

**The Federal Republic of Germany**

**- Answer to the Guiding Questions for Defining the Normative Content of the Issues Examined at the Tenth Working Session of the Open-ended Working Group:  
Social Protection and Social Security (including social protection floors)**

**Preliminary remark from Germany:**

*With reference to the results of the X. Working Session of the OEWGA of April 2019, we are submitting the following positions on the strengthening of the rights of older persons.*

*By sharing the documents on the sets of topics referred to, Germany is seeking to make another constructive contribution to advancing the substantive, open debate on the strengthening of the rights of older persons. Germany does not want to give the impression of seeking a binding, normative regulation on the UN level. Instead, the following just sets out the aspects that, in Germany's view, should guide the substantive debate.*

**Definition**

- 1. What is the definition of the right to social security and social protection (including social protection floors) for older persons in the national legislation in your country? Or how should such a right be defined, considering existing national, regional and international legal framework?**

Answer:

The statutory pension insurance serves to provide financial security in the event that a person can no longer work because of their age or disability. The statutory pension insurance is above all an insurance scheme for all working people. In addition, further groups of persons are subject to mandatory insurance and there is the option to take out voluntary insurance. The rights and obligations involved are set out in detail and judicially reviewable in Social Code Book Six and in other pieces of legislation.

If a person cannot pay for the cost of living despite receiving an income, they become eligible for social assistance as the "floor" of the social security system.

People of working age may qualify for employment promotion benefits incl. unemployment insurance under Social Code Book Three (SGB III).

Tax-financed social protection systems:

- The Basic Income Support for Job-Seekers (SGB II) is available up to statutory retirement age for people who are able to work but need assistance.
- As an element of social assistance (SGB XII), the basic income support in old age and in the event of reduced earning capacity is for persons in need of assistance once they reach the statutory retirement age as well as, on a long-term basis, persons permanently incapacitated for work from the age of 18 years.

**Scope of the right**

- 2. What are the key normative elements of the right to social protection and social security for older persons? Please provide references to existing standards on such elements as below, as well as any additional elements:**

- a) **Availability of contributory and non-contributory schemes for older persons**
- b) **Adequacy of benefits to guarantee older person's access to an adequate standard of living and adequate access to health care**

- c) **Accessibility, including older person's coverage by social security systems, eligibility criteria, and affordability of contributions**
- d) **Equitable access by older persons to the enjoyment of the right to social security and social protection, paying special attention to groups in vulnerable situation**
- e) **Participation of older persons in the design and administration of the social security system**

Answer:

The characteristic financing feature of the statutory pension insurance system is the statutorily established pay-as-you-go system. This means that today's pensions are financed from today's contributions paid by the insured and State subsidies. Future pensions will then be financed by the contributions from future working generations. Moreover, supplementary capital market-financed benefits from corporate and private pension insurance are an option.

The means-tested need for assistance is a prerequisite for eligibility to benefits from the minimum social security systems. It follows that this is a benefit that covers and is contingent on need and - unlike statutory pension insurance benefits - is fully tax-financed.

- b) the amount of benefits from the statutory pension insurance depends on the number and amount of earning points accrued during working life and reflect the work history of the insured. Together with the benefits from occupational and private pension schemes, they afford an appropriate standard of living.  
The rate of unemployment benefits for job-seekers with one child as defined by tax law is 67%, for other unemployed persons it is 60% of their gross earnings from work minus statutory deductions. Maximum benefit period: For those aged 50 to 55 years: up to 15 months, aged 56 to 58 years: up to 18 months, aged 59 years and older: up to 24 months.  
The benefit level of the minimum security systems looks at the concrete needs of those affected. The benefits pay for the cost of living, including housing and heating, and also comprise contributions to health and long-term care insurance.
- c) The statutory old and disability pensions have a wage replacement function. Survivors' pensions serve as maintenance replacement. The contributions to the statutory pension insurance are evenly split between employers and employees. Additional funds come from the taxpayers in the form of federal subsidies.  
The contributory employment promotion benefits, especially unemployment insurance, can be accessed by persons who have previously been liable to mandatory contributions to the Federal Employment Agency for a minimum period of, as a rule, 12 months because they were gainfully employed or for other reasons, e.g. because they were in receipt of other social benefits or had child-raising or caregiving responsibilities.  
Persons have a non-contributory legal right to benefits of the minimum security systems (Social Code Books II and XII) if they meet the individual requirement – need of assistance.
- d) The statutory pension insurance covers major life risks such as disability and old age. However, it also acknowledges other groups of persons, such as informal carers or persons who work in workshops for the handicapped.  
The institutions responsible for the minimum security systems are obliged to comprehensively advise and support those eligible or seeking assistance.
- e) The law of the statutory pension insurance is largely determined by the legislator. In addition to taking part in the general elections to the legislative parliaments, older persons can get involved in the context of the self-administration of the pension insurance institutions. As a rule, the self-administration is exercised by the insured, pensioners and employers on a voluntary basis. These representatives are elected every six years in free, equal and general elections - the social insurance elections.

Responsibility for implementing the right to employment promotion lies with the Federal

Employment Agency (BA). The self-administration of the Federal Employment Agency is a tripartite system.

The benefits of the basic income support for job-seekers are provided by the local job centre and the joint bodies responsible. The basic income support and benefits in the event of reduced earning capacity are provided by the local social assistance carriers.

### **State obligations**

**3. What are the measures that should be undertaken by the State to respect, protect and fulfill the right of social security and social protection for older persons, regarding the normative elements as provided above?**

#### Answer:

Germany has had good experience in laying down the rules for coverage of the major life risks, such as old age and disability, in a Code for everyone to check. The mandated pension insurance institutions advise the insured, employers and pensioners on their rights and obligations.

### **Special considerations**

**4. What special measures and specific considerations should be considered in developing the normative content of the right of older persons to social protection and social security?**

#### Answer:

In the statutory pension insurance, Germany cares about both intergenerational equity and appropriate benefits in order to maintain the acceptability of the pension insurance scheme. The range of employment promotion and unemployment insurance benefits consider the fact that older employees find it much more difficult to integrate or reintegrate into the labour market than younger persons. This reflects not only in several funding instruments, but also in the longer benefit-drawing period of the unemployment benefit.

**5. How should the responsibilities of non-State parties such as private sector be defined in the context of the right of older persons to social protection and social security?**

#### Answer:

The rights and duties of the private sector, especially the employers, in connection with the statutory pension insurance are clearly defined by law. The same is true of the statutory framework surrounding the voluntary investment into an additional occupational or private pension scheme. When it comes to occupational pension schemes, the social partners have the option to put relevant sector-wide regulations in place by means of collective agreements.

### **Implementation**

**6. What are the best practices and main challenges faced by your country in the adoption and implementation of the normative framework on social security and social protection for older persons?**

#### Answer:

Every year, the Federal Government releases a pension insurance report that maps past, present and future trends in the statutory pension insurance. This report serves as a major reference for all actors involved that enables them to check whether changes need to be made to the current statutory pension insurance system. When drafting and adopting legal reforms, the various actors, especially the social partners and the associations of stakeholders old and young, get the opportunity to feed their perspective and suggestions into the procedure, for instance by way of hearings.