European Union Agency for Fundamental Rights) (2021), '[Wie Kinder in Strafverfahren besser geschützt werden können](#)', press release, 17 June 2022.

	<p>Court Aids (<i>Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e. V.</i>) published guidance regarding the participation of youth welfare services in proceedings under the Juvenile Court Act.<sup>183</sup></p> <p>In November 2022 the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Government's Independent Commissioner for Issues of Sexual Child Abuse published non-binding guidelines for the application of child-appropriate criteria in family court proceedings (<i>Praxisleitfaden zur Anwendung kindgerechter Kriterien für das familiengerichtliche Verfahren</i>)<sup>184</sup> developed by the National Council and complementing the ones for criminal proceedings. The central question of the brochure is how to successfully conduct family court proceedings in child-related matters in a way that is child-friendly and sensitive to those affected.<sup>185</sup></p> <p>According to the coalition agreement, the Federal Government is planning to create a “child-sensitive judiciary”. It is noticeable that there is no clear overall responsibility at respective ministries for the implementation of this goal in practice.</p>
<p><b>Other measures or initiatives</b></p>	<p>The brochure “I have rights - A guide through criminal proceedings for young witnesses” (<i>Ich habe Rechte - Ein Wegweiser durch das Strafverfahren für jugendliche Zeuginnen und Zeugen</i>) published by the Federal Ministry of Justice was updated and reprinted in January 2022.<sup>186</sup></p>

<sup>183</sup> German Association for Juvenile Courts and Juvenile Court Aids (*Deutsche Vereinigung für Jugendgerichte und Jugendgerichtshilfen e. V.*) (2022), [Arbeitshilfe für die Praxis, Grundsätze für die Mitwirkung der Jugendhilfe in Verfahren nach dem Jugendgerichtsgesetz](#), Hannover.

<sup>184</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and Independent Commissioner for Issues of Sexual Child Abuse (*Bundesministerium für Familie, Senioren, Frauen und Jugend und UBSKM*) (2021), [Praxisleitfaden zur Anwendung kindgerechter Kriterien im Strafverfahren](#), Berlin, July 2021.

<sup>185</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and Independent Commissioner for Issues of Sexual Child Abuse (*Bundesministerium für Familie, Senioren, Frauen und Jugend und UBSKM*) (2021), [Praxisleitfaden zur Anwendung kindgerechter Kriterien im Strafverfahren](#), Berlin, July 2021.

<sup>186</sup> Germany, Federal Ministry of Justice (*Bundesministerium für Justiz*) (2022), [Ich habe Rechte - Ein Wegweiser durch das Strafverfahren für jugendliche Zeuginnen und Zeugen](#), Berlin.



## 7 Access to justice – Victims’ Rights and Judicial Independence

### 7.1 Legal and policy developments or measures relevant to the implementation of the Victims’ Rights Directive and the EU strategy for Victims’ Rights 2020-2025

On 8 July 2022, the German Bundesrat (parliament of the governments in the federal states) welcomed the proposal of the European Commission regarding the implementation of EU-wide rules to combat violence against women and domestic violence. It is considered an important and necessary step in the implementation of the EU Strategy for Victims’ Rights 2020-2025. In this resolution, the Bundesrat also called on the Federal Government to advocate for a better data situation in the area of violence against women and domestic violence in Germany. In addition, the Bundesrat called on the Federal Government to better protect victims of domestic violence or partnership violence who only have a derived right of residence by raising their situation at further EU negotiations.<sup>187</sup>

The Federal Government Commissioner for the Acceptance of Sexual and Gender Diversity (*Beauftragter für die Akzeptanz sexueller und geschlechtlicher Vielfalt*), whose office was first introduced in January 2022,<sup>188</sup> presented the draft of an action plan for the acceptance and protection of sexual and gender diversity (*Nationalen Aktionsplan für Akzeptanz und Schutz sexueller und geschlechtlicher Vielfalt*). The plan addresses protection against hate crimes among other aspects.<sup>189</sup>

On the occasion of a lethal attack on a participant of Christopher Street Day in Münster on 27 August 2022, the Federal Ministry of the Interior and Community (*Bundesministerium des Innern und für Heimat*) announced that anti-queer hate crimes must be fought more resolutely. The ministry therefore issued invitations to the opening meeting of the working group “Combating Homophobic and Transphobic Violence” on 22 September 2022. The working group is an independent expert committee

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<sup>187</sup> Germany, German Bundesrat (2022), [Decision of the Bundesrat for the Proposal for a Directive of the European Parliament and of the Council on combating violence against women and domestic violence](#) (*Beschluss des Bundesrats zum Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates zur Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt*), Drucksache 131/22, 8 July 2022.

<sup>188</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Federal Government Commissioner for the Acceptance of Sexual and Gender Diversity’](#) (*Beauftragter für die Akzeptanz sexueller und geschlechtlicher Vielfalt*), 18 March 2022.

<sup>189</sup> Tagesschau (2022), [‘Plan gegen Queerfeindlichkeit vorgelegt’](#), 30 August 2022.

composed of representatives of science, practice and the queer community. They discussed specific recommendations for action. In particular, the work was about how statistical recording can be increased and what possibilities exist to increase sensitivity and prevention in relation to homophobic and transphobic crimes.<sup>190</sup> The Federal Ministry also plans to explicitly include anti-queer motives in hate crime legislation.<sup>191</sup>

On 1 October 2022, a new instruction of the Federal Ministry of the Interior and Community to the Federal Office for Migration and Refugees (*Bundesamt für Migration und Flüchtlinge*) came into effect regarding the protection of queer refugees. In principle, the asylum procedure is carried out through a two-stage check. On the first level a prediction is made of how the person will behave when returning (*Verhaltensprognose*), on the second level, how governmental or non-governmental actors will react to this behaviour. This two-level check has now been adapted for LGBTIQ\* asylum seekers. There is no longer any behavioural prognosis. Instead, it has to be assumed that the sexual orientation or gender identity is lived openly in the state of origin. Under no circumstances may the person seeking protection be expelled to return to a closeted life in the country of origin. This even applies when the person says that they have so far been hiding their sexual orientation or gender identity.<sup>192</sup> On 18 November 2022 the Federal Government decided on a national action plan for the acceptance and protection of sexual and gender diversity called "Queer Leben" (Queer Living). The Commissioner for the Acceptance of Sexual and Gender Diversity (*Beauftragter für die Akzeptanz sexueller und geschlechtlicher Vielfalt*), whose office was first introduced in January 2022, is to coordinate the indicated measures. These relate to six fields of action: legal recognition, participation, security, health, strengthening advisory and community structures, and international issues. In the field of "security" the plan, for example, aims for a better protection against violence, assaults and hostilities and an improvement in the statistical recording and clarification of the unreported incidents.<sup>193</sup>

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<sup>190</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), '[Queerfeindliche Haskriminalität bekämpfen](#)', press release, 9 September 2022.

<sup>191</sup> Germany, Federal Ministry of the Interior and for Home Affairs (*Bundesministerium des Innern und für Heimat*) (2022), '[Queerfeindliche Haskriminalität bekämpfen](#)', press release, 9 September 2022.

<sup>192</sup> Germany, Federal Ministry of the Interior and Community (*Bundesministerium des Innern und für Heimat*) (2022), '[Schutz für queere Geflüchtete](#)', press release, 30 September 2022.

<sup>193</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), '[Aktionsplan „Queer leben“ – Agenda für eine Politik des Respekts und der Anerkennung von Vielfalt](#)', press release, 18 November 2022.

## 7.2 Measures addressing violence against women

On 19 July 2022, the Federal Ministry of Justice (*Bundesministerium der Justiz*) published a Draft Act revising the law on penal sanctions. Among other measures the Draft Act expands the examples given for inhumane motives that must be taken into consideration when sentencing. So far these examples under Section 46, subsection 2 of the Criminal Code (*Strafgesetzbuch*) already contain “racist”, “xenophobic”, “anti-Semitic” or “other inhumane” motives or goals. This enumeration is now to include “gender-specific” motives and motives “directed against sexual orientation”. Although these motives could already be taken into account under the current legal situation because they are generally accepted as “other inhumane” motives, judicial practice indicates a lack of awareness on this matter. In particular, in cases of crimes against women shaped by a partner relationship between victim and perpetrator, courts tend to consider this partner relationship as a mitigating circumstance. Therefore, the term “gender-specific” is to include not only motives based on hate towards a certain gender, but also cases in which the criminal act is guided by ideas of gender inequality. The latter is to address, for example, cases in which the perpetrator wants to enforce a supposed patriarchal claim to power and ownership against his partner or ex-partner. The inclusion of motives “directed against sexual orientation” highlights the importance of an appropriate sanction of criminal acts directed against LGBTI people.<sup>194</sup>

The German Women Lawyers Association (*Deutscher Juristinnenbund e.V.*) welcomes the extension of Section 46, subsection 2 of the Criminal Code, but demands further measures against gender-specific violence, such as a broad training program for police, public prosecution authorities and courts, and other preventive measures.<sup>195</sup>

On 6 May 2022, representatives of the federal, state and local governments met at the round table “Together Against Violence against Women” (*Gemeinsam gegen Gewalt an Frauen*) for the first time in this legislative period. According to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, this meeting marked the start of a discussion about a federal regulation regarding the right of women and their children to protection and counselling in the event of violence. The draft act

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<sup>194</sup> Germany, Federal Government (*Bundesregierung*) (2022), [Draft of a bill to revise the law on sanctions - alternative custodial sentence, sentencing, conditions and instructions, and Placement in a Rehab Facility](#) (*Entwurf eines Gesetzes zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt*).

