Commentary
by the responsible Ministries
on the independent evaluation report
of the German Institute for Human Rights:
The implementation of selected OSCE commitments
on human rights and democracy in Germany

September 2016

- ***unofficial translation -***

Preliminary note

Within the scope of Germany's Chairmanship of the OSCE in 2016, the Federal Foreign Office has commissioned the independent German Institute for Human Rights (DIMR) to conduct a voluntary and independent evaluation of the implementation of OSCE human dimension commitments in Germany. Germany is thereby continuing a practice that was introduced by Switzerland in 2014 and continued by Serbia in 2015. This practice is to be established permanently as a good exercise for future OSCE Chairmanships. The aim of the evaluation is a nuanced assessment of the implementation status of OSCE commitments in human dimension areas in Germany as well as recommendations for action.

The German Institute for Human Rights independently selected the thematic areas to be evaluated:

1) Tolerance and non-discrimination: Combatting discrimination and hate crime
2) Gender equality:
   - Data collection to prevent and combat violence against women
   - Pay equity
   - Women, peace and security: Germany's implementation of UN Security Council Resolution 1325
3) Combatting trafficking in human beings
4) Voting rights: Voting rights of persons with disabilities
5) Transparency and democratic institutions: Income transparency of political parties and representatives and of political advocacy groups

The extensive OSCE human dimension commitments are the benchmark for the evaluation.

The present document offers commentary on the evaluation report presented by the German Institute for Human Rights. It was compiled by the responsible Ministries of the Federal Government, including *inter alia* the Federal Ministry of the Interior, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Labour and Social Affairs, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of Defence, and the Federal Foreign Office. Additionally, NGOs and civil society actors have commented on the evaluation report, creating an overall picture comprised of the triad of the evaluation report, the Ministries' commentary and the comments from civil society.

Civil society has been actively encouraged to comment on the evaluation report, and a Coordination Office has been supported for this purpose. The Federal Government thereby recognises that civil society interest groups play an important role in the implementation of OSCE human rights commitments. Through their expertise and knowledge, they are able to both support the government with implementation and offer important assessment of the implementation of these commitments in their country.

Introduction

The participating Federal Ministries thank the German Institute for Human Rights for the report it has submitted, which is a valuable contribution to the continual improvement of implementation of human rights standards in Germany. The evaluation and the recommendations contained within it will be integrated into the ongoing dialogue on human rights issues between the Ministries and civil society as well as the shaping of measures and activities.

The participating Federal Ministries welcome the constructive overall tenor of the report and its nuanced account of developments in recent years. The partially positive assessment of measures to date affirms the path that has been taken so far in the implementation of human rights standards and OSCE human dimension commitments in Germany. Further improvements and enhanced implementation of the commitments remain an important matter for the Federal Government.

The points of criticism that were expressed have been reviewed and assessed in detail by the Ministries of the Federal Government, and can be taken into account in keeping with this assessment.

Concern for reviewing the implementation of human rights standards in Germany in a nuanced way from multiple perspectives is also underscored by other reporting processes. Particularly noteworthy are the processes of submitting country reports to the specialised UN treaty monitoring bodies and the monitoring mechanisms of the Council of Europe and their contribution to the national implementation of human rights commitments. The forthcoming presentation of the 12th Human Rights Report of the Federal Government, which will cover the period from 1 March 2014 to 30 September 2016 and outline the focal areas of German human rights policy, also merits special mention in this regard. The report contains an Action Plan on Human Rights as a special section, which presents the Federal Government's priorities for 2017 and 2018.

In this light, the responsible Ministries would like to comment on the evaluation report as follows.

1) Statement on Chapter B – Tolerance and non-discrimination

Chapter B 2 mainly describes the starting situation.

Regarding the description of hate crime (*Chapter B 2.1*), it should be noted that figures for right-wing politically motivated crime are not a subset of the category of hate crime, but rather the opposite is the case: hate crime is a subset of the category of politically motivated crime.

The 117 per cent increase in 2015 concerns the category of hate crime – the subtopic "xenophobic" in all fields of phenomena. Not all xenophobic crimes fall under the category of "right-wing politically motivated crime". This figure is composed as follows: 8209 right-wing politically motivated crimes, 11 left-wing political crimes, 77 politically motivated anti-foreigner crimes, 232 other politically motivated crimes.

