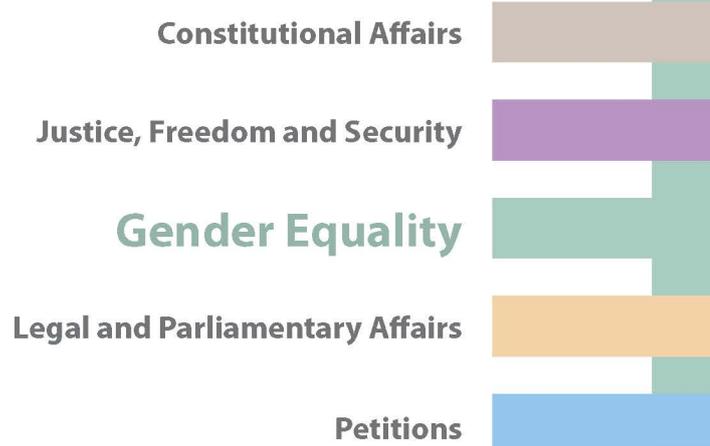


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **C**
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



The Policy on Gender Equality in Germany

In-depth analysis for the FEMM Committee





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

WOMEN'S RIGHTS & GENDER EQUALITY

The Policy on Gender Equality
in Germany

IN-DEPTH ANALYSIS

Abstract

Upon request by the FEMM Committee, this note provides an overview of the gender-equality legislation and policies in Germany, focussing on their recent developments and achievements. It reviews gender equality in decision-making, in employment, reconciliation of private and professional life, strategies to combat violence against women and sexual and reproductive health rights. Germany has achieved some progress in gender equality, mainly in the area of employment. European legislation has acted as the main driver for legal improvements in equal treatment and anti-discrimination.

**DOCUMENT REQUESTED BY THE
COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY**

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CONTENTS

| | |
|--|-----------|
| LIST OF ABBREVIATIONS | 4 |
| EXECUTIVE SUMMARY | 5 |
| 1. GENERAL INFORMATION | 7 |
| 1.1. Background | 7 |
| 1.2. An overview of gender equality in law and policy | 8 |
| 1.2.1. Gender equality: main issues and recent developments | 8 |
| 1.2.2. Gender Equality Machinery | 9 |
| 1.2.3. Gender Mainstreaming and Gender Budgeting | 10 |
| 2. GENDER EQUALITY POLICY AREAS | 11 |
| 2.1. Equal participation in decision making | 11 |
| 2.1.1. Political decision-making | 11 |
| 2.1.2. Economic decision-making | 13 |
| 2.1.3. Administrative decision-making | 14 |
| 2.2. Women in the labour market | 15 |
| 2.2.1. Employment rate | 16 |
| 2.2.2. Atypical and precarious work | 17 |
| 2.2.3. Gender pay gap | 18 |
| 2.2.4. Poverty among female elderly | 18 |
| 2.3. Reconciliation of private and professional life | 19 |
| 2.3.1. Maternity, paternity and parental leave | 19 |
| 2.3.2. Barcelona targets on childcare and care for older persons | 21 |
| 2.4. Eradication of gender-based violence | 22 |
| 2.4.1. Domestic violence | 23 |
| 2.4.2. Sexual violence | 24 |
| 2.4.3. Sexual harassment | 24 |
| 2.4.4. Stalking | 25 |
| 2.4.5. Trafficking in human beings for sexual exploitation | 25 |
| 2.4.6. Prostitution | 26 |
| 2.5. Sexual and reproductive health rights | 27 |
| 2.5.1. Abortion | 27 |
| 2.5.2. Day after pill | 28 |
| 2.5.3. Preimplantation diagnostics (PID) | 28 |
| 2.5.4. Caesarean sections and epidural anaesthesia | 29 |
| 3. CONCLUDING REMARKS | 30 |
| REFERENCES | 31 |

LIST OF ABBREVIATIONS

- ADS** Federal Anti-Discrimination Office
- AGG** General Equal Treatment Act
- BMFSFJ** Bundesministerium für Familie, Senioren, Frauen und Jugend
- CDU** Christian Democratic Party
- DIW** German Institute of Economic Research
- EU** European Union
- FDP** Free Democratic Party
- FIDAR** Frauen in die Aufsichtsräte
- GDR** German Democratic Republic
- GEI** Gender Equality Index
- GG** Grundgesetz (Basic Law)
- NGO** Non-governmental organisation
- PID** Preimplantation Diagnostics
- PND** Prenatal Diagnosis
- SPD** German Social Democratic Party
- StGB** Strafgesetzbuch (Criminal Code)

EXECUTIVE SUMMARY

Compared to other EU member states, **Germany's performance in achieving gender equality is mediocre**. The European Gender Equality Index ranks Germany lower than the EU average. Only in the areas of work, money and time Germany has achieved better results than the EU average. In recent years, efforts have been made particularly in **employment**. The federal government has focused on **family policies** and little efforts have been made in promoting **equality policies**. In addition, family policy was not consistently equality-oriented and had a re-traditionalising effect. **Gender mainstreaming** was implemented at federal level, but not effectively pursued. At Länder level, progress in equality depended on the political will of the 16 Länder governments.

Women are underrepresented **in decision-making**, both in the political and economic area. Most of the political parties have introduced nomination procedures of candidates, in particular gender quotas and zipping systems. In economic decision-making, women are widely underrepresented. A new **quota law for the private sector** has passed in December 2014.

Women have caught up with men in relation to **educational attainment**; however, they encounter gender-specific barriers at different moments of their life course. Women's **employment rate** has indeed clearly increased in recent years, but in Germany women's labour market integration has mainly taken place in jobs providing only little working hours and low wages. **Atypical employment** has increased continuously and has reinforced the **low-pay sector** affecting mainly women. As a result of the German labour market's structure, a considerable proportion of women face the **risk of poverty** at retirement age. The **gender pay gap** in Germany is high and persistent attaining around 22 percent.

Reconciliation policy has become an important policy field, which has recently started to take into consideration the desire of young parents to share family and professional life more equally. The lack of child care facilities still constitutes a problem in Germany. A new law promotes the reconciliation of private and professional life in case of caring for older family members.

The Protection Against Violence Act of 2002 constitutes a paradigm shift regarding the legal protection of women. It proclaims the principle that "the one who does the hitting has to go". In addition, the federal government has established two action plans on combating **domestic violence** more efficiently. In Germany, **sexual violence** is not prosecuted consequently. This is due to the definition of criminal offence in § 177 of the German Criminal Code concerning sexual assault and rape. This paragraph requires that a perpetrator must use violence, or menace to use violence, as a condition for being prosecuted. The federal government has recently announced reform plans to review this issue.

The number of **women trafficked into Germany for sexual exploitation** increased by 70 percent between 2005 and 2010. The current Federal Government has adopted a draft law in January 2015 aiming at better protecting women and children from trafficking. However, most of the recommendations brought forward by experts have not been considered.

The **Prostitution Act of 2002** aimed at improving the legal and social situation of prostitutes in Germany and combating its criminal environment. The law acknowledged prostitution as a legal profession subject to social security. It has been regarded as a further step of progress towards the self-determination of women who choose to offer paid sexual services. The debate among feminists is polarised between voluntary and self-determined prostitution on the one hand, and prostitution as violence against women on the other hand. The Prostitution Act has been held responsible for increasing trafficking of women. The governmental coalition is currently working on a more severe law.

The German **health system** provides equal access to women and men, but the services have been designed around standard male needs. Sexual and reproductive health rights mainly address abortion, preimplantation diagnostics and prenatal diagnosis. According to § 218 Criminal Law, **abortion** is in fact illegal in Germany, but exempt from punishment under certain conditions. Abortion will not be punished if the pregnant woman respects the rules for counselling. Women's NGOs demand the abolishment of § 218 StBG in order to end criminalisation of abortion in Germany.

Preimplantation diagnostics is regulated by the **Preimplantation Diagnostic Act of 2011** which is very restrictive. **Prenatal diagnosis (PND)** is regarded as a preventive medical care for pregnant women. The demand for these services has continuously increased independently of age and risk.

Germany has achieved some progress in gender equality, mainly in the area of employment. **European legislation** has acted as the main driver for legal improvements in equal treatment and anti-discrimination.

1. GENERAL INFORMATION

KEY FINDINGS

- In the end of the 1960s, emerging feminist and civil rights movements called for **socio-cultural changes towards women's self-determination**.
- The **German reunification** of 1990 constituted a new challenge for achieving equality in both parts of the country.
- In recent years, governments have **focused on family policies** which have not been consistently equality-oriented. Despite of the pressure of women's and civil society's organisations, the **federal government did not pursue effective equality policies**. **Gender mainstreaming** has been implemented at federal and Länder level, but not consequently pursued.

1.1. Background

Germany is the European Union's most populous nation with about 82 million inhabitants, of which more than half are women. The German federal governance system provides opportunities on the different governance levels to shape and implement equality policies. According to the German Constitution, Germany is a democratic and **social federal state** which consists of the federal central state and of 16 federal states (Bundesländer).

In the end of the 1960s, emerging feminist and civil rights movements called for **socio-cultural changes towards women's self-determination**, which led to substantial reforms to achieve more equality between women and men. They challenged the traditional gender roles of male breadwinners and female caregivers which characterised the decades after World War II. Married men had the right of final decisions for all family matters until 1957 when the Equal Rights Act came into force. It was only in 1977 that women in the Western part of Germany were entitled to gainful employment without the authorisation of their husbands. In the same year, the fault-divorce was changed into breakdown of marriage. Today, the form and structure of families have changed dramatically and a wider range of forms of cohabitation has emerged.