<sup>195</sup> Deutscher Juristinnenbund e.V. (2022), [‘Stellungnahme zum Referentenentwurf des Bundesministeriums der Justiz/Entwurf eines Gesetzes zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt’](#), 24 August 2022.

is to be based on the position paper,<sup>196</sup> which was drawn up in the previous legislative period. The plans contain the establishment of a federal coordination office, which is to create a strategy against violence against women and domestic violence as well as an independent reporting office which is to observe the situation and the impact of political measures.<sup>197</sup> On 28 October 2022 the Federal Government announced that it will not uphold the reservations made by Germany four years ago about individual articles of the International Convention to Prevent and Combat Violence Against Women and Domestic Violence, the so-called Istanbul Convention. Therefore, the convention will apply without restrictions from February 2023 on.<sup>198</sup>

Since November 2022, the National Rapporteur Mechanism on gender-based violence has been set up at the German Institute for Human Rights. It will continuously and independently monitor the state of implementation of the Istanbul Convention, contribute to creating a broad and reliable database and identify trends and developments in the field of gender-based violence.<sup>199</sup> At the same time the German Institute for Human Rights has also been entrusted by the Federal Government with continuous and independent domestic reporting on the implementation of the Council of Europe Convention on Trafficking in Human Beings (Convention of the Council of Europe to Combat Trafficking in Human Beings). The National Rapporteur Mechanism on trafficking in human beings will also evaluate existing measures against human trafficking in Germany and draw up recommendations for action. It will examine key issues annually and publish the results of its work every two years.<sup>200</sup>

On 1 July 2022, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) started the evaluation of the Prostitute Protection Act which came into force in 2017. The

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<sup>196</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2021), [‘Together against Violence against Women. Ensuring Protection and Counseling in the Event of Violence Nationwide. Joint Position for a Federal Statutory Regulation’](#) (‘Gemeinsam gegen Gewalt an Frauen. Schutz und Beratung bei Gewalt bundesweit sicherstellen – Gemeinsame Position für eine bundesgesetzliche Regelung’), roundtable of Federal, State and Local Governments.

<sup>197</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Klarer Auftrag für Recht auf Schutz und Beratung’](#), press release, 6 May 2022.

<sup>198</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Bundesregierung zieht Vorbehalte gegen Istanbul-Konvention zurück’](#), press release, 28 October 2022.

<sup>199</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Start der unabhängigen Berichterstattungsstelle. Deutschland setzt zentrale Verpflichtungen aus der Istanbul-Konvention um’](#), press release, 25 September 2022.

<sup>200</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Bundesregierung verstärkt Kampf gegen Menschenhandel. Berichterstattungsstelle am Deutschen Institut für Menschenrechte nimmt Arbeit auf’](#), press release, 18 November 2022.

investigation is being carried out by the “Kriminologisches Forschungsinstitut Niedersachsen e.V.” and will be presented to the Bundestag (Federal Parliament) in 2025.<sup>201</sup>

On 8 November 2022, the Federal Criminal Police Office (*Bundeskriminalamt*) presented Germany’s largest study regarding unreported violence so far. In the survey “Security and Crime in Germany” (SKiD) more than 46,000 people were asked about their experiences with crime. The study showed that men tend to be more likely to be victims of crime than women; however, women are significantly more likely to be a victim of sexual offenses and intimate partner violence. The study also demonstrated that the number of unreported crimes is especially high in the area of sexual offenses. Only 1 % of crimes are reported. While in most cases of crime, there is no prior relationship between perpetrator and victims, this does not apply to sexual offenses. The study also dealt with the fear of crime and showed that women feel significantly less secure in public at night than men and are more likely to avoid public transport or certain places at night. The survey will be carried out regularly in future.

On 24 November 2022, the Federal Criminal Police Office also published the annual report on crime statistics for intimate partner violence for the year 2021.<sup>202</sup> While the number of victims of intimate partner violence fell by 3 % from 2020 to 2021, it has increased by 3.4 % over the past five years, from 138,893 in 2017 to 143,604 last year.

Currently, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of the Interior and Community and the Federal Criminal Police Office (*Bundeskriminalamt*) are conducting a study called “Lebenssituation, Sicherheit und Belastung im Alltag (LeSuBiA)” whose goal is to examine violent incidents in a gender-differentiated manner. It aims to especially reflect on violence which is not reported to the police (the so-called *Dunkelfeld*). The results are to serve as a basis for decisions on effective protection against violence. They are intended to improve protection against and prevention of violence for all those affected. In addition, the project results should make a contribution to raising awareness in the areas of partnership violence, sexualised violence, stalking and digital violence. The survey will take place in 2023/24 and a result is expected in 2025.<sup>203</sup>

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<sup>201</sup> Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*) (2022), [‘Evaluation des Prostituiertenschutzgesetzes beginnt’](#), press release, 1 July 2022.

<sup>202</sup> Germany, Federal Criminal Police Office (Bundeskriminalamt) (2022), [Intimate Partner Violence, Evaluation of Criminal Statistics for 2021](#) (Partnerschaftsgewalt, Kriminalstatistische Auswertung – Berichtjahr 2021), November 2022.

<sup>203</sup> Germany, Federal Criminal Police Office (Bundeskriminalamt) (2022), [Lebenssituation, Sicherheit und Belastung im Alltag \(LeSuBiA\)](#).

## 8 Developments in the implementation of the Convention on the Rights of Persons with Disabilities

### 8.1 CRPD policy and legal developments & implementation of the European Accessibility Act

#### Policy developments

At the federal level the coalition agreement of the Federal Government for the period of 2021-2025 contains several promising measures for the implementation of the rights of persons with disabilities.<sup>204</sup> To date none of these measures have been implemented. Two initiatives at federal-state level are worth mentioning: firstly the “Bundesprogramm Barrierefreiheit” which will further accessibility in different areas such as mobility, housing, health care and the digital realm;<sup>205</sup> but it is yet to be backed by funds. Secondly, the coalition agreement contains an action plan for inclusive health care which will be fleshed out by the end of the year.

In June 2022 the German government launched the findings of its “Repräsentativerhebung zur Teilhabe von Menschen mit Behinderungen” (Representative Survey on the Participation of People with Disabilities). The study was conducted between 2017 and 2021 and it examines the participation of people with impairments and disabilities in central areas of life. The basis for the survey was a representative population sample of 22,000 people aged 16 and over with and without impairments who live in private households, special forms of housing for people with disabilities or senior citizen facilities.<sup>206</sup>

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<sup>204</sup> SPD, Bündnis 90/Die Grünen, FDP (2021), [Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025](#).

<sup>205</sup> Germany, Federal Ministry for Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*) (2021), ['Aufbruch für mehr Barrierefreiheit – Neue Koalition setzt Maßstäbe'](#), press release, 2 December 2021.

<sup>206</sup> Institut für angewandte Sozialwissenschaft GmbH (infas) (2022), [Final Report Representative Survey on the Participation of People with Disabilities](#) (Abschlussbericht Repräsentativbefragung zur Teilhabe von Menschen mit Behinderungen), Bonn, Federal Ministry for Labour and Social Affairs (Bundesministerium für Arbeit und Soziales), May 2022. A summary of the study is available in English: Institut für angewandte Sozialwissenschaft GmbH (infas) (2022) ['Summary. Representative Survey on the Participation of People with Disabilities'](#), Bonn, Federal Ministry for Labour and Social Affairs (Bundesministerium für Arbeit und Soziales), March 2022.

At the state level (Bundesländer), North Rhine Westphalia started the “North Rhine Westphalia State Initiative for the Protection against Violence”; the kick-off event took place on 27 September 2022.<sup>207</sup> This initiative sets the framework for a discussion and implementation process lasting several years, with which all those involved aim to further improve protection against violence in integration assistance. Here, interest groups of persons with disabilities, service providers and service suppliers, several state ministries as well as other actors in integration assistance intend to prepare and implement concrete measures to effectively prevent acts of violence in facilities for persons with disabilities and to contribute to more self-determination, participation and life satisfaction of persons with disabilities. The starting point is the recommendations of the expert commission “Challenging behaviour and protection against violence in facilities for persons with disabilities”.

### Legal developments

On 10 November 2022, the German Bundestag adopted a law on triage<sup>208</sup>, thus following the judgment of the Federal Constitutional Court from 16 December 2021.<sup>209</sup> The Court had decided that the legislator must take effective measures to ensure that persons with disabilities are protected in triage situations caused by the pandemic. The law formally prohibits discrimination on the grounds of “disability, degree of frailty, age, ethnic origin, religion or belief, sex or sexual identity”. The law names the “current and short-term probability of survival” as the decision criterion and hence leaves it to the doctors to decide who gets vital resources in a case of scarcity, albeit the decision on scarce resources in a non-discriminatory manner is not a medical question. Furthermore, the law contains regulations on the procedure in which the allocation decision is to be made.