The statement that there is no valid data on attacks against people with disabilities and homeless people or homophobically or transphobically motivated attacks, and that only civil society monitoring is referred to here, is incorrect. In the field of hate crime, 222 offences in the sub-category of "sexual orientation" were reported in 2015, as were 19 offences in the subcategory of "disability". Offences against homeless people were recorded under the category of "social status", in which 320 offences were reported in 2015. The corresponding data on hate crime—broken down by sub-category—is available on the website of the Federal Ministry of the Interior: http://www.bmi.bund.de/SharedDocs/Pressemitteilungen/DE/2016/05/pks-und-pmk-2015.html.)

Regarding the cases reported by MANEO, it should be noted that attacks as counted by civil society organisations do not always correspond one-to-one with criminal offences. In the case of homophobic and transphobic offences, however, the Federal Ministry of the Interior considers it likely that there are particular impediments to the reporting of criminal offences. That is why the Federal Ministry of the Interior plans to interconnect representatives of organisations that advocate for groups particularly affected by hate crime more comprehensively with the relevant police authorities.

The evaluation report's account of the radicalisation of society (*Chapter B 2.2*) is not analysed or described adequately. PEGIDA as a single phenomenon is mentioned relatively often, whereas numerous other phenomena showing contempt for human life, which have increased considerably in recent months (e.g. anti-ziganism), remain unmentioned. Right-wing populist demonstrations appear in many different formations (e.g. "Nein-zum-Heim" protests against refugee shelters, etc.). Radicalisation is evident in a growing propensity towards violence and the radicalisation of the "middle of society", which are becoming apparent above all in social networks and in confrontations relating to refuge and asylum.

The number of criminal offences against homes for asylum seekers (*Chapter B 2.3*) totalled 1031 offences, of which 923 fell into the category of "right-wing politically motivated crime", while 108 fell into the category of "politically motivated crime—other".

Regarding the discrepancies in statistics mentioned in *Chapter B 2.3*, the following should be taken into account:

- "Criminal offences" in statistics on politically motivated crime do not correspond one-to-one with "attacks".
- Criminal offences outside the perimeter of shelters are recorded in the statistics on politically motivated crime under the hate crime subcategory of "xenophobic" (since 1 January 2016, the new subcategory "against asylum seekers/refugees" has also existed to better distinguish offences). Such offences are not included among the 1031 offences "against shelters for asylum seekers" and must be added together with them.
- "Arson attacks" do not correspond one-to-one with the cases of arson in accordance with Sections 306 et seqq. of the Criminal Code (and offences causing explosions). In the 2015 statistics on politically motivated crime, 94 such cases of arson and 8 offences causing explosions were recorded. Additionally, there were 4 cases of attempted homicide through arson. The definition of arson in the Criminal Code requires that the act be objectively suited

to setting fire to significant parts of the building. For this reason, the act of setting fire to, for example, a rubbish container on the premises of a shelter for asylum seekers without the risk of the fire spreading is classified as criminal property damage and not as arson.

In order to get a better view of the trends named in *Chapter B 2.4*, politically motivated criminal offences "against the media" and "against officials" in the asylum context began to be recorded in separate statistical categories (subtopics) for the first time as of 1 January 2016.

In *Chapter B 2.6* the allegation is made that federal authorities, too, primarily investigated the victims, their relatives, and people "in the Turkish milieu" as well as members of minority groups (especially the Sinti and Roma). This description is incorrect. In fact, the investigations were initially carried out by various state-level (*Land*) prosecutors' offices. The Public Prosecutor General of the Federal Court of Justice did not take over the investigations until 11 November 2011, that is, after the NSU had revealed itself.

In order to support monitoring of hate crime by ODIHR (*Chapter B 3.1*), figures on all sub-categories of hate crime are reported to ODIHR regularly. At the Federal Ministry of the Interior, there is a National Point of Contact for reporting on hate crimes. The desk officer regularly takes part in the relevant ODIHR sessions and events.