The **German reunification** of 1990 constituted a new challenge for achieving equality in both parts of the country. In the GDR, people lived in more egalitarian partnerships. Child care was provided by the state and most women worked full-time. In contrast, the majority of women in Western Germany preferred the modified male breadwinner model. In addition, child care was mainly regarded as a family matter. Differences continue to exist, however women's choices have partly converged.

Demographic change and a shift in migration policy towards more integration of immigrants constitute important challenges which have an impact also on gender equality. But the **main driver for progress in gender equality** in Germany has been the **EU's binding legislation on equality**, in particular in women's employment.¹

¹ Maier (2015): Europäische Politiken zur Gleichstellung – nur noch schöne Worte? In: WSI-Mitteilungen 1/2015, 5-12.

1.2. An overview of gender equality in law and policy

1.2.1. Gender equality: main issues and recent developments

Compared to the other EU member states, **Germany's performance in achieving gender equality is mediocre**. The European Gender Equality Index (GEI) ranks Germany lower than the EU average. Only in the areas of work, money and time has Germany achieved better results than the EU average.² In recent years, efforts have been made particularly in employment; however barriers persist, e.g. in wage tax classification and dependant social coverage for spouses. The previous federal governments which were in charge before the latest Bundestag elections of 2013 have mainly **focused on family policies**. The new Minister for Families, Senior Affairs, Women and Youth, Manuela Schwesig (SPD) has shifted attention to gender equality policy.

The German legal framework on gender equality is based on the fundamental rights enumerated in the **Basic Law**. Equality between men and women is proclaimed by its Article 3.³ In 1994, a new article was added to the German Constitution that provided the obligation for the authorities to fight inequality between men and women, in so far as the State promotes the factual implementation of gender equality between men and women and strives to eliminate existing disadvantages. The laws to ensure equal rights and to prevent discrimination in Germany were developed on the basis of these rights of equality.

The **General Equal Treatment Act (AGG)**⁴ which became effective in 2006 **implements four European directives**: the Racial Equality Directive, the Employment Equality Directive, the Gender Equality Directive for goods and services and the Employment Gender Equality Directive.⁵ The Act protects citizens against all sorts of discrimination. The AGG covers discrimination in employment and social legislation, private law and civil service law. It focuses mainly on job discrimination for reasons of gender, race or ethnic origin, religion or belief, age, disability and sexual orientation.

The **Federal Equality Law**⁶ which came into force in 2001 aims at implementing gender equality in the federal public administration, federal courts and federal administration institutions under private law. It introduced the principles of gender mainstreaming into the administration according to the EU Amsterdam Treaty of 1999. In addition, this law requires establishing equality plans and to elect and appoint equality commissioners in all administrations.⁷ The federal states followed and implemented respective equality laws for their territories. The Federal Equality Law had **positive effects** on a more equal share of positions between women and men in the administration. The Federal State and the Länder have established **performance-related quotas** in order to promote the advancement of women working in administrations.

In contrast, women in decision-making positions in the **private sector** are **widely underrepresented**. A non-binding agreement for promoting equal opportunities for men

² See <http://eige.europa.eu/content/gender-equality-index#/country/DE>

³ An English version of the German Basic Law is available at : <http://www.constitution.org/cons/germany.txt>

⁴ General Equal Treatment Act AGG available at: <http://www.gesetze-im-internet.de/agg/index.html>

⁵ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services; Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions.

⁶ Bundesgleichstellungsgesetz, available at: <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=67816.html>.

⁷ Gleichstellungsdurchsetzungsgesetz DGleiG available at:

<http://www.bmfsfj.de/RedaktionBMFSFJ/Abteilung4/Pdf-Anlagen/PRM-13097-Gesetz-zur-Durchsetzung-der-Gl,property=pdf,bereich=bmfsfj,sprache=de,rwb=true.pdf>.

and women had no positive effects. Only recently, a **quota law** has passed in December 2014 against parts of the CDU/CSU group at the Bundestag⁸.

In recent years, different federal and Länder governments with different political majorities have focused on **family policies**. The number of child care facilities has increased, all-day schools were partly established and a new income replacement scheme was set up (Elterngeld). However, in the 2010 and following, little efforts have been made in promoting equality policies. In addition, family policy was **not consistently equality-oriented and had a re-traditionalising effect** mainly on families with low income. Despite of the pressure of women's and civil society organisations, the federal government did not pursue effective equality policies.⁹

1.2.2. Gender Equality Machinery

Since 1995, measures have been introduced aiming at establishing **institutional mechanisms** for the advancement of women according to the Beijing Platform for Action recommendations in their chapter H. To this purpose, three strategic objectives were defined: creating and strengthening national machineries and other governmental bodies; integrating gender perspectives in legislation, public policies, programmes and projects; generating and disseminating gender-disaggregated data and information.

The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has been assigned to coordinate the equality policies within the federal ministries. When gender mainstreaming was introduced as a guiding principle at the Federal Ministries' internal rules of procedure in 1999, an **inter-ministerial working group Gender Mainstreaming**, was introduced in 2000, however, it stopped to work five years later. The **Gender Competence Centre**, established at the Berlin Humboldt University in 2003, was subsequently closed down. Already in 2009, the UN CEDAW Committee criticized the cutback of the coordinating structures and reminded to go back to gender mainstreaming strategies. However, by now, the Federal Government does not pursue a systematic equality policy. Only single equality measures which are partly inconsistent with each other constitute the basis of equality policies. According to the Federal Government's report on the implementation of the Beijing Action Platform, the rapporteur reaffirmed that the government regards equality policy as a cross-sectional task bound to gender mainstreaming. A list of various measures details the efforts of the federal government without presenting a strategy.¹⁰

The **Federal Anti-Discrimination Agency (ADS)** provides unbiased support to persons who have experienced discrimination on grounds of racism or their ethnic origin, gender, religion or belief, on grounds of disability, their age or their sexual orientation. In particular, the Federal Anti-Discrimination Agency provides information on legal claims. It outlines possibilities of taking legal action within the scope of legal provisions for the protection against discrimination and provides referrals to counselling by other bodies all over Germany.¹¹ It also addresses discrimination based on sex and equal opportunities between women and men. According to the Federal and Länder Equality Laws, **equality commissioners** act on all issues related to gender equality and anti-discrimination at all levels of governance, including municipalities.

⁸ See below section 2.1.2.

⁹ See Alternative Report submitted by the Alliance of German Women's Organizations, in response to the 6th Periodic Report of the German Federal Government on the Convention of the Elimination of all Forms of Discrimination against Women, 2008; available at: <http://www.frauenrat.de/deutsch/infopool/nachrichten/informationdetail/article/cedaw-2009.html>

¹⁰ BMFSFJ (2014): Beijing + 20. Implementation of the Beijing Platform for Action. Federal Republic of Germany.

¹¹ Further information available at: http://www.antidiskriminierungsstelle.de/EN/AboutUs/aboutUs_node.html.

1.2.3. Gender Mainstreaming and Gender Budgeting

At federal level, **gender mainstreaming was in fact implemented, but since 2005 no longer pursued effectively.**¹² An inter-ministerial structure for gender mainstreaming at the federal government or a network of contact persons in all ministries no longer exist. According to the EIGE review on the implementation of the Beijing platform for Action in the EU member states, Germany ranks under the 8 EU countries which regressed in this area, although the federal ministries continue to be in charge to legally implement gender mainstreaming. But this legal obligation remains without results when there is no political will and no structures to effectively implement gender mainstreaming. In 2012, Germany was one from three European countries which disposed of no structures at all for implementing gender mainstreaming.¹³

As to gender reporting, the Federal Government submitted its first Report on Gender Equality in 2011 and is committed by decision of the German Bundestag to draft such a report from now on once every election period.

At Länder level, progress in equality depends on the political will in each of the 16 Länder governments which proves different according to the political majorities. In some Länder, gender mainstreaming has become an efficient strategy, e.g. in the Land of Berlin which has also implemented **gender budgeting** processes. Among German cities, Munich, Freiburg and Cologne have developed advanced gender mainstreaming and budgeting processes.

¹² The federal government commissioned a feasibility study on implementing gender budgeting at federal level, but has been reluctant to promote such projects. BMFSFJ (2006) : Machbarkeitsstudie Gender Budgeting auf Bundesebene, Berlin pp 235.

¹³ European Institute for Gender Equality EIGE (2014): Effectiveness of institutional mechanisms for the advancement of gender equality. Review of the implementation of the Beijing Platform for Action in the EU member states, Luxembourg.

2. GENDER EQUALITY POLICY AREAS

2.1. Equal participation in decision making

KEY FINDINGS

- Although equal rights for women and men are guaranteed by the Basic Law, by the Federal Equal Treatment Act and by respective laws in the federal states (Länder), **women in decision-making positions** are underrepresented in Germany, **both in the political and economic area**;
- The **proportion of elected women at the German Bundestag** and **at federal state level** has remained about **one third** for over ten years. As the 30% mark is regarded as “critical mass” for influencing decision-making effectively, political decision-making has not been a key issue in recent years.
- Most of the political parties have introduced measures in their respective nomination procedures of candidates to increase the proportion of women in electoral lists. In particular **gender quotas and zipping systems** have proven positive effects.
- Women are widely under-represented in **economic decision-making positions**. On the basis of the current coalition agreement, the new Federal Minister for Women and the Federal Minister for Justice have recently proposed guidelines for a draft law which stipulates quotas of at least 30% for women on supervisory boards from 2016. The quota law has passed in December 2014.
- In the **public sector**, the proportion of female employees attains more than 50%. Equality laws at federal and Länder level have established **performance-related quotas** in order to promote the advancement of women. In the federal administration, the proportion of women in all management functions has attained 30%.