During the legislative process there was criticism from various sides.<sup>210</sup> Disability associations judged that the law would not fulfil its goal (i.e., not be protective),<sup>211</sup> whilst doctors' representatives criticised that the safeguards would not be practical in a situation of emergency.<sup>212</sup> The German Institute for Human Rights made clear that the law does not meet the constitutional

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<sup>207</sup> Germany, Government of North Rhine Westphalia (2022), [‘Landesinitiative Gewaltschutz gestartet: Nordrhein-Westfalen stärkt den Gewaltschutz in Einrichtungen für Menschen mit Behinderung’](#), press release, 27 September 2022.

<sup>208</sup> Germany, [Second Act Amending the Infection Protection Act \(Triage\)](#) (*Zweites Gesetz zur Änderung des Infektionsschutzgesetzes (Triage)*), 25 November 2022.

<sup>209</sup> Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), [‘The legislator must take effective measures ensuring that persons with disabilities are protected in triage situations caused by the pandemic’](#), press release, 28 December 2021; Germany, Federal Constitutional Court (*Bundesverfassungsgericht*), [1 BvR 1541/20](#), 16 December 2021.

<sup>210</sup> Positions and hearings on the law can be accessed here: German Parliament (*Deutscher Bundestag*) (2022), [‘Health advocacy groups call for changes to proposed triage rule’](#) (*Gesundheitsverbände fordern Änderungen an geplanter Triage-Regelung*), 19 October 2022.

<sup>211</sup> Bochumer Zentrum für Disability Studies (BODYS) (2022), [‘Triage-Gesetz bleibt Selektionsgesetz’](#), press release, 14 November 2022.

<sup>212</sup> Deutsche Interdisziplinäre Vereinigung für Intensiv- und Notfallmedizin (DIVI) (2022), [‘PM: DIVI kritisiert Triage-Gesetz’](#), press release, 11 November 2022.

and human rights requirements.<sup>213</sup> The law neither addresses structural discrimination in the health care system nor prevents the individual indirect discrimination of people with disabilities or elderly people sufficiently. Given its fundamental importance, the topic should have been discussed in a broad parliamentary and societal debate.<sup>214</sup>

## European Accessibility Act

The German government should have reported to the European Commission by June 2022 on what it has done to transpose the requirements of the relevant EU Directive 2019/882 into German law. Because the coalition government had let this deadline pass, the EU Commission has now initiated “infringement proceedings” against Germany for failure to transpose EU legislation. Despite the lack of notification, the German Federal Government transposed the European Accessibility Act into German law in the so-called “Barrierefreiheitsstärkungsgesetz” (Act to Strengthen Accessibility)<sup>215</sup> and in the second “Medienänderungsstaatsvertrag” (second agreement between the Länder with regard to media).<sup>216</sup> The government announced in the coalition agreement that the “Barrierefreiheitsstärkungsgesetz” will be revised.<sup>217</sup>

## 8.2 CRPD monitoring at national level

The German Institute for Human Rights organised an online expert discussion with the title “Access to justice for persons with disabilities - Article 13 of the UN Convention on the Rights of Persons with Disabilities” together with Aktion Mensch on 22 March 2022 as part of the cooperation project “Recht haben - Recht bekommen”.

On 2 and 3 May 2022, the German Institute for Human Rights hosted a workshop on the rights of persons with disabilities and older persons in armed conflicts: “War – the Raw Edge of Intersectionality: Protecting and Accommodating Persons with Disabilities and Older Persons Affected by War in Ukraine”. The event was a joint initiative of the Institute, the UN Special Rapporteur on the rights of persons with disabilities, Gerard Quinn and the UN Independent Expert on the enjoyment of all

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<sup>213</sup> Deutsches Institut für Menschenrechte (2022), [‘Triage-Gesetz stellt Gleichwertigkeit allen menschlichen Lebens in Frage’](#), press release, 11 November 2022.

<sup>214</sup> Deutsches Institut für Menschenrechte (2022), [‘Triage-Gesetzgebung braucht breite parlamentarische Debatte’](#), press release, 29 September 2022.

<sup>215</sup> Germany, [Act on the implementation of Directive \(EU\) 2019/882 of the European Parliament and of the Council on accessibility requirements for products and services \(BFSG\)](#) (Gesetz zur Umsetzung der Richtlinie (EU) 2019/882 des Europäischen Parlaments und des Rates über die Barrierefreiheitsanforderungen für Produkte und Dienstleistungen (BFSG)), 22 July 2021.

<sup>216</sup> Media authorities published the text of the agreement: Die Medienanstalten (2022) [Interstate Treaty on the Media \(MStV\) as amended by the Second Interstate Treaty Amending Interstate Treaties on Media Law \(Second Interstate Treaty Amending the Media Act\) of December 27, 2021](#) (Medienstaatsvertrag (MStV) in der Fassung des zweiten Staatsvertrags zur Änderung medienrechtlicher Staatsverträge (Zweiter Medienänderungsstaatsvertrag) vom 27.12.2021), 30 June 2022.

<sup>217</sup> SPD, Bündnis 90/Die Grünen, FDP (2021), [Mehr Fortschritt wagen - Bündnis für Freiheit, Gerechtigkeit und Nachhaltigkeit - Koalitionsvertrag 2021-2025](#), p. 61.



human rights by older persons, Claudia Mahler. The workshop identified human rights violations, protection gaps and challenges of persons with disabilities and older persons in armed conflicts.

In June, the German Institute for Human Rights published a position on refugees with disabilities. The structural problems that refugees with disabilities face in Germany have been known for a long time. Currently, they mainly affect people from Ukraine seeking protection in Germany. The position paper lists the key human rights requirements for the identification, accommodation and care of refugees with disabilities in Germany.<sup>218</sup>

On 2 September 2022, the G7 representatives for people with disabilities and their needs met in Berlin for the first “Global Inclusion Summit” (Canada, France, Germany, Italy, Japan, the United Kingdom, the United States of America and the European Union; India and Indonesia participated as guest countries). The event dealt with three focus issues: 1) “Improving health care for persons with disabilities during COVID-19 and beyond”; 2) “Digitalisation and Artificial Intelligence – Opportunities and risks for persons with disabilities”, and 3) “Inclusion of persons with disabilities in climate action and adaptation”.<sup>219</sup> In the context of the first focus issue discussion, a representative of the German CRPD monitoring body gave a key note on the effects of the COVID-19 pandemic on the rights of persons with disabilities in Germany.

The German Institute for Human Rights attends regular sessions of the committee “National Action Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities” of the CRPD Focal point.

The German Institute for Human Rights took part in hearings held by the Federal Ministry of Health in January and July 2022 in preparation for the draft legislation on triage.

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<sup>218</sup> For more information please see: Deutsches Institut für Menschenrechte (2022), '[Considering the needs of refugees with disabilities. Deficiencies in the admission procedure must be remedied](#)' ('Bedarfe von geflüchteten Menschen mit Behinderungen berücksichtigen. Mängel im Aufnahmeverfahren müssen behoben werden'), Position Paper No. 25, June 2022.

<sup>219</sup> A summary abstract is available on the website of the German Government Commissioner on the Rights of Persons with Disabilities, who hosted the meeting: German Government Commissioner on the Rights of Persons with Disabilities (*Beauftragter der Bundesregierung für die Belange von Menschen mit Behinderungen*) (2022), '[Global Inclusion Summit 2022. Gemeinsamer Aufbau einer inklusiven Welt. Zusammenfassung des Vorsitzenden](#)', Berlin, 2 September 2022.

## Annex 1 – Promising Practices

<b>Thematic area</b>	<b>EQUALITY AND NON-DISCRIMINATION</b> Please provide one example of a promising practice to tackle discrimination against LGBTIQ people or discrimination on the grounds of socio-economic status, health status and physical appearance, such as awareness raising campaigns or training for relevant professionals. Where no such examples are available, please provide an example of an awareness raising campaign held in your country in 2022 relevant to equality and non-discrimination of LGBTIQ people or on the other above-mentioned grounds, preferably one conducted by a national equality body.
<b>Title (original language)</b>	No promising practice has been identified for this thematic area.

<b>Thematic area</b>	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b> Please provide one example of a promising practice to address racism and xenophobia. Please give preference to a promising practice about participation and engagement of Equality bodies and CSOs in addressing racism and hate crime. Where no such practice exists, please provide one example of a promising practice related more generally to combating racism, xenophobia, and related intolerances.
<b>Title (original language)</b>	Initiative Toleranz im Netz
<b>Title (EN)</b>	Initiative for tolerance in the digital sphere
<b>Organisation (original language)</b>	Landeskriminalamt Baden-Württemberg, Landesanstalt für Kommunikation, Landeszentrale für politische Bildung, Landesamt für Verfassungsschutz, Institut für Bildungsanalysen, Zentrum für Schulqualität und Lehrerbildung, Demokratiezentrum, Landesmedienzentrum
<b>Organisation (EN)</b>	Baden-Württemberg State Criminal Police Office, State Communications Office, State Agency for Civic Education, State Office for the Protection of the Constitution, Institute for Educational Analysis, Center for School Quality and Teacher Education, Democracy Center, State Media Center
<b>Government / Civil society</b>	Government, police, media, CSOs