The concerns expressed in *Chapter B 3.1.1* are not shared. The fact that criminal offences motivated by bias are to be recorded in every case is already evident from the definition of politically motivated crime, which explicitly states that an act targeting a person because of their political orientation, nationality, ethnicity, race, skin colour, religion, worldview, ancestry, physical appearance, disability, sexual orientation or social status is always also to be classified as politically motivated. The police officers making reports, who work with this definition, are thus thoroughly aware that a criminal offence need not be intended to serve the realisation of political goals (in a narrow sense) in order to meet the requirements of recording the act as politically motivated. Furthermore, this is made clear in the supporting technical documents with which police officers work (the catalogue of thematic areas, the instructions for completing forms, and additional explanatory documents).

The introduction of the current Police Reporting Service for Politically Motivated Crime (KPMD-PMK) in 2001 represented a move away from recording offences on the basis of the extremism concept. A key reason for this change was that deficiencies were previously seen in the recording of hate crimes. The new Reporting Service was therefore introduced with the particular goal that it would also be possible to record crimes that could not be classified under either of the two extremist fringes. Here the classification of phenomena into the areas of "right-wing politically motivated crime", "left-wing politically motivated crime", "foreign ideologies" and "other" only serves additionally to roughly classify offences ideologically, but covers the entire spectrum of bias-based criminal offences, including those that do not come from the extremist fringes.

Regarding the changes called for in *Chapter 3.1.1*, it should be known that a decision has already been made that beginning on 1 January 2017, Islamophobic, anti-Christian and antiziganist criminal offences will be recorded in separate categories (subtopics) in the statistics on politically motivated crime. The Federal Ministry of the Interior is seeking to implement the more meaningful statistics on

crime and the administration of justice which have been called for, and has initiated the possible measures in its area of responsibility, such that no need for further action is currently seen in the area of police statistics.

The contradiction between different figures in the area of homophobic and transphobic criminal offences that has been criticised does not exist: In 2014 a total of 184 criminal offences on the basis of sexual orientation were recorded. In the cited minor interpellation, in keeping with the question, only the selected groups of offences were presented.

At various points (*Chapter B 3.1.2, inter alia*), the report finds fault with the dearth of flow statistics for recording hate crime. In this regard, it should be noted that the Federal Government also fundamentally welcomes the introduction of flow statistics for criminological reasons. Flow statistics would make it possible to obtain information about the development and consequences of criminal activity and the impact of penal practices. However, it should be taken into account that over time, important differences in data collection by the police and the judiciary have arisen now and again, which to some extent causes significant problems with the amalgamation of data. Against this backdrop, the question of whether, how and, as the case may be, on what timeline flow statistics are to be introduced remains subject to further examination.

An initial step can be seen in the decision that has been made to send the files for certain serious politically motivated crimes (homicide, arson, causing an explosion) to the Federal Criminal Police Office for assessment after the case has been closed. The Federal Government is working to ensure that this regulation (No. 207 para. 2 and 3 of the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine) is expanded to cover all cases of politically motivated violence and that the Federal Criminal Police Office is thereby put in a position to assess and analyse data on the outcomes of cases in the area of politically motivated violence in a targeted way with regard to crime prevention and policy measures.

Regarding the description of civil society monitoring (*Chapter B 3.1.3*), it should be noted that some key actors have not been mentioned (the anti-Semitism watchdog group RIAS in Berlin and the Amadeu Antonio Stiftung regarding refugee shelters). Additionally, jugendschutz.net, which uses monitoring to collect data on right-wing extremism online, should be mentioned.

Regarding the number of attacks in eastern Germany mentioned in *Chapter B 3.1.3*, at the moment it can only be pointed out that the Conference of Interior Ministers is considering the question of how best to proceed further with the governmental analysis of old cases. Regarding the re-evaluation by the University of Potsdam, it should be noted that all homicides re-evaluated by Brandenburg occurred before the introduction of the Reporting Service for Politically Motivated Crime and therefore were measured by the police at the time (correctly) according to the extremism standard. The Moses Mendelssohn Centre at the University of Potsdam (MMZ) has, from today's perspective, measured them according to the further category of politically motivated crime and has retrospectively re-evaluated them in this context.

The blanket accusation made in *Chapter B 3.2.1* with respect to the set of issues related to the NSU, that "racist and stigmatising work conducted by the investigating authorities and security agencies" has not been adequately confronted, is repudiated.