Compared to their proportion in society, **women in decision-making positions are underrepresented in Germany, both in the political and economic area** - even though equal rights for women and men are guaranteed by the Basic Law, by the Federal Equal Treatment Act and by the respective laws in the federal states (Länder) and regardless of the fact that equal opportunities for men and women constitute an essential objective of equality policies.¹⁴ Participation of women in top positions of companies is a prevailing issue, in contrast to female participation in political decision-making.

2.1.1. Political decision-making

The proportion of elected women at the German Bundestag and at federal state level has remained about one third for over ten years (32% in 2010). The 30% mark is regarded as “critical mass” for influencing decision making effectively.¹⁵ This may explain why political decision-making has not been a key issue in recent years. In all the other decision-making fields the percentage of women is lower. Accordingly, political decision

¹⁴ BMFSFJ (2013): 2nd Gender Equality Atlas for Germany, Berlin, 133

¹⁵ BMFSFJ (2010): Atlas zur Gleichstellung von Frauen und Männern in Deutschland, 7; BMFSFJ (2013): 2nd Gender Equality Atlas, 8.

makers in parliaments play a leading role in achieving equality. This may reflect societal change as those positions have been assigned through elections.

More recently, the percentage of women sitting in the German Bundestag has increased from 32.9 percent to **36.5 percent**, following the last elections of 22 September 2013.¹⁶ These successful results have been ascribed to the **nomination procedures of candidates** of the political parties with regard to gender equality. The majority of political parties promote a balanced participation of women and men as candidates in political elections. All important political parties have introduced respective measures. The Green party has inserted a far reaching women's statute in its articles and has fixed an internal **quota** of 50 percent for women.¹⁷ In its statutes, Die Linke has opted for a 50 percent quota and has assigned the first or the second list's positions as well as all following odd positions to women as far as sufficient female candidates have been available.¹⁸ The Social Democratic Party (SPD) has established a 40 percent quota for women at all organisational levels.¹⁹ However, only 9 in 16 electoral lists (one list in every federal state) for the recent Bundestag elections have manifested a 40 percent proportion of female candidates. The Christian Democratic Union (CDU) is committed to a so-called "Quorum" which aims at a female participation rate of one third in all party positions and public mandates.²⁰ However, the CDU has achieved this goal in only 10 out of 15 electoral lists at Länder level. The CSU of Bavaria which forms a political group with the CDU at the Bundestag, has introduced a 40 percent quota for party positions, but does not stipulate measures in order to increase the number of female candidates.²¹

At the **federal government, almost one third of all leading positions are occupied by women** (32.1 percent in September 2014 against 29 percent in 2012). Almost all ministries have increased their proportion of women in 2014. There are considerable differences between levels of hierarchy: at federal ministry level, the proportion of women is 40 percent.²² The group of Parliamentary State Secretaries totals the highest proportion of women (41.2 percent).²³

At **municipal level, the proportion of elected women is weak**. Respective rankings on women's participation in elections have provoked a societal debate on how to increase the number of women in town councils. As a result, the Federal Government, Länder governments and women's organisations have carried out a multitude of **programmes to increase the proportion of women** as candidates at electoral lists. Compared to 2008, a number of cities have increased their proportion of women. In 2011, the average rate of female representation at municipal councils has attained 26.1 percent, ranging from 18.7 percent to 41.9 percent across the country.²⁴

¹⁶ Two parliamentary groups, those of Bündnis 90/Die Grünen and of the Linke, are even composed of more women than men (34 women against 29 men and 36 women against 28 men). The Social Democrats total 32 female deputies and 111 male deputies, the Christian Democrats 78 women and 233 men. Available at: http://www.bundestag.de/bundestag/abgeordnete18/mdb_zahlen/frauen_maenner/260128.

¹⁷ In addition, the electoral list's positions are assigned alternately dedicating the first and all the following odd positions to women. A Federal Women's Conference open for all women is organised every year in order to communicate with the general public and to bring forward equality objectives. Bündnis 90/Die Grünen (2012): Grüne Regeln. Satzung des Bundesverbandes, 62-68.

¹⁸ Die Linke depicts its vision of gender democracy and stipulates that the political participation of women within the party should be promoted actively. The party aims at preventing all discrimination against women's political work. Die Linke (2014): Bundessatzung, 10-11.

¹⁹ SPD (2014): Organisationsstatut, Wahlordnung, Schiedsordnung, Finanzordnung der sozialdemokratischen Partei Deutschlands 18, 26, 31, 46,48.

²⁰ CDU (2007): Statutenbroschüre der CDU Deutschlands, Berlin, 11-12.

²¹ Chojecka/Lukoschat (2013): Deutschlandreport, 3-6.

²² Chancellor Angela Merkel and 5 among 15 federal ministers are women, namely the Federal Minister of Defense, the Federal Minister for Education and Research BMBF, the Federal Minister for Environment and Construction, the Federal Minister for Employment and Social Affairs and the Federal Minister for Family Affairs, Senior Citizens, Women and Youth BMFSFJ. Bundesregierung 2014 available at: http://www.bundesregierung.de/Content/DE/Anlagen/Bundeskabinett_PDF.pdf?blob=publicationFile&v=19

²³ Fallois von ./ Höfeler, (2014): FRAUEN-MACHT-REGIERUNG II. Eine Studie über den Anteil von Frauen in Führungspositionen der Bundesregierung (Kienbaum), 10-16, 37.

²⁴ BMFSFJ (2013) 2nd Gender Equality Atlas, 10-11.

2.1.2. Economic decision-making

Women in economic decision-making continue to be widely underrepresented in the German private and public sector. A multitude of studies on women in executive positions conducted by the European Commission, the Federal Statistical Office, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ), the German Institute of Economic Research (DIW), the Hans Böckler Foundation, and others, have proven the unequal share of women in economic decision-making for many years. The current situation is characterised by a significantly weak proportion of women in executive positions in German companies. According to the recent Women-on-Board-Index, the proportion of **women in supervisory boards is 18.9 percent. Only 5.8 percent of the executive board members are women.** Among the 160 DAX, MDAX and TecDAX listed companies in Germany, the proportion of women in advisory boards has recently increased. A number of companies nominated women for the first time. However, the proportion of women in executive boards has even decreased so that a slow-down of the development can be observed.²⁵

The first **initiative for an equality law for the private sector** in Germany has been **rejected in 2001** by the majority of the Bundestag. The Federal Government and the umbrella organisations of the German economy subsequently signed a non-binding **agreement** for promoting equal opportunities for men and women in the private sector. However, this agreement had **no positive effects** on a more equal share of economic decision-making between men and women.²⁶ A multitude of initiatives have campaigned for binding rules in order to change the gender-related composition of corporate boards. Positive experiences in this field especially in Norway motivated stakeholders to require **gender quotas** in order to increase the number of women on boards. The "Berlin Declaration" of 2011 required a **binding legal regulation of 30 percent women** on advisory boards of listed, co-determined and public companies. This declaration was initiated by female members of the Bundestag on a cross-party basis. Not only deputies of political parties who have required fixed quotas played an active role, but also female deputies of the political parties which have combated legal quotas (CDU, CSU, FDP). In addition, a huge societal alliance across party lines accompanied the initiative which justified their action with: "We are not willing to continue to tolerate the violation of Article 3 Paragraph 2 Basic Law".²⁷

The former minister for Family Affairs, Senior Citizens, Equality and Youth, Kristina Schröder (CDU), rejected those requirements and proposed instead to establish flexible quotas which the companies should fix themselves. Representatives of the economy argued that qualification constituted the most important factor for them. In their opinion, quotas would undermine the needs of boards. Therefore, they preferred flexible quotas which have been objected by the political parties Bündnis 90/Die Grünen, SPD, parts of the CDU and Die Linke as well as by women's associations and equality bodies.

After the elections to the German Bundestag in September 2013, a new government was formed with Manuela Schwesig (SPD) as the new Minister for Women Affairs. On the basis of the coalition agreement, she and the Federal Minister for Justice have recently proposed guidelines for a draft law which stipulates quotas of at least **30 percent for women on supervisory boards from 2016.** This **quota law was finally adopted in December 2014** against parts of the CDU/CSU group at the Bundestag who fought against the draft law. In addition, the Federal Equality Act of 2001 and the Appointments to Federal Bodies

²⁵ BMFSFJ (2014): Gleichstellung von Frauen und Männern in der Bundesverwaltung, 5.

²⁶ BMFSFJ (2011): Vierte Bilanz der Bilanz zwischen der Bundesregierung und den Spitzenverbänden der deutschen Wirtschaft..