<b>Funding body</b>	State Ministry of the Interior Baden Württemberg
<b>Reference (incl. URL, where available)</b>	Stuttgart declaration against hate and incitement ( <a href="#">Stuttgarter Erklärung gegen Hass und Hetze</a> ) adopted at the conference of the State Ministers of the Interior on 2 December 2021  Establishment of the <a href="#">Initiative for tolerance in the digital sphere</a>
<b>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</b>	26 July 2022
<b>Type of initiative</b>	One-stop-shop bringing together a diverse set of actors against hate and incitement
<b>Main target group</b>	Victims of hate speech and incitement, especially victims of anti-semitism, racism, xenophobia and homophobia
<b>Indicate level of implementation: Local/Regional/National</b>	State level (Baden-Württemberg)
<b>Brief description (max. 1000 chars)</b>	<p>Based on a catalogue of measures to combat hate speech and incitement adopted on 16 November 2021 by the Cabinet Committee "Resolutely Against Hate and Incitement" of the State Government of Baden-Württemberg, a task force has been established within the State Criminal Police Office. It operates a landing page for the "Initiative Toleranz im Netz" which offers a one-stop-shop collecting and curating helpful addresses for victims of hate and incitement.</p> <p>The initiative for tolerance brings together state and civil society actors to effectively identify and combat hate speech and incitement by bundling and realigning existing measures and thus increasing their visibility and usability.</p> <p>The initiative is focused on (1) training, prevention and media competences, (2) reporting options and hotlines, and (3) counselling and victim support services. The initiative's partners reach from protecting people running for public office to academia researching on individual and societal consequences of hate crimes. Among the civil society partners are Leuchtlinie, a counselling service for victims of right-wing, racist, and antisemitic violence, and OFEK e.V., a victim support organisation for antisemitic incidents.</p>

<p><b>Highlight any element of the actions that is transferable (max. 500 chars)</b></p>	<p>As the Stuttgart declaration against hate and incitement was adopted at the conference of the State Ministers of the Interior, the core concept enjoys approval of other German states and could be replicated in those.</p>
<p><b>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</b></p>	<p>By coordinating existing services, the initiative for tolerance creates synergies rather than parallel structures and might improve inter-agency collaboration based on the diverse set of actors involved.</p>
<p><b>Give reasons why you consider the practice as having concrete measurable impact</b></p>	<p>With the one-stop-shop that is the landing page, the impact of the initiative can be measured for each collaborating partner i.e. by monitoring the use of victim support services or police reports filed for incidents of hate speech. One of the main reasons for low take-up of existing support infrastructure is the lack of knowledge thereof. Therefore, the bundling in one place together with a media campaign (Aktionstage "Streife im Netz" with social media live Q&amp;A's) might significantly increase the take-up of offered services.</p>
<p><b>Give reasons why you consider the practice as transferable to other settings and/or Member States?</b></p>	<p>The practice is essentially geared towards breaking down silos between and within organisations all working on hate speech and incitement. Operating with a one-stop-shop has proven beneficial for all types of initiatives, from offering psychosocial support to providing family counselling. To adopt such a holistic approach in the area of hate speech and incitement can be transferable in any State or administrative unit because it only requires a structured collaboration between authorities (i.e. Memorandum of Understanding) that defines who collaborates for what objective in which way. While the initiative focuses on quantity and quality of services extended, a landing page can serve as starting point, as it is programmable in the medium-term and might be suitable for contexts of strained budgets where the focus lies on improving the efficiency of existing service infrastructure.</p>
<p><b>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and</b></p>	<p>The initiative is based on the Cabinet Committee "Resolutely Against Hate and Incitement", which includes representatives from the Ministries of State, the Interior, Culture, Social Affairs and Justice. In addition, the state government's representative against anti-Semitism is involved in the process, and the initiative foresees to invite representatives of the religious communities and other experts to co-develop the initiative.</p> <p>It is unclear how beneficiaries can directly impact the initiative, but it is presumed that further information on feedback mechanisms will be published in the coming months.</p>

<b>implementation of the practice.</b>	
<b>Explain, if applicable, how the practice provides for review and assessment.</b>	Since the initiative launched in summer 2022, publicly available information is still scarce and M&E data could not be obtained yet.

<b>Thematic area</b>	<b>ROMA EQUALITY AND INCLUSION</b> Please provide one example of promising practice in relation to the two topics addressed in the chapter: regarding the implementation of national action plans and regarding the legal or policy developments addressing Roma/Travellers equality and inclusion.
<b>Title (original language)</b>	Melde- und Informationsstelle Antiziganismus (MIA)
<b>Title (EN)</b>	Reporting and Information Centre Antiziganism (MIA)
<b>Organisation (original language)</b>	Zentralrat Deutscher Sinti und Roma
<b>Organisation (EN)</b>	Central Council of German Sinti and Roma
<b>Government / Civil society</b>	Civil society
<b>Funding body</b>	Federal Ministry of the Interior and Community
<b>Reference (incl. URL, where available)</b>	<a href="https://www.antiziganismus-melden.de/">https://www.antiziganismus-melden.de/</a>
<b>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</b>	Official launch: 5 July 2022

<b>Type of initiative</b>	
<b>Main target group</b>	politics, public
<b>Indicate level of implementation: Local/Regional/National</b>	In the moment, at the beginning of the project, the Central Council of German Sinti and Roma is the project management organisation. Afterwards, it is planned to transfer MIA into an independent and autonomous organisation. In addition to the federal office, three regional registration offices have been won as cooperation partners, and exploratory talks are being held with others.
<b>Brief description (max. 1000 chars)</b>	The Reporting and Information Centre on Antiziganism (MIA) can make an important contribution to making discrimination visible and combating antiziganism. MIA aims to draw attention to existing deficits in the regulatory system and to record the dark field of antiziganist incidents in Germany to a greater extent and can thus make a significant contribution to the establishment and expansion of equality and protection against discrimination. The goals are to raise awareness about the manifestations and extent of antiziganism in society, to establish adequate counselling services for those affected and to raise public and political awareness.
<b>Highlight any element of the actions that is transferable (max. 500 chars)</b>	The project offers the opportunity to raise awareness of antiziganism as a problem of the society.
<b>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</b>	The project is designed to last.
<b>Give reasons why you consider the practice as having concrete measurable impact</b>	The project is still in its infancy. It remains to be seen how it will be received.
<b>Give reasons why you consider the</b>	

<b>practice as transferable to other settings and/or Member States?</b>	
<b>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</b>	
<b>Explain, if applicable, how the practice provides for review and assessment.</b>	It remains to be seen whether the body is equipped with sufficient resources.

<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> <b>Please, provide one example of a promising practice related to the topics addressed in the chapter, i.e., in relation to data protection, and/or artificial intelligence systems.</b>
<b>Title (original language)</b>	AutoCheck – Welche Diskriminierungsrisiken stecken in automatisierten Entscheidungssystemen (ADM)?
<b>Title (EN)</b>	AutoCheck – Mapping risks of discrimination in automated decision-making systems (ADM)
<b>Organisation (original language)</b>	AlgorithmWatch
<b>Organisation (EN)</b>	AlgorithmWatch

<b>Government / Civil society</b>	Civil society
<b>Funding body</b>	Federal Anti-Discrimination Agency ( <i>Antidiskrimierungsstelle des Bundes</i> )
<b>Reference (incl. URL, where available)</b>	<a href="https://algorithmwatch.org/en/autocheck/">https://algorithmwatch.org/en/autocheck/</a>
<b>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</b>	February 2021 till September 2022
<b>Type of initiative</b>	awareness raising and capacity building
<b>Main target group</b>	employees of German anti-discrimination offices
<b>Indicate level of implementation: Local/Regional/National</b>	national
<b>Brief description (max. 1000 chars)</b>	In close cooperation with the Federal Anti-Discrimination Agency, the project AutoCheck has developed and created instructions, tools and training courses primarily aimed to build up and improve competencies to understand and deal with risks of algorithmic bias among both employees of German anti-discrimination offices and those affected by discrimination. The work is based on case study research and interviews with anti-discrimination experts and should provide answers to questions such as: What are automated decision-making systems? How does discrimination occur? How can one recognize this form of discrimination and what can be done about it? The resulting guidebook includes case studies, tips, checklists, sources and contact information for further support. The guidebook can be downloaded together with additional material (workshop script and slides) so that workshops can be held independently by anyone with some prior knowledge. The project had organised two workshops: the first workshop as a pilot workshop, pre-testing the material, and the second workshop to reach out to staff from antidiscrimination offices as multipliers.