With regard to the NSU complex, the Second Committee of Inquiry of the 17th Electoral Term of the German Bundestag agreed across all parties to adopt 47 recommendations for the police, the Office for the Protection of the Constitution, and civil society concerning the deficiencies with the security agencies that had been ascertained. These recommendations have—at least for the federal level—now been mostly implemented. They include recommendations on strengthening intercultural competence, on interacting with the victims and the loved ones of deceased victims, and on sensitisation to the areas of right-wing extremism and right-wing terrorism as well as on overhauling the definition system and catalogue of thematic areas for politically motivated crime.

In its final report, the Second Committee of Inquiry reiterates that the murders had recognisably racist characteristics and states, along other things, that the investigations did not aim in this direction enough (e.g. Bundestag Printed Paper 17/4600, p. 844): "In future investigation proceedings, the committee wishes to see, at the proper time, more courage to try new things and an impartial view of the facts that is less guided by complacency—particularly in regard to considering racist motives if such motives are suggested by the circumstances of the act or in view of the victims. The fact that those conducting investigations clung to experience-based knowledge despite indications to the contrary must be questioned critically within the police force."

Additionally, in the implementation of the Committee of Inquiry's recommendations, Section 46 (2) of the Criminal Code – as is mentioned in the evaluation report itself on page 25 (*Chapter B 3.3*) – has been amended to the effect that motives which are racist or xenophobic or otherwise show contempt for human life are now to be included in particular. Accompanying changes concern the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine, which are binding for the investigating authorities.

Furthermore, and finally, the process of confronting and coming to terms with authorities' actions in connection with the investigations concerning the National Socialist Underground (NSU) terrorist organisation is not a finished process. On the contrary, six Parliamentary Committees of Inquiry at *Land* level (Baden-Württemberg, Brandenburg, Hesse, North Rhine-Westphalia, Saxony and Thuringia) as well as a Bundestag Committee of Inquiry are currently addressing the failings of the respective authorities. The criminal proceedings before the Munich Higher Regional Court against the suspected NSU member Beate Zschäpe and the four suspected NSU supporters who are accused alongside her are still underway.

The optimisation of exchange of information among *Länder* and federal security authorities, and especially the identification of structures that cross *Länder* borders within the scope of the applicable regulations on data transmission, is the primary goal of the Joint Centre for Countering Right-Wing Extremism and Terrorism (GETZ-R), as deficiencies were seen in this area in the investigations of the NSU murders. Extremist criminal offences, however, are not the only topic addressed by the GETZ-R. For example, criminal offences against shelters for asylum seekers, which generally are committed

due to xenophobic/racist motives, are addressed on a weekly basis. Cooperation is based on the duties and authorisation rules of the participating security authorities.

The blanket accusations made in *Chapter B 3.2.2* that problematic investigation strategies exist and that public prosecutor's offices and courts do not handle the criminal phenomenon of hate crime appropriately are repudiated.

It is correct that starting points for improvements have arisen from the still-ongoing process of confronting and coming to terms with the NSU complex in particular. The Federal Government has recently got a series of reforms off the ground in order to counter the phenomenon of racism more effectively in criminal proceedings in general and to strengthen the rights of protection of those (potentially) affected (cf. the changes to Section 46 (2) of the Criminal Code and to the Guidelines for Criminal Proceedings and Proceedings to Impose a Regulatory Fine, mentioned in Chapter B 3.3 of the evaluation report).

The Ministers of Justice have also agreed to pursue racist and extremist criminal offences in a more systematic and better-coordinated manner. They have announced various measures focusing on more thorough exchange of information between the *Länder* and the Federal Public Prosecutor General as well as better statistical recording of hate crimes. Additionally, the *Länder* have had positive experiences with establishing special departments within their public prosecution offices to combat politically motivated crime. Such specialised public prosecutors will be particularly able to make an even stronger contribution to solving such crimes more effectively in future.

Federal Minister of Justice Heiko Maas has furthermore – like other members of the Federal Government and Federal Chancellor Angela Merkel – often spoken out publically and clearly against racist agitation. Federal Minister Maas has also focused particularly on the racism that is rampant on the Internet. For example, at his initiative Facebook has agreed to work more closely and intensively with private complaints offices and to ensure that their leads are given priority and are pursued quickly. At the invitation of the Federal Minister of Justice, a task force of Internet service providers, civil society organisations, NGOs and representatives of the field of policy has developed further proposals for effective long-term ways of dealing with online hate speech.

