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**The Federal Republic of Germany - Answer to the**

**GUIDING QUESTIONS FOR THE FOCUS AREAS OF THE X SESSION OF THE OPEN-ENDED WORKING GROUP ON AGEING:**

**Social protection and social security (including social protection floors)**

**National legal framework**

1. What are the legal provisions in your country that recognize the right to social security and social protection, including non-contributory and contributory old-age pensions? Do they have a constitutional, legislative or executive foundation?

*Answer:*

***In Germany, the principle of the welfare state[[1]](#footnote-1) obliges legislature to adhere to the principles of social equity and security and to counterbalance social disparities. Moreover, according to German Basic Law[[2]](#footnote-2) the decent subsistence level must be ensured for the needy. That also includes comprehensive obligations of transparency for legislature and a duty to state reasons when calculating and updating the benefits and services provided for this purpose.***

***In addition to that, the Federation has been granted the right of legislation in the area of "social insurance" [[3]](#footnote-3). The concept covers everything which, in substance, takes the form of a social insurance. For example:***

* ***the four traditional fields of statutory insurance against illness, age, invalidity and accident;***
* ***for the field of statutory pension insurance – regulations of the Social Code [[4]](#footnote-4);***
* ***for the field of farmer's old-age security – the regulations of the law on farmers’ old-age security.***

***On the other hand, there is legislative power for the Federation[[5]](#footnote-5) in the area of "public welfare". This term comprises cost-of-living assistance and assistance to ensure a decent subsistence level, public funds and measures to overcome existing or imminent economic, physical, mental or emotional emergencies and threats. In Germany, there is also a compulsory insurance against the risks of illness and the need for long-term care irrespective of age (please see answers in questionnaire 2).***

**Availability**

2. What steps have been taken to guarantee universal coverage and to ensure that every older person has access to social security and social protection schemes including non-contributory, contributory and survivor’s pensions, to ensure an adequate standard of living in older age?

*Answer:*

***Social security and social protection are granted to older people through various systems which are linked to the employment status and to contributions made:***

* ***Employees, for instance, are compulsorily insured within the statutory pension insurance scheme and depending on the amount of contributions paid in each case are entitled to old-age pension, pension on account of reduced earning capacity and survivor's pension.***
* ***Retired civil servants receive corresponding benefits from the pension insurance for civil servants***
* ***Self-employed persons are compulsorily insured in certain cases.***

***Whoever suffers hardship in the Federal Republic of Germany despite these social security benefits will still be able to lead a decent life, in particular due to social assistance benefits (basic income support in old age and in the event of reduced earning capacity).***

3. What steps have been taken to ensure that every older person has access to social security and social protection schemes which guarantee them access to adequate and affordable health and care and support services for independent living in older age?

*Answer:*

***In Germany, a compulsory insurance irrespective of age primarily against the risks of sickness and need for long-term care is in place. As for the health sector, there is compulsory insurance coverage either under a private or a statutory health insurance scheme. As for the long-term care sector, there is compulsory insurance coverage either under a statutory or a private long-term care insurance scheme.***

***Insurance benefits are provided irrespective of the actual income and financial situation of the insured person.***

***For socially disadvantaged people, contributions to health insurance and long-term care insurance are also included as a need within the framework of social assistance, so that by this means there is access to adequate and affordable health and long-term care benefits under the same conditions as for other people. If, in addition to that, benefits from the social long-term care insurance are not or only insufficiently granted in case of a need for long-term care, people in need of long-term care may make a claim for care assistance benefits via the social assistance agencies. Prerequisite for these benefits, beside a need for long-term care, is also a financial need.***

**Adequacy**

4. What steps have been taken to ensure the levels of social security and social protection payments are adequate for older persons to have access to an adequate standard of living, including adequate access to health care and social assistance?

*Answer:*

***The pension from the statutory pension insurance is by far the most important provision for old age in Germany. As a wage replacement benefit the pension amount is adjusted annually.***

***The most important criterion for this adjustment is the wage development among employees. Hereby it is ensured that wage and contribution based pensions are in line with the income development of the active contributors.* *Intergenerational confidence-building commitments (with a view to taxes, an appropriate burden on contributors) are important for the acceptance of the statutory pension insurance scheme.[[6]](#footnote-6)***

***If the income does not suffice to ensure a decent subsistence level, the needs for social assistance as the bottommost social security net in case of poverty are calculated for each concrete individual case. The amount payable for the respective needs alongside the standard rate in accord with the respective basic needs level and the expenditure on housing comprises expenditure on heating and, if necessary, additional further needs. Social assistance also covers the contributions to health insurance and long-term care insurance as needs. The determined amount needed minus the creditable income and assets results in the benefit amount. Therefore there is no standardised amount of social assistance per person. The standard needs are determined anew by law every five years after the results of the sample survey of household income and expenditure have been collected.[[7]](#footnote-7)***

***In the years between, standard needs are adjusted by use of a mixed index which proportionately includes both the development of retail costs for goods and services relevant to basic needs and also the German average development of net wages.***

**Accessibility**

5. What steps have been taken to ensure older persons have adequate and accessible information on available social security and social protection schemes and how to claim their entitlements?