<p><b>Highlight any element of the actions that is transferable (max. 500 chars)</b></p>	<p>In June 2022, the project launched its guidebook "Automated Decision-Making Systems and Discrimination": <a href="https://algorithmwatch.org/en/wp-content/uploads/2022/06/AutoCheck-Guidebook_ADM_Discrimination_EN-AlgorithmWatch_June_2022.pdf">https://algorithmwatch.org/en/wp-content/uploads/2022/06/AutoCheck-Guidebook ADM Discrimination EN-AlgorithmWatch June 2022.pdf</a></p>
<p><b>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</b></p>	<p>As all materials can be downloaded free of charge from the project website, meant to empower anyone interested in the topic in organising workshops independently, the practice sustains even after the termination of the project.</p>
<p><b>Give reasons why you consider the practice as having concrete measurable impact</b></p>	<p>Raising awareness of the risks of algorithmic bias among anti-discrimination counselling services will help to detect and challenge discrimination hidden in "blackboxes" of automated decision making and, thus, make a difference. The number of staff trained in AutoCheck workshops is measurable as well as counselling sessions which raise the issue in relevant cases.</p>
<p><b>Give reasons why you consider the practice as transferable to other settings and/or Member States?</b></p>	<p>With the growing diffusion of ADM systems across Europe anti-discrimination work in other Member States is facing similar challenges as in Germany even though the legal framework differs. All materials are provided in German <i>and</i> English so that they could be adapted and used by anyone who understands English. The project was in touch with EQUINET and had already promoted its work in this context.</p>
<p><b>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</b></p>	<p>The guidebook and all training material have been developed in close cooperation with the Federal Anti-Discrimination Agency, and its drafting was informed by interviews and the pilot workshop with anti-discrimination experts and staff from counselling services.</p>

<b>Explain, if applicable, how the practice provides for review and assessment.</b>	Though no systematic review and assessment took place, a feedback loop with some of the stateholders took place in December 2022 to inform forthcoming work of AlgorithmWatch.
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<b>Thematic area</b>	<b>RIGHTS OF THE CHILD</b> <b>Please provide a promising practice for the related topics addressed in the chapter (i.e., the impact of poverty and exclusion on children and children and justice).</b>
<b>Title (original language)</b>	"Praxisleitfaden zur Anwendung kindgerechter Kriterien für das Strafverfahren – Empfehlung von kinderrechtsbasierten Standards für den Umgang mit minderjährigen Opferzeuginnen und Opferzeugen"
<b>Title (EN)</b>	"Guidelines for the application of child-appropriate criteria in criminal proceedings - Recommendation of child rights-based standards for interaction with minor victim witnesses"
<b>Organisation (original language)</b>	Bundesministerium für Familie, Senioren, Frauen und Jugend und Unabhängiger Beauftragter für Fragen des sexuellen Kindesmissbrauchs <del>Developed within the work of the</del> "Natioler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen"
<b>Organisation (EN)</b>	Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and The Federal Government's Independent Commissioner for Child Sexual Abuse Issues "National Council against Sexual Violence inflicted on Children and Adolescents"
<b>Government / Civil society</b>	Government
<b>Funding body</b>	The Federal Government (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth)
<b>Reference (incl. URL, where available)</b>	Printed version: <a href="https://www.bmfsfj.de/bmfsfj/service/publikationen/praxisleitfaden-zur-anwendung-kindgerechter-kriterien-fuer-das-strafverfahren-193090">https://www.bmfsfj.de/bmfsfj/service/publikationen/praxisleitfaden-zur-anwendung-kindgerechter-kriterien-fuer-das-strafverfahren-193090</a>  Download: <a href="https://www.nationaler-rat.de/fileadmin/user_upload/dokumente/praxisleitfaden_kindgerechte_kriterien_strafverfahren_0308.pdf">https://www.nationaler-rat.de/fileadmin/user_upload/dokumente/praxisleitfaden_kindgerechte_kriterien_strafverfahren_0308.pdf</a>

<b>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</b>	Published in October 2021
<b>Type of initiative</b>	Guideline brochure
<b>Main target group</b>	Police and justice administrations (i.e. police officers, public prosecutors, investigating judges)
<b>Indicate level of implementation: Local/Regional/National</b>	National
<b>Brief description (max. 1000 chars)</b>	The non-binding guidelines for the application of child-appropriate criteria in criminal proceedings are available as a printed brochure and in PDF-format. The 26 pages give an overview on how child rights-based criteria can be applied by professionals in criminal proceedings. Criteria include the special need for protection of minor child witnesses, acceleration requirement, child-friendly information and accompaniment, interdisciplinary networking and exchange, child-friendly design of interrogations/hearings as well as qualification and further training. Four chapters directly addresses the professional groups of police officers, public prosecutors, investigating judges and judges. The text shows what they must consider in practice in order to implement the criteria.
<b>Highlight any element of the actions that is transferable (max. 500 chars)</b>	Every element of the measure is transferable.
<b>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</b>	Although the guidelines are non-binding. They are a Government initiative and can serve as minimum standards for child-appropriate criminal proceedings on a national level. The multiperspective approach in their development and promotion by the National Council on Combatting Sexual Violence Against Children and Young People ( <i>Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen</i> ) make them more likely to be used by different stakeholders and participants in criminal proceedings.

	<p>Furthermore, the guidelines are flanked by projects of other Federal Ministries such as the brochure "I have rights - A guide through criminal proceedings for young witnesses" (<i>Ich habe Rechte - Ein Wegweiser durch das Strafverfahren für jugendliche Zeuginnen und Zeugen</i>) published by the Federal Ministry of Justice which was updated and reprinted in January 2022.</p>
<p><b>Give reasons why you consider the practice as having concrete measurable impact</b></p>	<p>The developed criteria can serve as a basis for indicators to evaluate the practice in the Federal States and comparative assessment. Parallel to the development of the criminal law criteria (based on the work of the German Children's Fund), the development of criteria in family court proceedings has been ongoing. The German Institute for Human Rights and the German Children's Fund (DKHW), together with experts from practice and research, have developed child rights-based criteria for family court proceedings on the basis of the UN CRC, the Council of Europe's Guidelines for Child-Friendly Justice, and the corresponding work by the EU Fundamental Rights Agency in particular the recommendations of its study "Child-Friendly Justice" - as well as checklists as working tools for professionals. The application of the criteria was field-tested and evaluated at three different courts in Germany. It was revealed that they are both useful and applicable in practice. The results and the criteria have been incorporated into the work of the National Council against Sexual Violence inflicted on Children and Adolescents. Further information at: <a href="https://www.institut-fuer-menschenrechte.de/themen/kinderrechte/kindgerechte-justiz">https://www.institut-fuer-menschenrechte.de/themen/kinderrechte/kindgerechte-justiz</a> and Children's Rights-Based Criteria for Family Court Proceedings (<a href="http://dkhw.de">dkhw.de</a>).</p>
<p><b>Give reasons why you consider the practice as transferable to other settings and/or Member States?</b></p>	<p>The aim of the above-mentioned guideline "Practical Guide to the Application of Child-Friendly Criteria for Criminal Proceedings" is to provide practical assistance to stakeholders in implementing the contents of the guideline in the best interests of children and adolescents affected. The newly developed practical guide thus shows how international guidelines can be adapted to national contexts. The guidelines could therefore serve as an example for other member states and provide a suggestion for adaptation to their respective judicial systems.</p>
<p><b>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and</b></p>	<p>The guidelines were developed as part of the work of "National Council against Sexual Violence inflicted on Children and Adolescents" (<i>Nationaler Rat gegen sexuelle Gewalt an Kindern und Jugendlichen</i>) in summer 2021. The National Council includes representatives from politics, civil society, experts from science and practice as well as members of the Council of Affected Persons (<i>Betroffenenrat</i>) at the Federal Government's Independent Commissioner for Issues of Sexual Child Abuse. The practice guidelines are the result of several hearings of experts as well as expert discussions in which judiciary with judges and public prosecutors, police, lawyers, the Council of Affected Persons, counseling agencies, child protection organizations, psychosocial process support, science and judicial administration have formulated and introduced their contributions from their respective profession. In November 2021 the guidelines were presented at a discussion as part of the Conference of Ministers of Justice.</p>

<b>implementation of the practice.</b>	
<b>Explain, if applicable, how the practice provides for review and assessment.</b>	In the closing remark of the brochure it is stated that „it is intended to evaluate the usefulness of the criteria for those involved in criminal proceedings. Moreover, The guidelines should be adapted in child-friendly language and discussed with children and youth for this purpose” (page 26).

<b>Thematic area</b>	<b>ACCESS TO JUSTICE – Victim’s Rights and Judicial Independence</b> <b>Please provide one example of a promising practice in relation to the topic address in the chapter: i.e. Victim’s Rights Directive, the EU Strategy for Victim’s Rights and violence against women.</b>
<b>Title (original language)</b>	No promising practice has been identified for this thematic area.

<b>Thematic area</b>	<b>Developments in the implementation of the Convention on the Rights of Persons with Disabilities (CRPD)</b> <b>Please provide one example of a promising practice of national monitoring bodies (e.g., a well-run outreach campaign, an inclusive survey, a successful effort or initiative to improve legislation, etc.) in relation to projects or programmes implementing the CRPD or promoting the rights of persons with disabilities. Where no such practice exists, please provide one example of a promising practice in relation to projects or programmes implementing the CRPD or promoting the rights of persons with disabilities, focussing on projects and programmes implemented with EU funding.</b>
<b>Title (original language)</b>	Alternative Barrierefreie Beförderung (“ABB”)
<b>Title (EN)</b>	Alternative Barrier-Free Transport (working title)
<b>Organisation (original language)</b>	Berliner Verkehrsbetriebe → commissioned the company VAI
<b>Organisation (EN)</b>	Berlin Transport Authority → VAI