So that these online hate crimes can be effectively pursued, the Federal Ministry of Justice and Consumer Protection has provided information which explains in a simple and easily accessible way how reports calling attention to online hate crime are supposed to look. Concerning this matter, the Federal Ministry of Justice and Consumer Protection has also published an informational page on reporting hate crimes, entitled *Anzeigenerstattung - gemeinsam gegen Hassbotschaften* ["Reporting incidents – together against hate speech"], on its website.

Federal Minister of the Interior Thomas de Maizière is also taking decisive action against racism and hate speech. On 27 January 2016, he banned the Internet platform Altermedia Deutschland. Altermedia was one of the leading information platforms for the right-wing extremist scene in German-speaking countries. It received millions of page views per year. The operators of Altermedia disseminated racist, xenophobic, anti-Semitic, homophobic and Islamophobic content. On behalf of the Federal Public Prosecutor General, the Federal Criminal Police Office has investigated the

operators of Altermedia Deutschland for suspected formation of a criminal organisation in accordance with Section 129 of the Criminal Code.

The assessment in *Chapter B 3.3* (and in Conclusion, Chapter B 4) that Germany "has fulfilled the demand for a specific regulation on hate crime" through the revision of Section 46 (2) sent. 2 of the Criminal Code that was introduced by the act on the implementation of the recommendations of the Bundestag Committee of Inquiry into the National Socialist Underground of 12 June 2015, effective 1 August 2015, and therefore is largely meeting the OSCE standards at the legislative level, is welcomed.

The view is not shared, however, that the umbrella term "other motives showing contempt for human life" used along with the characteristics "racist" and "xenophobic" is inadequate, and that in particular additional forms of hate crime need to be named specifically, such as homophobic or transphobic motives or aims. The fact that the regulation accounts for further recognised bans on discrimination through the characteristic of "other [motives and aims] showing contempt for human life" is a matter of consensus and was expressly stipulated as such in the official legislative materials. Concretely, this especially concerns crimes which are directed against the religious orientation or—as called for in the mentioned chapters of the evaluation report— disability, social status, or sexual orientation of the victim (Bundestag Printed Paper 18/3007 on Article 2, p. 15).

The explicit naming of "racist" and "xenophobic" motives corresponds to the recommendations of several international bodies that are engaged with combatting racism and xenophobia (c.f. Bundestag Printed Paper 18/3007, loc. cit. p. 14 with further references). Here, contrary to what is suggested in the evaluation report, the term "xenophobia" does not, for example, take the perspective of racist perpetrators. On the contrary, the use of this formulation makes clear that the corresponding motives, which seek to marginalise people, are to be condemned and thus are to be taken into consideration in sentencing as a factor leading to a more severe punishment (Bundestag Printed Paper 18/3007, loc. cit. p. 15). Despite some overlap, the terms are also sufficiently distinct from one another. While "racism" originally denoted an — allegedly — biological or phenotypic background and rests on the foundation of a corresponding worldview, the additionally used term "xenophobia" encompasses behaviour that stigmatises people as "foreign" on the basis of certain criteria such as their appearance, background, language or other social conduct (Bundestag Printed Paper loc. cit. with further references).

Statistical data and data from legal practice on the application of the revised Section 46 (2) sent. 2 of the Criminal Code are not yet available because this revision has only very recently taken effect—as the evaluation report rightly emphasises.

Additionally, the following new regulations, which have been adopted within the area of responsibility of the Federal Ministry of the Interior, are not taken into consideration in the German Institute for Human Rights' account:

- since 1 January 2016, politically motivated criminal offences "against the media" and "against officials" in the asylum context have been recorded in separate statistical categories (subtopics),
- beginning on 1 January 2017, Islamophobic, anti-Christian and antiziganist criminal offences will be recorded in separate categories (subtopics) in the statistics on politically motivated crime,

- since summer 2015, the Police Service Instructions have stated that motives which are racist, xenophobic or otherwise show contempt for human life are always to be checked for in the investigation of evidence concerning violent crimes, and this checking is to be documented.