²⁷ Berliner Erklärung 2011 available at: <http://www.berlinererklaerung.de/>

Act²⁸ **will be reformed in order to promote equality, including in public companies and federal bodies.**²⁹

The debate on quotas has mainly been pushed forward by two civil society initiatives. The German Female Lawyers Association participated in 60 shareholder meetings to ask in which way the companies intend to realise the self-commitment for equality (which was announced in the working programme of the governmental commission German Corporate Governance Codex in 2010).³⁰

The Initiative for More Women in Advisory Boards (FidAR) has created the Women-on-Board-Index in 2011. This ranking provides data on the number of women on boards every year and promotes transparency and orientation. It has mainly contributed to involving the general public in the debate.³¹

2.1.3. Administrative decision-making

In Germany 5.7 million people work in the public sector. Among them, more than 50 percent are women (2002: 50 percent; 2011: 3 million or 53 percent). However, a **strong segregation of female and male activities or professions** can be observed. The proportion of women in teaching professions, in day-care facilities for children, in hospitals or in social security attain 70 percent or even higher whereas women continue to be clearly underrepresented in the police, in the military or in the transport sector. Among younger age groups, horizontal segregation appears to be even more pronounced. Women have also caught up as employees in public enterprises. In 14.764 public enterprises which existed in Germany in 2009, the proportion of female employees attained 48 percent.³²

The **Federal Equality Law** which came into force in 2001 aims at implementing gender equality in the federal public **administration**, federal courts and federal administration institutions under private law. It introduced the principles of **gender mainstreaming** into the administration according to the EU Amsterdam Treaty of 1999. In addition, this law requires establishing **equality plans** and to elect and appoint **equality commissioners** in all administrations³³. The federal states followed and implemented respective equality laws for their territories. The Federal Equality Law had **positive effects** on a more equal share of positions between women and men in the administration.

Equality laws at federal and Länder level have established **performance-related quotas** in order to promote the advancement of women working in administrations. In the case of equal qualification, competence and professional performance women have to be preferred if they are underrepresented. In consequence, women perform better in decision-making positions in the public sector than in the private sector.³⁴ **In the federal administration, the proportion of women in all management functions has attained 30 percent.**³⁵ At the supreme federal authorities, the proportion of women has been lower (23 percent) and vertical gender segregation appears to be particularly pronounced. The current situation at the federal ministries shows a positive development. Among heads of department, the percentage of women is the most underrepresented (23.6 percent). At first-line management (head of division), the proportion of women is significantly higher

²⁸ Bundesgremienbesetzungsgesetz

²⁹ BMFSFJ Im Fokus Nr. 52, 25 March 2014

³⁰ Available at: http://www.djb.de/Themen/Projekt_HV/

³¹ Available at: <http://www.fidar.de/wob-index/uebersicht.html>

³² Schimeta (2012): Einsam an der Spitze, 11-14.

³³ Gleichstellungsdurchsetzungsgesetz, DGLG.

³⁴ According to findings based on micro-census of 2007, their proportion total 33 percent; 45 percent in East Germany and 29 percent in West Germany. Kleinert (2011), 1-2.

³⁵ Zweiter Erfahrungsbericht zur Umsetzung des Bundesgleichstellungsgesetzes 2009 available at: <http://dipbt.bundestag.de/extrakt/ba/WP17/320/32090.html>.

(32.2 percent) as a consequence of the higher number of leading positions at that level.³⁶ Differences can be observed between the federal ministries. Where the minister in charge is a woman, the proportion of leading women in civil service positions appears to increase. Compared to 2012, there is a **clear trend to increase female participation in administrative decision-making**.³⁷

2.2. Women in the labour market

KEY FINDINGS

- Equality between men and women in the labour market is guaranteed by law; however, **de facto equality** between women and men in gainful occupation has **not yet been realised** in Germany and **strong gender specific differences** still prevail in the labour market.
- Women have caught up with men in relation to **educational attainment**; however, they encounter gender-specific **barriers** at different moments in their life course, mainly choice of profession, career entry, start of a family and childbirth, retirement age.
- **Women's employment rate** has indeed **clearly increased** in recent years, but in Germany women's labour market integration has mainly taken place in jobs providing only **little working hours and low wages**.
- The increase of women's labour market participation goes ahead with a **change in employment behaviour among mothers** from the caring to the working mother. In consequence, the **modernised breadwinner model** has become more prevalent in both parts of Germany.
- **Atypical employment** has increased continuously in Germany and has reinforced the **low-pay sector** affecting mainly women.
- Germany is marked by **one of the highest and most persistent gender pay gaps in the EU** attaining around **22 percent**.
- As a result of the German labour market's structures, a considerable proportion of women face the **risk of poverty at retirement age**.

Equality between men and women in the labour market is enshrined in Article 3 of the Basic Law which guarantees gender equality, as well as in the Works Council Constitution Act which prohibits gender discrimination.³⁸ The General Equal Treatment Act (AGG) of

³⁶ Fallois von/Höfeler 2014: 10-16, 37.

³⁷ However, experts have pointed out that despite the performance-related quotas women continue to be underrepresented in decision-making positions. A report which examines the situation of women at the administration of the Land North-Rhine-Westphalia states that those quotas do not have the effects intended by the equality law. This appears to be due to evaluation criteria which are developed in selection processes in order to find the best qualified candidate and to avoid the appointment of a female candidate conformable to the performance-related quota. Papier (2014): Rechtsgutachten, 32-36.

³⁸ German Basic Law available at

The Works Council Constitution Act stipulates in § 75 that wage earners must not be discriminated against on the ground of race or ethnic origin, descent, nationality, religion or belief, disability, age, political or trade union activities or attitudes or gender or sexual identities. Available at: <http://webcache.googleusercontent.com/search?q=cache:GFDssOpkiuOJ:www.gesetze-im-internet.de/bundesrecht/betrvg/gesamt.pdf+&cd=2&hl=de&ct=clnk&gl=de>

2006 implements the relevant European directives (see above). Its objective is to prevent and to eliminate both **direct and indirect discrimination**. In addition, case law determines further developments in this field. However, de facto equality between women and men in gainful occupation has not yet been realised in Germany. Although **women have caught up men relating to educational attainment and perform even better than men, they are not able to realise this outcome in the labour market**. **Women's employment has indeed clearly increased** in recent years, but women's labour market integration has mainly taken place in **jobs providing only little working hours and low wages**. Women's share of the overall volume of gainful employment has not increased; it has latterly even slightly decreased. Men's employment has also become more fragmented, but **strong gender specific differences still prevail** in the labour market.³⁹

Demographic change and its consequences on the workforce have an impact on the female labour force potential because, as a consequence, companies need to develop new qualified human resources. Thus, gender equality in employment has become an important asset for economic development and an objective of employment policies.

2.2.1. Employment rate

Today, more women are employed than ever before in Germany. The early 1990ies marked a turning point with regard to women's labour market participation. Since German reunification, **female employment** in western Germany has seen a **constant and strong increase**.⁴⁰ Between 1991 and 2012, the female employment rate rose 12.9 percentage points from 54.6 percent to 67.5 percent. In eastern Germany, the female employment rate was temporarily reduced as a result of German reunification and then increased again and, at 69.1 percent, slightly exceeded the western German rate in 2012. While the number of female workers has increased almost constantly over the past 20 years, the number of male workers in 2013 was only slightly higher than in the early 1990s. Among women, this development was supported by a **higher level of qualifications** of younger individuals who replaced less qualified cohorts, which gradually left the labour market.

Employment among women and men aged 55 and above has particularly increased in the period until 2012 in both parts of Germany. This is seen as a result of the **pension reforms**, which have risen the **regular retirement age from 65 to 67**, and a shift in labour market policies which associated deductions for early retirement in order to stop using it as a general tool to combat unemployment. However, the participation rate of women aged more than 55 remains significantly lower than of men at the same age.

The increase in the female employment rate in western Germany in recent years has been driven particularly by a **change in employment behaviour among mothers**. While mothers of young children used to take a long break, today such **breaks are shorter and the majority of employed mothers return to their workplaces at the end of the three years' parental leave**. In particular, highly qualified women use to return faster into employment than less qualified women.

Those developments imply a significant societal change, which has an impact on the lifestyle of couples with children. After German reunification, the **modernised breadwinner model**⁴¹ of father in full-time employment and mother in part-time

³⁹ See BMFSFJ (2011): Neue Wege – Gleiche Chancen, 88-94.

⁴⁰ For the following see: BMFSFJ (2011): Neue Wege – Gleiche Chancen.; Holst/Wieber (2014): Eastern Germany ahead in employment of Women, in: DIW Economic Bulletin 11.2014.

⁴¹ The modernised breadwinner model is a variation of the traditional breadwinner model. The latter is based on a distinct division of labour within the couple, consisting in the father providing financial resources through paid work in full-time employment on the one hand, and the mother who does the unpaid care work for the family members. In the modernised breadwinner model the mother cares for the family and additionally contributes to

employment **has become more prevalent** in both parts of Germany. In western Germany, the traditional male breadwinner model has lost significance. 30.7 percent of two-parent households currently live according to this model against 44.8 percent in 1996. In eastern Germany, the situation is different. In over half of the households with two working parents, both parents are still in full-time employment, thus living according to the equality model against almost three-quarters in 1996. As a result, the modernised breadwinner model has gained ground in both parts of Germany.