<b>Government / Civil society</b>	Government
<b>Funding body</b>	State of Berlin (Bundesland Berlin) → Senate Department of Berlin for the Environment, Mobility, Consumer and Climate Protection
<b>Reference (incl. URL, where available)</b>	<a href="https://www.berlin.de/sen/uvk/verkehr/verkehrsplanung/oeffentlicher-personennahverkehr/rufbusse/alternative-barrierefreie-befoerderung/">https://www.berlin.de/sen/uvk/verkehr/verkehrsplanung/oeffentlicher-personennahverkehr/rufbusse/alternative-barrierefreie-befoerderung/</a>
<b>Indicate the start date of the promising practice and the finishing date if it has ceased to exist</b>	On 29 March 2022, BVG awarded the contract to the company Via. It will take over the "Alternative Barrier-Free Transport (ABB)" on behalf of BVG. By the end of 2023, the U8, parts of the U5 and the Marienfelde S-Bahn station will be connected in a pilot project. City-wide operation is planned for 2024.
<b>Type of initiative</b>	
<b>Main target group</b>	First and foremost it is for persons with disabilities that are legally recognized as such according to the social law book (§ 228 SGB IX). But it also can be used by people with limited mobility for other reasons, such as senior citizens, people with prams or small children, pregnant women, injured people and people with luggage.
<b>Indicate level of implementation: Local/Regional/National</b>	Local
<b>Brief description (max. 1000 chars)</b>	The goal is to have a mobility guarantee for passengers on local public transport (ÖPNV): If people with physical impairments cannot get on or off at a station or stop due to defective lifts or other obstacles, BVG (Berlin Transport Authority) will help out with a fleet of minibuses that can be conveniently called by phone or via app or website. This also applies to all stations that are not yet accessible. The minibuses bridge the section of the journey that cannot be covered barrier-free by regular public transport. Passengers are picked up at a station that is not accessible and transported to the next accessible station, or vice versa to the destination that is not accessible.
<b>Highlight any element of the actions that is</b>	Accessible on-demand-services for people with disabilities can be set up in different places. All elements are transferable and can be adapted to any place. It is important to have accessible cars/minibuses and to have an accessible app and phone service to call the service.

<b>transferable (max. 500 chars)</b>	
<b>Give reasons why you consider the practice as sustainable (as opposed to 'one off activities')</b>	On-demand-services to bridge gaps in accessibility lines can be an interim solution until all public transport is accessible for everyone. It is not a 'one off activity', because it must be done on a long term since people first have to know about it and get used to it (for instance how the app works) and then people rely on it. So there is no way to do it only for a short time.
<b>Give reasons why you consider the practice as having concrete measurable impact</b>	
<b>Give reasons why you consider the practice as transferable to other settings and/or Member States?</b>	Accessible minibuses can be used on every street and hence improve the mobility of persons with disabilities who use the local public transport system.
<b>Explain, if applicable, how the practice involves beneficiaries and stakeholders in the design, planning, evaluation, review assessment and implementation of the practice.</b>	The Senate Department for the Environment, Mobility, Consumer and Climate Protection (SenUMVK) in its function as public transport authority has commissioned the Berliner Verkehrsbetriebe (BVG) to develop and introduce a service for affected passengers. BVG has commissioned VIA as a subcontractor to implement the service. The state commissioner for people with disabilities was intensively involved in the development of the concept, as was the AG Verkehr barrierefrei of SenUMVK, in which the Berlin associations of people with disabilities are represented. An expert group of people affected is also accompanying the pilot phase and is involved in the evaluation of the project. After testing on selected routes, city-wide operation is planned for 2024.
<b>Explain, if applicable, how the practice provides</b>	

<b>for review and assessment.</b>	
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## Annex 2 – Case Law

Thematic area	<b>EQUALITY AND NON-DISCRIMINATION</b> <b>Please provide one high court decision addressing discrimination against LGBTIQ people or on the grounds of socio-economic status, health status and physical appearance (not related to health or disability or to other grounds like ethnic origin, religion). Where relevant, always highlight any relevance or reference to multiple or intersectional discrimination in the case you report.</b>
Decision date	No case law has been identified for this thematic area so far.

Thematic area	<b>RACISM, XENOPHOBIA AND RELATED INTOLERANCE</b> <b>Please provide the most relevant <u>high court</u> decision concerning the application of <u>either</u> the Racial Equality Directive or the Framework Decision on racism and xenophobia, addressing racism, xenophobia, and other forms of intolerance more generally.</b>
Decision date	14.12.2022
Reference details	<p>Frankfurt Regional Court (Landgericht Frankfurt)</p> <p>Az. 2-03 O 325/22</p> <p>"Twitter vs. anti-Semitism commissioner of the state of Baden-Württemberg. Defamation through disparaging tweets. Content similar to the core must also be deleted: LG Frankfurt a.M., Urt. v. 14.12.2022, Ref.: 2-03 O 325/22"</p> <p><u>Press release by the court on the case</u>  <u>Court ruling on third-party website, as it is not yet published on the court's website</u></p>
Key facts of the case (max. 500 chars)	<p>The preliminary injunction proceedings decided by the Regional Court of Frankfurt am Main concerned several comments which appeared on <b>Twitter</b> in September 2022 and in which it was untruthfully claimed that the <b>anti-Semitism commissioner of the state of Baden-Württemberg</b> had "a closeness to paedophilia" and that he had "had a fling". In addition, it was spread about him that he was involved in "anti-Semitic scandals" and that he was "part of an anti-Semitic pack".</p>

	<p>In the hate speech trial, the court ruled that <u>if there is a concrete indication of a violation of personality rights</u>, Twitter must also remove statements that are “similar to the core” (kerngleiche Äußerungen).</p> <p>The anti-Semitism commissioner thus has a claim against Twitter for injunctive relief against the statements disseminated in the tweets 1, 2, 3, 4 and 6 pursuant to §§ 823, 1004.1 sentence 2 BGB analogously, Art. 2.1, 1.1 GG, 8 ECHR.</p>
<b>Main reasoning/argumentation (max. 500 chars)</b>	<p>The designation in a Tweet as anti-Semitic was initially an expression of opinion. However, it was illegal in the chosen context, because it did not contribute to the formation of public opinion and was clearly aimed at creating an emotional atmosphere against the anti-Semitism commissioner. After the anti-Semitism commissioner demanded the removal of these comments, Twitter should have immediately ceased and desisted their dissemination.</p>
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	<p>Freedom of Opinion or Freedom of the Press vs. the general Right of Personality; § 186 StGB (defamation), §§ 185 ff. StGB (insult), Art. 8 ECHR</p> <p>Acts of infringement similar to the core (kerngleiche Äußerungen/Verletzungen)</p>
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	<p>The Chamber ruled: "The injunction applies not only if a statement is repeated word for word, but also if the messages contained therein are republished in spirit."</p> <p>And further: "The statements are not prohibited in any context. Only those comments are affected which are to be regarded as equivalent and which, despite certain deviations, have an identical core of utterance."</p> <p>This does not impose a general monitoring obligation on Twitter with regard to its 237 million users. A duty to check exists only with regard to the specific infringement of personality rights complained of. "German law requires every party obligated by a cease-and-desist order to determine for itself whether the characteristic of the concrete form of infringement is expressed in a variation and is thus similar to the core. Twitter is thus in no different a situation than when a specific infringement is reported. In this case, too, Twitter must examine whether this infringement requires deletion or not," said the chairwoman in the reasons for the judgement.</p>
<b>Key quotation in original language and translated into English with reference details (max. 500 chars)</b>	<p>„Ein auf die konkrete Verletzungsform beschränktes Unterlassungsgebot greift nicht nur dann, wenn eine Äußerung wortgleich wiederholt wird, sondern auch dann, wenn die darin enthaltenen Mitteilungen sinngemäß ganz oder teilweise Gegenstand einer erneuten Äußerung sind (BGH, Urteil vom 24.07.2018 – VI ZR 330/17 Rn. 44 – Prozessberichterstattung). Anders als die Antragsgegnerseite behauptet, werden die verfahrensgegenständlichen Äußerungen damit nicht in jeglichem Kontext untersagt. Betroffen sind von der Kerngleichheit nur solche Äußerungen, die der Verkehr als den untersagten Äußerungen gleichwertig ansieht und bei denen etwaige</p>

	<p>Abweichungen den Äußerungskern unberührt lassen. Der Bundesgerichtshof spricht insoweit von einer „Identität des Äußerungskerns“ (BGH, Urteil vom 24.07.2018 – VI ZR 330/17 Rn. 44 – Prozessberichterstattung). <b>Würden nur völlig identische Äußerungen die Rechtsfolge des § 890 Abs. 1 Satz 1 ZPO auslösen, könnte die Unterlassungsverpflichtung leicht umgangen werden; ein verhältnismäßiger Ausgleich zwischen dem Persönlichkeitsrecht und der Meinungsfreiheit wäre nicht gewährleistet.</b>“</p> <p>“An injunction limited to the specific form of infringement does not only apply if a statement is repeated word for word, but also if the messages contained therein are the subject of a new statement, either in whole or in part (BGH, judgment of 24 July 2018 - VI ZR 330/17 marginal no. 44 - Prozessberichterstattung). Contrary to what the defendant claims, the statements at issue in the proceedings are thus not prohibited in any context. Only those statements are affected by the core similarity which the public considers to be equivalent to the prohibited statements and where any deviations do not affect the core of the statement. In this respect, the Federal Court of Justice speaks of an "identity of the core of the statement" (BGH, judgment of 24 July 2018 - VI ZR 330/17 marginal no. 44 - Prozessberichterstattung). <b>If only completely identical statements triggered the legal consequence of section 890 (1) sentence 1 ZPO, the obligation to cease and desist could easily be circumvented; a proportionate balance between the right of personality and the freedom of expression would not be ensured.</b>“</p>
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<b>Thematic area</b>	<b>ROMA EQUALITY AND INCLUSION</b> Please provide the most relevant high court decision addressing violations of fundamental rights of Roma and Travellers.
<b>Decision date</b>	No case law has been identified for this thematic area.