The following should be noted regarding the aforementioned initiative of the Federal Ministry to supplement and clarify the remarks in *Chapter B 3.4*: invitations to participate in the task force on how to deal with illegal hate speech on the Internet were accepted by the Internet service providers Facebook, Google (for its video platform YouTube) and Twitter as well as by the civil society organisations eco – Association of the Internet Industry, the German Association of Voluntary Self-Regulation of Digital Media service providers (FSM), jugendschutz.net, klicksafe.de, the Amadeu Antonio Stiftung (no-nazi.net) and the association Gesicht Zeigen! The outcome of this working group is the paper "Together against hate speech", in which the participating companies committed to doing more to combat illegal hate speech on their systems. The companies' implementation of the measures that were agreed upon is currently being evaluated.

Regarding the description of the basic and advanced training of the police and the judiciary in *Chapter B 3.5*, it should be noted that the substance of the suggestions by CERD and ECRI on the issue of the basic and advanced training of police officers, public prosecutors and judges is largely in accord with the demands that the German Bundestag Committee of Inquiry into the National Socialist Underground has made to work towards recognition, within the scope of prosecution, of potential right-wing extremist or xenophobic backgrounds to violent crimes against victims with an immigrant background.

The Committee of Inquiry's recommendations for the police on strengthening intercultural competence, on interacting with victims and the loved ones of deceased victims, and on sensitisation to the areas of right-wing extremism and right-wing terrorism have been taken on by the Federation and the *Länder* and have, in some cases as mandatory components, been integrated into training; special training offers have also been developed.

Advanced training on politically motivated crime takes the victims' perspective into account. The Federal Criminal Police Office holds trainings for reflection on the "victim-offender model", and has specially created a video for trainings on the topic of "Victims after the crime—expectations and perspectives". At the Federal Criminal Police Office, events are also held on the topic of migrants in Germany and migrants in the police force, as are advanced trainings on intercultural competence.

In the field of justice, the Federal Ministry of Justice and Consumer Protection is currently working together with the German Institute for Human Rights to plan a basic and further training project that goes beyond the previous offerings, the funding of which remains to be decided by the German Bundestag when it passes the next budget law. The object of this project is to develop and test specific further training modules on the issue of racism, taking the legal framework of human rights into account, and to provide them to the federal *Länder* to establish them as part of the existing basic and further training structures. Judges and public prosecutors are thereby to be supported in reacting appropriately to racist and hate-motivated crimes and dealing with the experiences of those affected by racism in criminal proceedings. At the justice summit mentioned in Chapter B 3.5 of the evaluation report, the responsible *Länder* ministers unanimously welcomed this project.

The assessment in *Chapter B 3.5*, that the topic of hate crime is not adequately addressed in judicial basic and further training is by the way not shared, cf. the conferences offered by the German Judicial Academy, which are correctly mentioned in the same chapter.

Regarding the description in *Chapter B 3.6* of counselling centres for those affected by hate crimes, the following comment is to be made: The Federation provides a minimum of 70,000 euros per federal *Land* per year to expand and support the work of counselling centres for those affected by hate crimes. At the same time, the *Länder* must contribute at least 20 per cent in co-financing. The regulation concerning the minimum level of funding was instituted because different *Länder* have very different needs (e.g. Berlin and Brandenburg extensively finance their own counselling centres for those affected by hate crimes and do not request any federal funding for this). Along with the funding for the counselling centres in the *Länder*, the Association of Counselling Centres for Those Affected by Right-Wing, Racist and Anti-Semitic Violence (VBRG) also receives additional funds for its work as an umbrella organisation within the scope of its structural development into a federal central agency. The formulation of the footnote suggests that the Federation only provides 70,000 euros per year in total for all counselling centres.

It is also noted that counselling centres also existed in western German *Länder* before 2015 (e.g. the victims' counselling centre Back Up in North Rhine-Westphalia) and that the western German *Länder* also take part in funding victims' counselling centres.

In order to change overall social conditions, the Federal Anti-Discrimination Agency has, *inter alia*, organised a salon on hate speech on the Internet and procured a legal opinion on possibilities for effective prosecution of hate crimes.

In this area, for example, specialised contact points of the Federal Police, the Berlin Police and the public prosecution office work together with the MANEO project against homophobic violence regularly at a "jour fixe".