*Answer:*

***The pension insurance funds maintain a regionally branched network of information and consulting centres where employees subject to the statutory pension insurance scheme can get information about their pension entitlements. From the age of 27, after 5 years of contributions, insured persons receive an annual pension information letter with an overview of the accrued pension rights and the amount of old-age pension to be expected in the future. From the age of 55 and after at least five years of contributions, every 3 years insured persons receive a detailed pension information letter with extensive information about the individual old-age pensions, pensions on account of reduced earning capacity and survivor's pension.***

***The local social assistance agencies, usually the municipalities, are obliged to provide comprehensive counselling and support for the entitled individuals. Additionally, pension insurance funds are also obliged to inform about the eligibility requirements for basic income support in old age and in the event of reduced earning capacity to advise and to help with the filing of an application for basic income support – particularly by forwarding applications to the agency responsible for basic income support in old-age and in the event of reduced earning capacity.***

***Beyond that there are ample offers of support and advisory services by associations and trade unions as well as other independent bodies such as pension consultants.***

***As a result of an addendum to the ordinance on the avoidance of undue hardship due to early take-up of retirement pensions (Unbilligkeitsverordnung) since 1st January 2017 it has been ensured that older individuals entitled to basic income support (for jobseekers) (Social Code Book II) from the age of 63 (earliest possible retirement age with deductions) will not be obliged to draw an old-age pension early if they have to apply for additional benefits of basic income support in old age and in the event of reduced earning capacity (Social Code Book XII) as a consequence.***

6. The design and implementation of normative and political framework related to social security and social protection benefits included an effective and meaningful participation of older persons?

*Answer:*

***Please see answers to questions 1 and 2.***

**Equality and equal treatment**

7. Which are the measures adopted to ensure equitable access by older persons to social security and social protection, paying special attention to groups in vulnerable situations?

*Answer:*

***Please see answers to questions 2, 3, 4 and 5.***

**Accountability**

8. What mechanisms are in place to ensure social security and social protection schemes are effective and accountable?

*Answer:*

***The pension payable from the statutory pension insurance is adjusted annually. The most important benchmark of this adjustment is the level of wage development among employees. This ensures that wage- and contribution-related pensions keep pace with the income development of active contributors (cf. answer to question 4). There are extensive obligations of transparency and obligations to state reasons in place for the determination of the decent subsistence level[[8]](#footnote-8). Legislature fulfills these obligations especially by way of redetermining the basic needs by law one the basis of the results of the sample survey of household income and expenditure which is done every five years and this way, legislature discloses and provides reasons for each and every step of the determination. In the years where there is no recalculation, the basic needs levels are updated each 1st January. The updating of basic needs levels is made on the basis of the German average development of prices for goods and services relevant to basic needs as well as the German average development of net wages and salaries per employee as per national account (mixed index).***

9. What judicial and non-judicial mechanisms are in place for older persons to complain and seek redress for denial of their right to social security and social protection?

*Answer:*

***The Social Code provides for various options and assistance for the enjoyment and take-up of social rights. They also serve, in particular, disadvantaged persons or persons with reduced mobility to better assert their rights and the low-threshold access to social benefits. The individual is entitled to information and counselling from the social benefits agencies concerning his or her rights and duties according to the Social Code.***

***The social law system provides ordinary legal remedies for all persons concerned. Administrative acts can be reviewed by means of an objection in a preliminary administrative internal proceeding. Legal action can be taken in the social court against a potential decision on an objection.[[9]](#footnote-9) Up to and including the court of appeal there is no obligation to be represented in courts of social jurisdiction. Generally, no court fees apply for plaintiffs in these legal proceedings.***

***Social security recipients can lodge complaints out of court with the supervisory bodies in charge of social benefit agencies as well as with the petitions committees of the German Bundestag or of the respective German state parliaments.***

***Even after exhaustion of all ordinary and extraordinary remedies, the administrative social law procedure of the so-called “Zugunstenverfahren” (a review request) makes it possible for the applicant to make a request for a review to the administration to find out whether the law has been applied incorrectly or incorrect circumstances were taken as a basis.***

1. *From article 20 para. 1 in conjunction with 28 para. 1 p. 2 Basic Law* [↑](#footnote-ref-1)
2. *from article 1 para. 1 Basic Law in conjunction with the principle of the welfare state of article 20 para. 1 Basic Law* [↑](#footnote-ref-2)
3. *from section 74 No. 12 Basic Law (competing legislation)* [↑](#footnote-ref-3)
4. *SGB VI – Social Code - - Book VI -* [↑](#footnote-ref-4)
5. *from article 74 para. 1 No. 7 Basic Law* [↑](#footnote-ref-5)
6. *In order to meet these objectives, legislature introduced the pension pact for Germany during the 18th legislative term. The insofar relevant Act concerning performance improvement in statutory pension insurance first entered into force on 1st January 2019. Thus, security for older people is ensured as well. As to stabilise the efficiency of the general pension insurance scheme, it is ensured that the gross pension level amounts to at least 48 per cent by 2025.*  [↑](#footnote-ref-6)
7. *Lately, this was effected by means of the Basic Needs Calculation Act from 2016 on the basis of the sample survey of household income and expenditure of 2013.* [↑](#footnote-ref-7)
8. *derived from article 1 para. 1 Basic Law in conjunction with the principle of the welfare state from article 20 para. 1 Basic Law* [↑](#footnote-ref-8)
9. *The three-stage social jurisdiction consists of two trial courts (“Tatsacheninstanzen”) (social court option to appeal to the Higher Social Court) as well as an appellate body at the Federal Social Court.* [↑](#footnote-ref-9)