<b>Thematic area</b>	<b>ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION</b> Please provide the most relevant high court decision – or any court ruling – relating to the processing of personal data by new technologies in asylum, migration and border management delivered in 2022 (on Eurodac, SIS and VIS).
<b>Decision date</b>	No case law has been identified for this thematic area.

<b>Thematic area</b>	<b>INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION</b> <b>Please provide the most relevant high court decision related to the topics addressed in the chapter (i.e. data protection, and/or artificial intelligence systems).</b>
<b>Decision date</b>	2 March 2022
<b>Reference details</b>	Federal Court of Justice ( <i>Bundesgerichtshof</i> )  5 StR 457/21  ECLI:DE:BGH:2022:020322B5STR457.21.0 <a href="https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;Datum=2022&amp;nr=127966&amp;pos=19&amp;anz=428">https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&amp;Art=en&amp;Datum=2022&amp;nr=127966&amp;pos=19&amp;anz=428</a>
<b>Key facts of the case (max. 500 chars)</b>	On 15 July 2021, the Regional Court Hamburg ( <i>Landgericht Hamburg</i> ) had sentenced a man to five years prison for ten offences of trafficking a significant quantity of drugs. Moreover, the Court had ordered the confiscation of proceeds from crime in the amount of more than 70,000 Euros. In some cases, text messages, which had been sent by the accused via encrypted mobile phones of the provider EncroChat, were used as key evidence. The EncroChat data had been obtained by French authorities through the infiltration of EncoChat communication in 2020; insights were provided via Europol to the German Federal Criminal Police Office ( <i>Bundeskriminalamt</i> ) which involved the central cybercrime unit of the General Prosecutor's Office in Frankfurt/Main that officially requested all Germany-related EncroChat data by issuing a European Investigation Order to the French. The accused appealed against the decision of the Regional Court, raising the complaint that the use of the EncroChat data as evidence was inadmissible.
<b>Main reasoning/argumentation (max. 500 chars)</b>	The Federal Court of Justice confirmed, firstly, that the legal basis governing the use of evidence in criminal proceedings, namely Section 261 of the German Court of Criminal Procedure ( <i>Strafprozessordnung</i> ), does also apply to data obtained through judicial assistance and, secondly, that no specific regulations restricting the use of such evidence apply. The use of evidence must be proportionate and carefully considered, in particular when the fundamental right of private communication is interfered with by interception. However, German law provides for hacking into remote IT systems and other intrusive surveillance of private homes and communication to

	<p>investigate serious crimes such as drug trafficking. The Court rejected any claims by the accused that improperly obtained evidence must be excluded from criminal proceedings: a) The legality of surveillance by the French surveillance is no prerequisite for the transfer of evidence; different requirements for ordering such measures in France and Germany can be compensated for at the level of the courts' use of evidence, b) the collection of evidence did not violate basic values of human rights or European law as the French investigations targeted a network for the secret facilitation of criminal activities which is not to be seen as general mass surveillance, c) even if the French authorities should have breached their duty to inform Germany about surveillance operations against German territory, which could have led to a failure to notify affected individuals and, thus, to the absence of legal remedies, due consideration of the different interest would in any case lead to the predominance of the state's interest in criminal prosecution, d) a targeted or systematic evasion by French or German authorities of provisions serving as legal safeguards for accused persons has neither been demonstrated in a comprehensible manner nor is it evident otherwise.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b></p>	<p>Against criticism of "investigative power shopping", the Federal Court of Justice held that the request by German authorities for the transfer of evidence under the European Investigation Order does not require that investigative measures by which the evidence was collected in another Member State have to be lawful under German law. Eventually, the courts would have to consider if obtained evidence should be excluded from criminal proceedings.</p>
<p><b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b></p>	<p>The Federal Court of Justice dismissed the appeal of the accused. The Court ruled that the EncroChat data received from the French authorities may be used as evidence, as they serve the purpose of investigating serious criminal offences.</p> <p>Nevertheless, on 19 October 2022 the Regional Court Berlin (<i>Landgericht Berlin</i>) referred another EncroChat case for preliminary decision to the CJEU, tabling 14 questions on the interpretation of Directive 2014/41/EU on the European Investigation Order, e.g. if art. 6 (1) of the Directive prohibits EIOs, when the integrity of collected evidence cannot be assessed for reasons of secrecy, or if EU law provides for the exclusion of evidence obtained by an EIO that was issued unlawfully. See: Regional Court Berlin (<i>Landgericht Berlin</i>), 279 Js 30/22, Decision, 19 October 2022, available at: <a href="https://www.hrr-strafrecht.de/hrr/lg/22/279-js-30-22.php">https://www.hrr-strafrecht.de/hrr/lg/22/279-js-30-22.php</a>.</p>
<p><b>Key quotation in original language and translated into English with reference details (max. 500 chars)</b></p>	<p><i>"Da es nicht um die Anordnung einer eigenen Ermittlungsmaßnahme geht, die erst noch von einem Mitgliedstaat im Ausland vollstreckt werden soll, sondern nur um den Transfer bereits vorliegender Beweismittel, hängt die Zulässigkeit einer Europäischen Ermittlungsanordnung deshalb in Fällen wie dem vorliegenden nicht davon ab, ob die zugrunde liegende Ermittlungsmaßnahme nach deutschem Recht (etwa §§ 100a, 100b StPO) rechtmäßig hätte ergehen können."</i> (Rn. 53)</p>

	<p>"As it is no matter of ordering a separate investigative measure that is yet to be enforced by a Member State abroad, but only a matter of transferring evidence which is already available, the admissibility of a European Investigation Order in cases like the present does not depend on whether the underlying investigative measure would have been lawfully under German law (such as sections 100a, 100b of the Code of Criminal Procedure)." (para. 53)</p>
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<b>Thematic area</b>	<p><b>RIGHTS OF THE CHILD</b>  <b>Please provide the most relevant high court decision for the related topics addressed in the chapter.</b></p>
<b>Decision date</b>	7 April 2022
<b>Reference details</b>	<p>Federal Constitutional Court (Bundesverfassungsgericht, BVerG)</p> <p><b>1 BvL 3/18</b> (1 BvR 2824/17, 1 BvR 2257/16, 1 BvR 717/16)  <i>BVerfG, Beschluss des Ersten Senats vom 07. April 2022 - 1 BvL 3/18 -, Rn. 1-376</i></p> <p><a href="https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-046.html">https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-046.html</a></p>
<b>Key facts of the case (max. 500 chars)</b>	<p>The First Senate of the Federal Constitutional Court rendered its decision on constitutional complaints (1 BvR 717/16, 1 BvR 2257/16) and a social court (1 BvL 3/18 ) referral for judicial review concerning the constitutionality of provisions governing mandatory contributions to different public insurance schemes under Germany’s social security system.”The Court held that the [relevant] provisions [of the Eleventh Book of the Code of Social Law, §§ 55 (1), 55(3)]violate the right to equality in Art. 3(1) of the Basic Law given that the contribution rate is the same for all parents, regardless of how many children they raise.”</p> <p><a href="https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-046.html">https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-046.html</a></p>

<p><b>Main reasoning/argumentation (max. 500 chars)</b></p>	<p>The first Senate of the Federal Constitutional Court discussed a differentiation requirement regarding the collection of social security contributions. Stating, that the general equality rate is not already violated if the legislator does not make differentiations. However, the legislator violates the fundamental right of equality if he fails to take into account actual inequalities, which are so significant that they need to be considered. On the basis of the legislative considerations that bear the current contribution law of social long-term care insurance, the equal contribution burden within the group of parents, regardless of the number of children, creates equal treatment of unequal. Therefore, the equal contribution burden on the parents independent of the number of children does not prove to be constitutionally justified.</p> <p>With regard to the contribution law of the statutory pension insurance, the Senate argues that the Basic is not violated by the fact that members of the statutory pension insurance with children pay the same high pension insurance contribution as members without children. It is argued that in this legislative design there is no disadvantage for the parents as it is not recognizable that the economic child raising effort is not sufficiently taken into account in the system of pension insurance due to the crediting of the child-raising periods. Also with regard to the contribution law of statutory health insurance the Senate declares that the treatment of parents does not cause economic inequalities and additional burdens are sufficiently compensated.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b></p>	<p>The court ruled positively on the question whether there is a need for further consideration of the economic child-rearing expenses in the statutory health, pension and long-term care insurance contribution law according to the number of children in a family.</p> <p>“Applying the same contribution rate to all parents, regardless of how many children they have, is not justified under constitutional law. The legislator must amend the statutory framework by 31 July 2023 at the latest.”  (<a href="https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-046.html">https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2022/bvg22-046.html</a>)</p>
<p><b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b></p>	<p>In the present decision, the Federal Constitutional Court confirmed that in the current system of social long-term care insurance, parents with more children are disadvantaged in a specific way compared to those with fewer children, because the additional child-raising effort that increases with the number of children is not taken into account in the applicable contribution law. The same contribution burden on parents, regardless of the number of children they have, is not constitutionally justified. Paragraph 55, section 1 sentence 1 and section 3 sentences 1 and 2</p>