The content of the remarks on the federal programme Social Cohesion through Participation ("Zusammenhalt durch Teilhabe") in *Chapter B 3.7.1* is incorrect and misses the intention of the programme. The essential substance of this federal programme is promoting the democratic work of associations and dealing with discriminatory and anti-democratic behaviour at all levels. To this end, the Federal Ministry of the Interior has since 2010 supported projects in nationally active associations and organisations in rural or economically underdeveloped areas through the programme Social Cohesion through Participation, and in doing so has built onto existing structures. The focus is on activists and volunteers who are trained, *inter alia*, to become democracy advisors within associations so that they are able to sensitise people within their own organisations to discriminatory and anti-democratic attitudes, offer advice in cases of conflicts with an extremist background, and initiate and support the development of prevention strategies. In doing so, the projects deal with all forms and phenomena of discrimination, especially including racial discrimination and homophobia and transphobia. Regular everyday conflicts within an association's work are the starting point for the project work. Therefore, reduction of it to the problem perception of political organisations and activities must be repudiated. The concrete project design takes place

within the associations and organisations according to their respective needs for action. Accompanying this, the project actors take part in coachings and supervision and qualification measures that are conducted by external service providers on behalf of the Federal Ministry of the Interior. The project is being evaluated and scientifically advised. In 2016, support for associations in handling the association-specific challenges connected to the current refugee movements is additionally being offered. As of the beginning of the next funding period in 2017, the programme will be opened up to projects in economically underdeveloped or rural regions throughout Germany.

The survey results cited as evidence are unfamiliar here. The results of the scientific advising, which also include surveys of project participants, are carefully evaluated and taken into account in the further conception and carrying out of the programme.

In accordance with the coalition agreement, the Federal Government is creating a new National Action Plan Against Racism (working title), which has been expanded to include the topics of homophobia and transphobia. This plan is currently being developed within the framework of an Interministerial Working Group on Preventing Extremism and Promoting Democracy under the lead responsibility of the Federal Ministry of the Interior and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, and is to be completed in spring 2017.

Against the backdrop of the recommendations of the UN World Conference against Racism in Durban in 2001, this National Action Plan is also being developed with consideration of a consultation with civil society. A daylong event with numerous NGOs and civil society initiatives took place to this end on 5 July 2016. Ideas and experiences were gathered from civil society in a discursive exchange at various roundtables, *inter alia*, on the following spheres of activity: human rights policy, education and political education, social and political engagement, diversity in the workplace, basic and further training, strengthening (inter)cultural competence in social environments, assessing and dealing with racist criminal offences, research on and protection against discrimination and everyday racism. The suggestions and contributions from civil society are being reflected on and categorised in a Ministry- and topic-specific way in the further course of creating the plan. At the “Forum against Racism”, a discussion platform between NGOs and the Federal Government (chaired by the Federal Ministry of the Interior), the further process and respective states of affairs concerning the National Action Plan are being described and discussed, as was also usual in the past. The demands for transparency and information that were mentioned in the evaluation report (*Chapter B 3.7.1*) were thus already taken into account before April 2016.

The “No Hate Speech” campaign supported by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth began on 29 June 2016 as part of the “No Hate Speech Movement” initiated by the Council of Europe. The aim of the “No Hate Speech” campaign is, *inter alia*, to sensitise young people and to support them in championing human rights online and offline. The campaign is supported by the “No Hate Parliamentary Alliance” of the Parliamentary Assembly of the Council of Europe.

2) Statement on Chapter C Gender equality

Chapter C I: Data collection to prevent and combat violence against women

The report states in *Chapter C I.2* that the Protection against Violence Act and legal practice have not yet been subjected to comprehensive further evaluation. It should be noted here that in October 2002, shortly after the Protection against Violence Act took effect, the Federal Ministry of Justice and Consumer Protection commissioned the State Institute for Family Research at the University of Bamberg to carry out accompanying research on the Act to improve the civil jurisdictional protection against violent acts and harassment and to facilitate the transfer of a shared home in the event of a separation. The findings of the research project were published in 2005 in the series "Rechtstatsachenforschung" [studies of legal facts] by the Bundesanzeiger Verlag, the publisher of the Federal Gazette, and are available in bookstores (Dr Marina Rupp [ed.], "Rechtstatsächliche Untersuchung zum Gewaltschutzgesetz" [Investigation of legal facts concerning the Protection against Violence Act], ISBN 3-89817-515-4). Based on the results of the study, a sub-working group of the Federal Government/*Länder* Working Group on Domestic Violence then compiled and evaluated feedback on the evaluation and on experiences with the Protection against Violence Act in practice. A sub-working group compiled a report dated 29 January 2008 on the results; this report contains considerations and recommendations that are to be incorporated into deliberations concerning the further improvement of the Prevention of Violence Act.