2.2.2. Atypical and precarious work

Despite positive developments in the German labour market, in 2013, 45.3 percent of all employment contracts in Germany were part-time, marginal part-time (mini-jobs) or subcontracted labour (Leiharbeit). The proportion of part-time work attained 20.2 percent.⁴² While women have caught up in labour force participation, the **unequal distribution of part- and full-time jobs between women and men** has barely changed. In 2013, almost half of women in employment worked part-time; in contrast, this was the case of only one in nine men. This is an important reason why in terms of **volume of work** the share of women has remained stable. In 2013, women accounted for just fewer than 40 percent of the total number of hours worked. In 2013, women worked an average of 30.1 hours per week, whereas men worked an average of 39.5 hours per week.⁴³

The **Hartz labour market reforms** implemented 10 years ago aimed at activating both short- and long-term unemployed by a new institutional repertoire of active schemes. They constituted a structural change of the German unemployment and social benefit system, which has had an impact on gender equality.⁴⁴ The **promotion of flexible and discontinuous employment has reinforced the low-pay sector affecting mainly women**.⁴⁵ In 2014, more than two thirds of all low-paid persons were women. However, there exist considerable differences between eastern and western Germany.⁴⁶ In addition to the labour market reforms, the fast increase of low-paid work has also been due to high unemployment rates after the German reunification.

In particular, the extension of the **mini job scheme** (450 Euro job) in the course of the Hartz IV reform has **deteriorated women's situation**, as they do not receive sufficient wage for living. Today, the proportion of mini-jobs attains 21.1 percent of all employed persons.⁴⁷ The employed persons in this segment are not entitled to the regular social security benefits and they depend on welfare schemes in case of unemployment or retirement. Since the maximum cap of 15 working hours per week has been lifted, the hourly wages of mini jobs decreased dramatically. Women's organisations and trade unions have called for the abolishment of the mini job scheme for a long time.⁴⁸ However, the current federal government has no such plans on the agenda.

After long and intensive controversies in politics, in the economy and society, a **minimum wage of 8.50 Euros per hour has been introduced** at the beginning of 2015 by the

the family income generated by the father through part-time or marginal part-time work. In contrast, the equality model is based on two parents working full time or approximately full time.

⁴² See WSI-Datenbank "Atypische Beschäftigung", available at: http://www.boeckler.de/wsi_5859.htm

⁴³ See Brenke (2015): Growing importance of Women in the German labor market, in: DIW Economic Bulletin 5.2015.

⁴⁴ See Botsch/Maier (2009): Gender Mainstreaming in Employment Policies in Germany, Berlin.

⁴⁵ In December 2013, 7.65 million persons or 17.8 percent of all employed persons were employed in the low wage sector, among them 61 percent women. Anfrage der Grünen im Bundestag.

⁴⁶ While the proportion of low-paid women in western Germany attained 71.3 percent from 2004 to 2007, this proportion was clearly lower in eastern Germany attaining only 57.7 percent. See Holst/Wieber (2014).

⁴⁷ Compared to 2007, the proportion of mini-jobs has even risen to 0.6 percentage points. See Böckler Impuls 14/2014, 1.

⁴⁸ Deutscher Frauenrat (2010): Minijobs – Wege in die Armut. Kann sich unsere Gesellschaft Minijobs leisten? Positionspapier des Deutschen Frauenrats zu Minijobs beschlossen auf der Mitgliederversammlung 2010.

current governmental coalition of CDU/CSU and SPD. Women's organisations, trade unions and a number of stakeholders had been calling for this reform for a long time. Experts estimate that in particular women will benefit from that law. However, the regulation provides a number of cases exempted from the minimum wage.

2.2.3. Gender pay gap

Germany is marked by one of the highest and most persistent gender pay gaps in the EU attaining around 22 percent, while the EU average is 16.4 percent.⁴⁹ **In the private sector, the gap is much higher than in the public sector.** It results from persisting horizontal and vertical job segregation between men and women, from employment breaks and working time reductions due to care work for the family, as well as from undervalued skills and competences of women who used to be employed in low-paid careers for women. In addition, the labour market's structure depicted above contributes to strengthen wage differentials between women and men, in particular by the increased low wage sector. In addition to direct wage discrimination, the appraisal of female work appears to be the main problem for the gender pay gap in Germany.

Since the **Equal Pay Day** has been introduced in Germany in 2008 initiated by *Business and Professional Women*, **more attention** has been paid to the gender pay gap. However, up to now, **binding measures** able to reduce the gender pay gap or to value female work adequately **do not exist**. Instruments aiming at measuring pay gaps at companies like Logib-D or Eg-Check need to be developed and implemented.⁵⁰ When the current federal minister for Women Affairs Manuela Schwesig opened the gender pay gap campaign 2015, she confirmed to be **planning a law on equal pay** which will guarantee transparency in order to combat women's wage discrimination.⁵¹

2.2.4. Poverty among female elderly

Although the **labour market participation of the elderly has increased** since the implementation of the pension reforms aiming at increasing the statutory retirement age in annual steps between 2012 and 2029 to 67 years of age, older women's labour market participation is **still low** and, in consequence, their **pension levels** will be **low** as well. This results from instable labour market integration and the high proportion of women working in the low wage sector. Actually, **women receive at average only 40 percent of men's pensions**. Furthermore, the current gender pay gap will very likely result in a gender pension gap over the next 20 years.⁵²

In particular women's share of part-time and marginal part-time jobs and low paid work as well as horizontal and vertical segregation tend to increase women's **risk of poverty also at retirement age**.

⁴⁹ Eurostat available at: http://ec.europa.eu/eurostat/statistics-explained/index.php/Gender_pay_gap_statistics

⁵⁰ BMFSFJ (2011), Neue Wege – Gleiche Chancen „, 117-125; direct and indirect wage discrimination: <http://www.frauenrat.de/deutsch/infopool/nachrichten/informationdetail/article/-727fb5a85a.html>; further information: <http://www.equalpayday.de>.

⁵¹ <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=210602.html>

⁵² Goebel/Grabka (2012): Entwicklung der Altersarmut n Deutschland, DIW Berlin.

2.3. Reconciliation of private and professional life

KEY FINDINGS

- **Reconciliation policy** has become an **important** policy field in Germany, which recently started to consider with more attention the desire of young parents to share family and professional life more equally.
- In January 2007, a **new income replacement scheme** (Elterngeld) was set up, lowering maternity leave allowances and shortening the length of the paid leave period, accompanied by an incentive for fathers to take a leave too. Elterngeld represents a **change in the paradigm of German family policy** as it recognizes that mothers are “employed” persons and encouraging fathers to contribute more actively to the care of children.
- The **parental leave regulation**, covering **three years**, remains in force. Parents may remain in employment but for the time of their leave receive neither wages nor benefits.
- The current Federal Minister for Family Affairs, Senior Citizens, Women and Youth Manuela Schwesig has reformed the income replacement scheme into **Elterngeld Plus**, which responds to parents aiming at a more equal share of private and professional life.
- The **lack of childcare facilities** still constitutes a **problem** in Germany. A considerable proportion of mothers encounter difficulties to find child care facilities for children aged 1 to 3 years old.
- A new law, which became effective in January 2015, promotes the reconciliation of private and professional life in case of **caring for older family members**.

2.3.1. Maternity, paternity and parental leave

The first Gender Equality Report commissioned by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2013) has analysed equality of men and women in the life cycle. Key moments in women’s life cycle have been identified which cause inequality between men and women. In particular, **starting a family** and thus **employment breaks** and **getting back to gainful employment** prove to be decisive moments in women’s life, which generate inequality.

According to the report, the level of education and of professional qualification appears to be very high for both, men and women. However, relevant differences are connected to family life. **Caring for small children remains the main cause for the persisting disadvantages for women in career building** in Germany. These negative effects cannot be caught up during the life course. In consequence, women in decision-making positions tend to have no children. In 2006, 70% of the women in leading positions in Germany had no kids; this proportion has increased to 77% in 2008. 25% of the women in decision-making positions were singles. This proportion is twice as high as those of male decision makers.⁵³

⁵³ BMFSFJ (2013), 2nd Gender Equality Atlas, 126-129.

Reconciliation policy has become an **important** policy field in Germany, which recently started to consider with more attention the desire of young parents to share family and professional life more equally. In January 2007, a **new income replacement scheme for mothers** (Elterngeld) was set up, replacing the previous scheme (Erziehungsgeld) that provided flat benefits for up to two years after childbirth, subject to an earnings ceiling. The new Elterngeld scheme foresees that mothers retain two thirds of previous earnings after childbirth for the period of one year. Elterngeld represents a **change in the paradigm of German family policy** as it recognizes that mothers are “employed” persons who need an income replacement during the period of childcare, while the period of Elterngeld entitlement has been reduced to one year as a reaction to the critique that the withdrawal of young mothers from the labour market had been rather long. Elterngeld is paid for two additional months in cases where the **father** also takes leave, prolonging the entitlement period to a maximum of 14 month, so to encourage fathers to contribute more actively to the care of children. The **parental leave regulation**, covering three years, remains in force. Parents may remain in employment but for the time of their leave receive neither wages nor benefits.

The findings of the evaluation report 2009 show that, due to Elterngeld, **young mothers go back to gainful employment earlier**. The majority of mothers in gainful employment before child birth use to go back to work at the end of the parental leave period of three years. Highly qualified mothers use to go back earlier. However, the majority of mothers choose **part-time** work in order to better reconcile private and professional work.