	<p>Social Code XI and paragraph 57 section 1 sentence 1 Social Code XI are not compatible with Article 3 section 1 Basic Law. The legislator is obliged to make new regulations by 31<sup>st</sup> July 2023.</p> <p>Further constitutional complaints have been rejected. In the cases of statutory health and pension insurance contributions, the court stated that there are no adjustments required.</p>
<p><b>Key quotation in original language and translated into English with reference details (max. 500 chars)</b></p>	<p><i>"Der gleichheitsrechtlich relevante Nachteil liegt darin, dass Eltern mit mehr Kindern beitragsrechtlich lediglich in dem gleichen Maße besser gestellt werden wie Eltern mit weniger Kindern, obwohl der wirtschaftliche Erziehungsmehraufwand mit wachsender Kinderzahl steigt." (Rn. 270)</i></p> <p><i>"The disadvantage relevant to equality law is that parents with more children are only better off to the same extent as parents with fewer children in terms of contributions, although the additional economic effort involved in raising children increases with the number of children." (paras. 270)</i></p>

<p><b>Thematic area</b></p>	<p><b>ACCESS TO JUSTICE – Victim’s Rights and Judicial Independence</b>  <b>Please provide the most relevant high court decision related topics addressed in the chapter (i.e the Victim’s Rights Directive, the EU Strategy for Victim’s Rights and violence against women).</b></p>
<p><b>Decision date</b></p>	<p>31 May 2022</p>
<p><b>Reference details</b></p>	<p>Federal Court of Justice (Bundesgerichtshof)</p> <p>6 StR 125/22</p> <p><a href="https://openjur.de/u/2437883.html">https://openjur.de/u/2437883.html</a></p>
<p><b>Key facts of the case (max. 500 chars)</b></p>	<p>The decision of 31 May 2022 issued mainly the requirements for determining the presence of a pathological mental disturbance. Concerning the topic of “violence against women” the Federal Court of Justice additionally found that the address of a women’s shelter may not be published in a judgment for this would be a violation of the Istanbul Convention.</p>



<b>Main reasoning/argumentation (max. 500 chars)</b>	Courts and law enforcement agencies are responsible for the protection of victims of domestic violence. This follows from Art. 3 lit. b, 23 lit. b of the Council of Europe Convention on preventing and combating violence against women and domestic violence of 11 May 2011 [Istanbul Convention], implemented into German law by law on the Council of Europe Convention of 11 May 2011 on preventing and combating violence against women and domestic violence and includes the protection of the victims address.
<b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b>	-
<b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b>	The court's comments on the disclosure of the address of a women's shelter are helpful as an argumentation aid for future cases, e.g. for victims, lawyers and women's rights NGOs. In the specific case, the question of the disclosure of the address was not relevant to the decision. The Federal Court of Justice (BGH) continues to develop law by indirectly applying the norms of international law from the Istanbul Convention with a gender-sensitive understanding. It is one of very few decisions in which this done and it shows a promising development. In the context of protection against (gender-based) violence in visitation and custody proceedings, protecting victims by keeping their whereabouts secret is regularly a problem.
<b>Key quotation in original language and translated into English with reference details (max. 500 chars)</b>	<p>Die Angabe der Anschrift eines Frauenhauses in den Urteilsgründen (UA S. 4) ist rechtlich nicht geboten und unvereinbar mit dem gerade auch Gerichten und Strafverfolgungsbehörden obliegenden Schutz von Opfern häuslicher Gewalt (vgl. hierzu Art. 3 lit. b, 23 lit. b des Übereinkommens des Europarats zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt vom 11. Mai 2011 [Istanbul-Konvention], umgesetzt in deutsches Recht durch Gesetz zu dem Übereinkommen des Europarates vom 11. Mai 2011 zur Verhütung und Bekämpfung von Gewalt gegen Frauen und häuslicher Gewalt BGBl. 2017 II, S. 1026 ff.; BT-Drucks. 18/12037, S. 47 f., 76 f.). (BGH, Beschluss vom 31. Mai 2022 – 6 StR 125/22 –, Rn. 20, juris)</p> <p>The publication of the address of a women's shelter in the grounds of a judgment is not legally required and incompatible with the protection of victims of domestic violence, which is also the responsibility of courts and law enforcement agencies (cf. Art. 3 lit. b, 23 lit. b of the Council of Europe Convention on preventing and combating violence against women and domestic violence of 11 May 2011 [Istanbul Convention], implemented into German law by law on the Council of Europe</p>

	Convention of 11 May 2011 on preventing and combating violence against women and domestic violence).
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<b>Thematic area</b>	<b>DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)</b> <b>Please provide the most relevant High Court decision, which quoted the CRPD or prominently referred to the CRPD in the reasoning.</b>
<b>Decision date</b>	12 January 2022
<b>Reference details</b>	BVerwG, Urteil vom 12. Januar 2022 – 5 C 2.21 – <a href="https://www.bverwg.de/de/120122U5C2.21.0">https://www.bverwg.de/de/120122U5C2.21.0</a>  Federal Administrative Court, Judgement of 12 January 2022 – 5 C 2.21 –  Preceding decisions: Administrative Court of Schwerin, Judgement of 18 March 2018 – VG 6 A 2151/16 Higher Administrative Court of Greifswald, Judgement of 24 November 2020 – OVG 1 LB 611/18
<b>Key facts of the case (max. 500 chars)</b>	On 12 January 2022 the Federal Administrative Court decided that a person with disabilities who had been granted a personal assistant in his working environment, has the right to maintain the assistant when he decides to maintain his work after reaching the statutory retirement age.  The claimant is a self-employed, blind lawyer. The claimant practised law with a personal workplace assistant since 1994. The monthly payment for the assistant by the local Integration Office ceased in August 2016 when the claimant reached the statutory retirement age of 65 years and 5 months. However, the claimant sought payment for the additional costs for the personal workplace assistant for another two years that he continued working after reaching his statutory retirement age. The claimant relies on his right of non-discrimination because of his disability while the defendant claims that the rights to an assistant naturally ceased at the point of reaching statutory retirement age.
<b>Main reasoning/argumentation (max. 500 chars)</b>	The Court ruled that the claimant does have a right to maintain the personal workplace assistant. The defendant (local Integration Office) is obliged to pay for the expenses.

	<p>The right to a workplace assistant derives from § 185 (5) Social Security Code, Book 9, and grants the right to have measures implemented to ensure an equal working environment for disabled people. This right does not automatically cease at the point of reaching statutory retirement age.</p>
<p><b>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</b></p>	<p>The Court made clear that the concept of 'work life' always entails a social component. A person's work life does not automatically end with the statutory retirement age but can expand further on. Work life plays an important role in one's chance of personal development, fulfilment, (financial) autonomy and self-determination. The objective of § 185 Social Security Code, Book 9, is to support and promote disabled people who are already part of the labour market as opposed to other laws that promote the access to the labour market. The support is supposed to be tailored to the individual needs of that person, may that person be employed or self-employed. The disabled person is -just as in the case of a non-disabled person- to decide which occupation he or she wants, whether s/he devotes all of his/her labour to this occupation or whether s/he devotes his or her employment, and whether he or she wishes to pursue full-time or part-time employment, this must also apply to the time of his or her retirement from work.</p> <p>The Court stressed that this interpretation of the concept of work life is in line with Art. 27 (1) CRPD, namely, that the right to work for disabled people entails the right to freely chose a workplace, work on an equal basis with others and enjoy a working environment that is open, inclusive, and accessible. Therefore, the idea that the right to a workplace assistant could cease at a certain age, contradicts the right to actively enjoy the right to work based on Art. 27 (I) CRPD. It is crucial for equality in the field of employment to ensure the accessibility and inclusiveness of the workplace. This must therefore entail the right to work past a certain statutory retirement age while still receiving the individual tailored assistance needed to work on an equal basis with others as this right is equally granted to non-disabled people.</p>
<p><b>Results (sanctions) and key consequences or implications of the case (max. 500 chars)</b></p>	<p>The defendant, the local Integration Office (Integrationsamt) must pay the additional costs for a workplace assistance.</p>
<p><b>Key quotation in original language and translated into English with reference details (max. 500 chars)</b></p>	<p>"Der Anspruch auf Gewährung einer notwendigen Arbeitsassistentz zur Ausübung einer selbstständigen Erwerbstätigkeit ([...] § 185 Abs. 5 SGB IX n.F.) wird nicht dadurch ausgeschlossen, dass der schwerbehinderte Mensch die Regelaltersgrenze für Rentenleistungen überschreitet. Denn eine zu gewährende Arbeitsassistentzleistung verliert ihren Charakter als "begleitende Hilfe im Arbeitsleben" ([...] § 185 Abs. 1 Satz 1 Nr. 3 SGB IX n.F.) nicht deshalb, weil der Berechtigte das Rentenregelalter oder eine nach dem Gesichtspunkt der Üblichkeit zu bestimmende Altersgrenze erreicht hat und eine Altersrente bezieht."</p>

[<https://www.bverwg.de/120122U5C6.20.0>]

“The claim to the granting of a necessary work assistance for the exercise of a self-employed activity ([...] § 185 (5) Social Security Code, Book 9) is not excluded by the fact that the disabled person exceeds the statutory retirement age. This is because a work assistance benefit does not lose its character as “accompanying assistance in working life” ([...] § 185 (1) Social security Code, Book 9) when the entitled person has reached the statutory retirement age or an age limit to be determined by customary practice and is receiving a retirement pension.”