Elterngeld influences the assignment of responsibilities within the family. **Young fathers contribute actively to child care** and spend more time with their children as a result of the income replacement scheme. Since it has been introduced, the number of fathers who make use of it has continuously **increased** attaining about 25 percent in 2012. In average, they take three and a half months leave. A quarter of them take a longer leave for the family.⁵⁴

Studies on **working time wishes** differentiated by gender show that men in two-parent households with children up to the age of 16 work around 43 hours per week (2013) in both parts of Germany. However, significantly lower working hours are desired among them than are actually worked. They wish to work 38.8 hours (west) and 38.6 hours (east). This is about the same level as their contractually agreed working time. **Among mothers, clear east-west differences persist**. In 2013, mothers in eastern Germany worked over nine hours longer, at an average 34.9 hours of actual working time, than mothers in the west (25.5 hours). This difference is due to **different societal models**. In the GDR, women used to be in full-time employment and public childcare structures were available and well-developed. By contrast, in western Germany, child care was rather privatised and paid work for mothers was generally seen merely as a source of supplementary income. Up to now, mothers’ desired average weekly working time increased in the west and fell in the east. According to recent studies, young parents frequently wish to share gainful employment and care work equally; however, we can observe that gender roles change after the first childbirth into more traditional patterns.⁵⁵

The current Federal Minister for Family Affairs, Senior Citizens, Women and Youth Manuela Schwesig (SPD), therefore, has reformed the income replacement scheme into **Elterngeld Plus** which responds to parents aiming at a more equal share of private and professional life. It is regarded as a **flexible** instrument which provides that **parents can go back very early to part-time work and receive Elterngeld Plus for a longer period**. In addition, if both mother and father go back to work part-time (25 -30 hours weekly), four months can be added to Elterngeld Plus. This regulation promotes **partnership** among parents and

⁵⁴ BMFSFJ (2009): Evaluationsbericht Bundeselterngeld und Elternzeitgesetz 2009, Berlin; DIW (2012): Elterngeld-Monitor, Berlin, commissioned by BMFSFJ

⁵⁵ BMFSFJ (2011): Neue Wege, 98-99.

supports equality between women and men. Furthermore, parents who wish to take a break for the family are provided with more flexibility to do so.⁵⁶

Elterngeld Plus is welcomed by civil society's organisations which represent **single parents**. Partnership between mothers and fathers promote women's continuous professional careers and insure their economic independence. In the case of divorce or separation, a more equal share of family and professional life between mother and father will strengthen the position of single mothers who continue to encounter numerous disadvantages. At the same time, those organisations also criticised the fact that single parents do not benefit from additional months for partners.⁵⁷

2.3.2. Barcelona targets on childcare and care for older persons

The **lack of child care facilities** still constitutes a problem in Germany. A considerable proportion of mothers encounter difficulties to find child care facilities for children aged 1 to 3 years old, although the Federal Government scheduled the increase of the number of child care places for children under 3 years already in 2003. The child care facilities creation law of 2004⁵⁸ assumed a need for additional 230.000 places, which has been difficult to achieve. In 2013, 780.000 places for children under 3 years have been planned at federal level, a number which should cover the demand of 35 percent of children under 3. Since August 2013, every child under 3 years is entitled to a place. If childcare cannot be provided by their municipality, parents can file complaints. Actually, in 2013, a proportion of only 29.3 percent of all children of this age group had a place. The proportion was twice as high in eastern Germany than in western Germany. There are important regional differences between the Länder and the municipalities in terms of places available.⁵⁹

Caring for older persons constitutes a further challenge in women's life cycle. A new law which became effective in January 2015⁶⁰ promotes the reconciliation of private and professional life in this case. It regulates a paid break of ten days in case of an urgent need of caring for family members. In addition, a full or part-time break of 6 months can be taken. Persons concerned have the right to receive an interest-free loan in order to provide their living.⁶¹

⁵⁶ Further information: <http://www.elterngeld-plus.de/>

⁵⁷ Verband alleinerziehender Mütter und Väter Bundesverband e.V., available at: <https://www.vamv.de/>

⁵⁸ Tagesbetreuungsbaugesetz

⁵⁹ Statistisches Bundesamt (2013): Kindertagesbetreuung regional 2013. Ein Vergleich aller 402 Kreise in Deutschland, 7-8.

⁶⁰ Pflegezeitgesetz

⁶¹ Further information: Federal Government available at <http://www.bundesregierung.de/Content/DE/%20Artikel/2014/10/2014-10-15-kabinett-vereinbarkeit-familie-pflege-beruf.html>

2.4. Eradication of gender-based violence

KEY FINDINGS

- Combating **violence against women** is regarded as a **high priority** for women's and civil society's organisations and for the Federal Government.
- The **Protection Against Violence Act** of January 2002 constitutes a paradigm shift regarding the legal protection of women. It proclaims the principle that "the one who does the hitting has to go".
- The Federal Government's **two action plans** to combat domestic violence against women have established a comprehensive concept of how to combat violence in a more efficient way. **The second action plan** highlighted the fact, that the majority of women concerned had experienced violence in their own home. It also addressed migrant women.
- The criminal offence § 177 of the **Criminal Code**⁶² concerning **sexual assault and rape will be reformed**.
- The **General Equal Treatment Act** AGG which came into effect in 2006 provides legal **protection against all forms of sexual harassment**.
- **Stalking** became a new legal **offence** on 31 March 2006, aiming at quick interventions by the police and at protecting victims.
- Implementing the EU Directive 2011/36/EU, the Federal Government has adopted a **draft law on 28 January 2015** aiming at better protecting women and children from **trafficking** in human beings. However, only a minimum of requirements have been included.
- The **Prostitution Act of 2002** regards independent prostitution as a legal professional activity. The debate in politics and society is polarised because the Prostitution Act is regarded as responsible for the increase of trafficking of women for sexual exploitation in Germany. The federal government is willing to **reform** the act.

According to a recent EU wide **survey** on violence against women, in the EU one in three women has experienced physical and/or sexual violence from the age of 15.⁶³ A representative study of violence against women in Germany already published in 2004 found comparable findings. 37 percent of all interviewees have experienced at least one form of physical attack or violence since the age of 16. One woman in seven has experienced some form of sexual violence since the age of 16. 40 percent of the respondents have experienced either physical or sexual abuse or both. Various forms of sexual harassment have been experienced by 58 percent of the women interviewed. Around 25 percent of all women resident in Germany have experienced forms of physical or sexual abuse, or both, from current or previous male or female partners.⁶⁴ Violence against

⁶² Strafgesetzbuch STGB

⁶³ European Union Agency for Fundamental Rights FRA (2014): Violence against women: an EU wide survey. Main results, Luxembourg, 27-35.

⁶⁴ BMFSFJ (2004): Health, Well-Being and Personal Safety of Women in Germany. A representative study of violence against women in Germany commissioned by the Federal Ministry for Families, Senior Citizens, Women and Youth.

women has emerged as a topic of discussion in the public arena since the 1975 International Women's Year. In consequence, **combating violence against women** is regarded as a **high priority** by women's and civil society organisations.

The Federal Government addressed the topic and promoted the process of removing the taboos which had been maintained until then. The first German **shelter for women** was founded in Berlin in 1976 as a pilot project by the Federal Government and the Berlin Senate followed by a growing number of shelters all over West-Germany. The Federal Government funded and published a series of studies, material for further-training and publications on **domestic violence** which served as a basis for the ongoing debate.

In the 1980's and 1990's other forms of violence occurred in the debate. Under the pressure of civil society organisations, **sexual violence against women** came to the public fore. The Federal Government initiated pilot projects and studies exploring women's experiences as witnesses in rape trials, the sexual abuse of girls and boys, sexual harassment at the workplace, prostitution tourism and trafficking in women, sexual advances in the course of therapy and violence against older, foreign or disabled women.⁶⁵

2.4.1. Domestic violence

Violence against women in the home is covered by the criminal law provisions contained in the **Criminal Code**. In January 2002, the **Protection Against Violence Act** has been introduced which constitutes a paradigm shift regarding legal protection of women being violated. This law aims not only at women concerned, but also at perpetrators and proclaims the principle that "the one who does the hitting has to go". At federal and Länder level, **protection measures** have been implemented in order to ameliorate **police intervention**.

In addition, the Federal Government has established **two action plans to combat violence against women**. The **first action plan** presented a comprehensive concept of how to combat violence in a more efficient way. It focused on **prevention** and legislation, but also on **cooperation** among institutions and projects as well as nationwide **networking** of assistance services and awareness raising measures.⁶⁶ The objective was to strengthen cooperation between governmental and non-governmental institutions and to develop a network of special services to assist victims. In the course of the action plan, a considerable number of intervention projects against domestic violence have been implemented, for example hotlines and counselling centres.

The **second Federal Government's action plan** focused on deficiencies that had been unveiled in a comprehensive and representative study on health, well-being and personal safety of women in Germany.⁶⁷ The findings drew attention to the fact that for both **physical and sexual violence**, approximately half of the women victimized since the age of 16 named their attackers as their male **partners** or ex-partners. The results showed that 71 percent of women suffering physical violence and 69 percent suffering sexual violence stated that the attack took place in their own home (**domestic violence**). Furthermore, all forms of violence can contribute extensively to psychological, psychosocial and health problems. Early help, intervention and prevention are necessary. The second action plan therefore aimed at ameliorating the efficiency of combating violence against women and the protection of **women at risk**.⁶⁸ It also addressed **migrant women** who appear to be more frequently victimized. In addition, it concentrated on women at risk e.g. in situations such as separation and divorce.

⁶⁵ BMFSFJ (2005): Action plan of the Federal Government to combat violence against women, Berlin, 3-4.

⁶⁶ BMFSFJ (2005) : Action Plan, p 28.

⁶⁷ BMFSFJ (2004): Health, well-being and personal security of women in Germany, Berlin pp 46.

⁶⁸ BMFSFJ (2012): Aktionsplan II der Bundesregierung zur Bekämpfung der Gewalt gegen Frauen, Berlin pp 74.

Germany has also signed the Council of Europe Convention on "Preventing and combating violence against women and domestic violence", the so-called **Istanbul Convention**, and the Federal Government is currently examining the conditions for its ratification and notably the legal changes that are needed to implement the Convention.⁶⁹

Women's organisations continue to express concern that existing support systems such as shelters for women and non-residential counselling centres **lack sustained funding** and appear frequently threatened with cuts or closure.⁷⁰

2.4.2. Sexual violence

In Germany, **sexual violence is not prosecuted consequently**. Women who experience sexual violence frequently do not report their perpetrators to the police and frequently there is no penal reaction. According to studies, the proportion of raped women who do not report sexual violence to the police is estimated at 85 until 95 percent. In 2012, only 8.4 percent of all reported acts of sexual violence were sentenced.⁷¹ This is due to the definition of criminal offence in § 177 of the German **Criminal Code** concerning sexual assault and rape and its interpretation by the Federal Court of Justice. This paragraph requires that a person coerces another person into sexual acting as a condition for being prosecuted. This implies that a perpetrator must use violence or menace to use violence or exploit a vulnerable situation. It is insufficient if a victim says clearly no to a potential perpetrator. In consequence, the Criminal Code **does not cover all forms of rape and does not guarantee comprehensive protection of sexual self-determination**.⁷²

The current Federal Minister for Justice Heiko Maas has announced to be willing to examine the Penal Law with regard to protection gaps. On occasion of a hearing with experts and NGOs, the Legal Committee of the Bundestag discussed **reform** plans on 28 January 2015. The reform is envisaged in the context of the ratification of the Istanbul Convention.

2.4.3. Sexual harassment

According to a representative study, 58 percent of all respondents have experienced sexual harassment. In 97 percent of all cases harassment was initiated by males and in only 2 percent of the cases by females.⁷³ The recent FRA study on the subject confirms the findings.⁷⁴ Sexual harassment frequently occurs at the workplace or in vocational education. The **General Equal Treatment Act** AGG which came into effect in 2006 **provides protection against all forms of sexual harassment**. A person who experiences sexual harassment at the workplace is entitled to complain with the employer who is obliged to examine the complaint. The Federal Anti-discrimination Office counsels persons who experience sexual harassment.⁷⁵

⁶⁹ See Deutsches Institut für Menschenrechte available at: <http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/konvention-gegen-gewalt-gegen-frauen-tritt-am-1-august-in-kraft-gesetzlicher-aenderungsbefordernis.html>

⁷⁰ See: BMFSFJ (2013): Bericht der Bundesregierung zur Situation der Frauenhäuser, Fachberatungsstellen und anderer Unterstützungsangebote für gewaltbetroffene Frauen und deren Kinder, Berlin, pp 329.

⁷¹ Grieger/Klemm/Eckardt/Hartmann (2014): „Was Ihnen widerfahren ist, ist in Deutschland nicht strafbar“. Fallanalyse zu bestehenden Schutzlücken in der Anwendung des deutschen Sexualstrafrechts bezüglich erwachsener Betroffener, bff Frauen gegen Gewalt e.V., Berlin, pp 34. Further information available at: <http://www.frauen-gegen-gewalt.de/projekt-reformierung-177-947.html>.

⁷² See Institut für Menschenrechte available at: <http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/konvention-gegen-gewalt-gegen-frauen-tritt-am-1-august-in-kraft-gesetzlicher-aenderungsbefordernis.html>

⁷³ BMFSFJ (2004): Health, well-being and personal security of women in Germany, Berlin, 14.

⁷⁴ FRA (2014): Violence against women: An EU-wide survey. Main results, Luxembourg

⁷⁵ Available at: <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=73018.html>.

2.4.4. Stalking

A **new offence on stalking came into effect on 31 March 2006** aiming at quick interventions by the police and at protecting victims.⁷⁶ An act of severe stalking can be sentenced with imprisonment ranging from three months to five years in case that the stalker endangers the life or health of the victim. The law has initiated a greater public awareness of stalking. According to the experience of counselling bodies, there have been difficulties in implementing the new law. Women are still not listened to by the police when reporting incidents as no physical violence has been experienced.⁷⁷

2.4.5. Trafficking in human beings for sexual exploitation

Trafficking in human beings for sexual exploitation is a severe violation of Human Rights. According to police reports, the number of women trafficked into Germany for sexual exploitation **increased by 70 percent between 2005 and 2010**.⁷⁸

The European Commission adopted the EU Strategy towards the eradication of trafficking in human beings 2012-2016. One of the main pillars of the Strategy is the **EU Directive 2011/36/EU** on preventing and combating trafficking in human beings and protecting its victims. The Directive had to be transposed in national law by 6 April 2013. Trafficking in human beings for sexual exploitation is also covered in § 232 Criminal Code.⁷⁹

The governmental coalition of CDU/CSU and FDP presented a **draft law in 2013 aiming at implementing the EU Directive**.⁸⁰ The draft law was criticised by the parliamentary opposition of SPD, Bündnis 90/Die Grünen and Die Linke who estimated that the efficient protection of victims had not been considered, notably in relation to the possibility to get permanent residence permits.⁸¹ Due to such controversies, the draft law was **not adopted**.

The current **Federal Government managed to adopt a draft law on 28 January 2015** aiming at better protecting women and children from trafficking. However, most recommendations which the experts have brought forward have not been considered.⁸² The Federal Minister for Justice pointed out that for a start only compulsory penal relevant issues will be implemented in order to react rapidly, since the deadline for implementing the EU Directive in Trafficking ended already in 2013.⁸³

⁷⁶ Criminal Code section 238, Criminal liability in cases of persistent persecution.

⁷⁷ Further information at: <http://www.gegenstalking.de/gegenstalking.html>.

⁷⁸ European Women's Lobby (2013): Women's Watch 2012-2013, Brussels, 23.

⁷⁹ Available at: <http://dejure.org/gesetze/StGB/232.html>.

⁸⁰ Gesetzentwurf zur Bekämpfung des Menschenhandels und Überwachung von Prostitutionsstätten (BT-Drs. 17/13706).

⁸¹ The opposition notably required the right of residence for all trafficked persons, which in the draft law was only intended for victims willing to testify in criminal proceedings. NGOs criticised that the draft law does not meet the intention of the EU Directive for victims. Women from third countries are considered as foreigners who entered the German territory illegally; they have to leave Germany immediately. Even if they testify against a prosecutor they have to go back to their country after the legal proceeding. NGOs, for example Terre des Femmes, require unlimited residence permits, non-bureaucratic, comprehensive and psychological supply of victims, financial protection and adequate accommodation for victims, nationwide native language information centres and shelters and an independent right of residence for foreign married women. Further information: Solwodi available at: <http://www.netzwerk-ebd.de/nachrichten/solwodi-neue-chance-die-eu-richtlinie-zur-verhuetung-und-bekaempfung-des-menschenhandels-umzusetzen/>. For NGO positions, see Terre des Femmes available at: <http://www.frauenrechte.de/online/index.php/themen-und-aktionen/frauenhandel/forderungen>.

⁸² Bundesweiter Koordinierungskreis gegen Menschenhandel available at: <http://www.kok-gegen-menschenhandel.de/kok-informiert/stellungnahmen-pressemittelungen/stellungnahmen-eintraege/detailansicht-stellungnahmen/artikel/kok-stellungnahme-zum-bmjv-referentenentwurf-zur-umsetzung-der-eu-richtlinie-gegen-menschenhandel.html>

⁸³ See debate in the Bundestag 28 January 2015; available at: http://www.bundestag.de/mobil/kw05_regierungsbefragung/357732.

2.4.6. Prostitution

Practicing prostitution on a voluntary basis by adults and the demand of prostitution has been legalized in Germany for a long time. The German Bundestag adopted the **Prostitution Act in 2002**, aiming at improving the legal and social situation of prostitutes in Germany and combating its criminal environment. The law abolished the notion of violation of morality for prostitution and acknowledged it as a **legal profession subject to social security**. It has been regarded as a further step of progress towards the self-determination of women who choose to offer paid sexual services. Women's organisations and German feminists have welcomed this law. In contrast, in other European countries, prostitution is somehow prosecuted. The European Women's Lobby advocates against all forms of prostitution and has launched a campaign entitled *Together for a Europe free from prostitution*. **The debate among feminists is polarised** between those supporting that prostitution can be voluntary and self-determined and those believing that prostitution is a form of violence against women. In Germany, a heated debate between supporters and people rejecting the Prostitution Act is ongoing.

Prostitution does not only concern women who choose it as a professional activity. A considerable number of **prostitutes are victims of human trafficking**. In this context, the Prostitution Act has been held responsible for increasing trafficking of women for sexual exploitation. Evaluation reports, commissioned by the BMFSFJ, show that the law indeed has only partially achieved its goals. However, it is estimated that it has not contributed to impede combating trafficking in human beings.

The **current governmental coalition is working on a more severe law**. The objective is to **better regulate prostitution** and to promote more possibilities for prostitutes to leave it.⁸⁴ The federal government has found an **agreement at the beginning of February 2015**. Prostitutes will have to be officially registered and brothels' operators will need a license in order to strengthen control. Furthermore, regular counselling and the use of condoms will be obligatory at federal level. The opposition in parliament has considered this as mere symbolism. Advice provided by experts and NGOs involved in projects with prostitutes has so far been discarded.⁸⁵ The draft law will be presented by the Federal Minister Manuela Schwesig in March 2015.⁸⁶

⁸⁴ See Federal Government available at: <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=97962.html>.

⁸⁵ Dorothea Czarnecki, Henny Engels, Barbara Kavemann, Elfriede Steffan, Wiltrud Schenk, Dorothee Törnau Beratung zu Fragen des Menschenhandels: Naile Tanis (2014): Prostitution in Deutschland – Fachliche Betrachtung komplexer Herausforderungen; Federal Ministry of Family Affairs, Seniors, Women and Youth (2014): Hearing on the regulation of prostitution, available at: <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=208046.html>; see also: Deutscher Frauenrat available at: <http://www.frauenrat.de/deutsch/infopool/nachrichten/informationdetail/article/kontroverse-anhoerung-zum-neuen-prostitutionsgesetz.html>

⁸⁶ See Die Tageszeitung 5 February 2015.

2.5. Sexual and reproductive health rights

KEY FINDINGS

- According to the controversial § 218 of the Penal Law, **abortion is illegal in Germany, but exempt from punishment under certain conditions (counselling)**. The abortion rate has been decreasing constantly. The day after pill is available upon prescription and from spring 2015 on, without.
- **Preimplantation diagnostics (PID)** is regulated by the Preimplantation-Diagnostic Act of 2011 in a very **restrictive** way.
- The demand of **prenatal diagnosis (PND)** has continually **increased**, independently of age and risk.
- **Maternal mortality** ratio in Germany is among the **lowest** in the world.
- The proportion of **Caesarean sections** is **very high**. This appears to be caused by structural or organisational or economic reasons and not by medical evidence.

By law, women and men have **equal access to health services** in Germany. But women's health needs are different from men's. However, in many respects, services which are provided by the health system have been **designed around standard male needs**. In such a perspective, women are regarded as deviation from men. Although they may be in part affected by different types of symptoms and illnesses and may have different reactions to health problems, gender related issues appear to be barely reflected in the services provided by the German health care system. A consistent gender sensitive health strategy is lacking in the federal health policy.

Women's movement and NGO's have broadly addressed gender health differences and their effects on women since the 1970s. A considerable number of **women's health counselling centres** have been founded at municipal level aiming at providing specific information to women and at supporting them in case of health problems.⁸⁷ They advocate for women's interests in the German health system.

This section will focus on sexual and reproductive health issues which prevail in the current debate.

2.5.1. Abortion

According to § 218 Criminal Law, **abortion is illegal in Germany, but exempt from punishment under certain conditions**.⁸⁸

Abortion will not be punished if the pregnant woman respects the rules for **counselling** in case of abortion. A **certificate** must be presented to the physician who will perform the abortion which testifies that the woman has attended consultation organised by an officially recognised **advisory body** for undesired pregnancy. Then a **physician** who has not been involved in the consultation must perform the abortion **within 12 weeks** after conception. The costs for abortion according to the counselling regulation must be **paid by the woman** unless she is in an economically difficult situation.

⁸⁷ The Feministisches Frauengesundheitszentrum e.V. Berlin, one of the first women's health counselling centres was founded 40 years ago. Further information available at: <http://www.ffqz.de/index.htm>.

⁸⁸ § 218 a Abs. 1, § 219 Strafgesetzbuch StGB.

In case of medical or criminological indication, abortion is not illegal. Only in these cases, the costs are taken over by health insurance for women who are covered.⁸⁹

Since 2004, the **abortion rate has continually decreased**: from 66 per 10.000 women aged between 15 until 49 years in 2004, 59 per 10.000 women in 2010 to 56 women per 10.000 in 2013. Among the women who had an abortion, 74 percent were aged between 18 and 34 years; 15 percent between 35 and 39 years; 8 percent older than 40 years; 4 percent were minors. 96 percent of the abortions have been performed according to the counselling regulation. In 2013, the overall number attained 102.800 abortions.⁹⁰

Women's NGOs and networks demand the abolishment of § 218 StBG in order to **end criminalisation** of abortion in Germany. In addition, they argue that forced counselling complicates the access to abortion and also the counsellors' access to the women concerned. The required time for consideration between counselling and medical performance does not appear to have positive effects.⁹¹

2.5.2. Day after pill

The day after pill is **available** in Germany, but a **medical prescription** is still needed. After the European Commission had authorised the day after pill (Ulipristal) in January 2015, the Federal Health Minister Hermann Gröhe - who had insisted on maintaining consultation and medical prescription - has announced that both pills (Ulipristal and Levonorgestrel) shall be **available in pharmacies without medical prescription in spring 2015**.⁹²

2.5.3. Preimplantation diagnostics (PID)

In Germany, preimplantation diagnostics is regulated by the **Preimplantation Diagnostic Act of 2011** which is conceived in a **very restrictive** way. It provides diagnosis in the case of in-vitro fertilisation for couples who run a high risk of serious genetically transferable diseases. The debate that preceded the adoption of the law was very controversial, as PID is regarded as a selection instrument. A number of Länder has created specific ethic commissions aiming at clarifying the issue from a moral perspective. In addition, the restrictive Embryo Protection Law which regulates the production of embryos and aims at protecting produced embryos from abuse had to be changed in order to permit PID.⁹³

Prenatal diagnosis (PND) is regarded as a **preventive medical care for pregnant women**. PND has also been used for preventing women to give birth to a child with disabilities. When PND was introduced as a health insurance service in 1976, it was destined to pregnant women with a high genetic risk or aged over 38 years. Since then, the **demand of these services has continually increased** independently of age and risk. Women's organisations argue against selective diagnosis and require separating medical care for pregnant women from selection diagnosis.⁹⁴

⁸⁹ BMFSFJ available at: <http://www.bmfsfj.de/BMFSFJ/gleichstellung.did=98262.html>.

⁹⁰ Statistisches Bundesamt Schwangerschaftsabbrüche 2013 available at: <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Gesundheit/Schwangerschaftsabbrueche/Schwangerschaftsabbrueche.html>.

⁹¹ Nationales Netzwerk Frauen und Gesundheit: available at: <http://www.nationales-netzwerk-frauengesundheit.de/index.htm>.

⁹² <http://www.tagesschau.de/inland/pille-101.html>.

⁹³ Ärzteblatt available at: <http://www.aerzteblatt.de/nachrichten/49904/Pro-und-Contra-zur-Praeimplantationsdiagnostik>

⁹⁴ Women's organisations require separating selective diagnosis from preventive medical examination of pregnant women. Pregnant women should have the right to give birth to a child with disabilities. See

2.5.4. Caesarean sections and epidural anaesthesia

In industrialised countries, the **maternal mortality ratio** is normally very low and Germany is among the countries with the **lowest** ratio in the world of less than 5 every 100.000 live births.⁹⁵ In contrast, **the proportion of Caesarean sections is very high**: in 2010, 31.9 percent of all deliveries were Caesarean sections. NGOs are concerned by this fact as they estimate that a considerable number of Caesarean sections appear to be caused by structural or organisational or economic reasons and not by medical evidence. Guidelines for Caesarean sections' indications which are required by WHO exist in Germany (2008), however they are estimated as insufficient. A campaign has been launched on this issue aiming at promoting obstetrics appropriate to self-determination of women.⁹⁶

Epidural anaesthesia appears to be generally available in hospitals. It is administered by anaesthetists on demand of the women. At average, it is used in 25 percent of all deliveries and 20 percent of all Caesarean sections.⁹⁷

<http://www.frauenrat.de/deutsch/infopool/nachrichten/informationdetail/article/therapie-oder-selektion-ndash-fachtagung-zur-praenataldiagnostik.html>.

⁹⁵ Data from Bundesinstitut für Bevölkerungsforschung 2012; available at <http://www.bib-demografie.de/SharedDocs/Glossareintraege/DE/M/muettersterblichkeit.html>

⁹⁶ Arbeitskreis Frauengesundheit available at: <http://www.akf-kaiserschnitt-kampagne.de/cms/kaiserschnitt-kampagne/>.

⁹⁷ <http://www.qofeminin.de/schwangerschaft/pda-geburt-d11716c190325.html>.

3. CONCLUDING REMARKS

Since the turn of the century, **some progress** in gender equality has been achieved in Germany. The **legal framework has been improved** by equality laws covering both the federal level and the 16 Länder. At local level, cities have enhanced their structures aiming at promoting gender equality. The General Equal Treatment Act covers discrimination on the ground of gender, race or ethnic origin, religion or belief, age, disability and sexual orientation. Institutional mechanisms for promoting, implementing and monitoring gender equality have been established. Though, their results depend both on the **political will** of the governments at different levels of the German federalism and on pressure from an active civil society.

Equality policies at federal level have fallen short of women's expectations. Women's organisations are advocating and actively campaigning for more progress. Societal change, in particular women's integration in the labour market, women's self-determination and financial independence, has had an impact on the life styles of women and men. A more diverse society has generated more diverse forms of families with new needs. However, **for a long time, equality policies have not been able to achieve consistent improvements.** While female employment rates have increased, reconciliation between private and professional life and the persistent gender pay gap have not been adequately addressed to date.

European legislation has acted as the main driver for legal improvements in equal treatment and anti-discrimination. EU equality policies have been developed over the past thirty years, but with the start of the financial and economic crisis in 2009 an adverse trend can be observed. The Federal Minister in charge for Women's Affairs is currently focusing on the achievement of equality in Germany, but **a stronger support from and a commitment of the whole political arena, including at European level, will be needed for further progress.**

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