Judicial protection of children against violence is provided through custody measures and restrictions of rights of contact, culminating in the removal of contact. Concerning persons entitled to custody, children can be protected through protective orders as well as through interventions in custody rights in the event that orders and restraints should be insufficient (Sections 1666 and 1666a of the Civil Code). Orders corresponding to the content of a protective order against violence can also be issued: these include, for example, summons for a violent parent to vacate the home, accompanied by further prohibitions of proximity or contact (restraining orders) concerning the child. Restrictions on or the removal of the right of contact are possible if such restrictions are necessary to serve the best interests of the child (Section 1684 (4) of the Civil Code). This can be the case particularly in the event of violence or abuse. To protect the child, the family court can also order that contact is permitted only in the presence of a third party who is prepared to cooperate.

In *Chapter C I.2*, a 2004 representative study on violence against women in Germany by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and a 2014 study by the European Union Agency for Fundamental Rights are cited. By taking these two studies together, the conclusion is drawn that a significant reduction in violence against women in the past ten years cannot be discerned despite political activities. It should be noted here that this conclusion cannot be drawn by taking these two studies in conjunction. Both studies asked those surveyed about their experiences of violence over the entire course of their lives to date (beginning at age 16). The European Union Agency for Fundamental Rights study additionally asked about experiences of violence in the 12-month period directly preceding the survey. Beyond this, the time points of the experiences of violence were not documented. Thus, simply placing the aggregated figures of the two studies

alongside one another does not make any statement on changes in the prevalence of violence possible.

In *Chapter C I.3*, under the heading “Evaluation of the implementation of OSCE commitments”, it is stated that at the federal level, activities to combat violence against women and to collect data and information have thus far been conducted almost exclusively by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. On this matter, the aforementioned research project which was commissioned by the Federal Ministry of Justice and Consumer Protection is to be referred to. It should furthermore be noted that the Federal Ministry of Justice and Consumer Protection has the lead responsibility for the Protection against Violence Act, which is making a significant contribution to combatting violence against women in practice. A legislative process is currently underway through which the protection of victims under the Protection against Violence Act in the case of a settlement is to be further improved. Finally, the Federal Ministry of Justice and Consumer Protection and the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth jointly publish an informational brochure on the Protection against Violence act, entitled "Mehr Schutz bei häuslicher Gewalt" [More protection from domestic violence].

Regarding research funding in *Chapter C I.3*, it should be noted that according to the division of responsibilities within the Federal Government, research funding for projects in the area of violence against women lies predominantly within the purview of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. Because of its connection to the field of educational institutions, the Federal Ministry of Education and Research funds research projects on the sexual abuse of children and youth in the total amount of 35 million euros due to its own ministerial responsibilities according to the recommendations of the Round Table on the Sexual Abuse of Children on 30 November 2011 within the framework of educational and health research.

Under the sub item "Data collection by the police and courts" in *Chapter C I.3*, it is stated that a systematic assessment of data and analyses of court proceedings and their outcomes and of the protective measures taken in relation to domestic violence has not yet taken place. It should be noted that the *Länder* family courts responsible for matters of protection against violence record data on these proceedings in a nationally uniform way via judicial statistics. The cases opened and closed, subject of the proceedings, type of settlement and duration of the proceedings are thus recorded and the corresponding figures are analysed and published by the Federal Statistical Office annually in series 2.2 of technical series 10. The judicial statistics, however, do not contain any information about the protective measures taken in specific cases.

The criminal prosecution statistics published annually by the Federal Statistical Office (series 3 of technical series 10) also report those convicted and sentenced for criminal offences under the Protection against Violence Act. Regarding the data in question, however, it is also to be taken into consideration that in cases in which those convicted or sentenced have violated more than one law through one act (Section 52 of the Criminal Code) or multiple acts (Section 53 of the Criminal Code), the prosecution statistics only record the criminal act that carries the most severe legal punishment. The number of persons convicted or sentenced for violations of the Protection against Violence Act may therefore be higher than what can be shown in the figures concerned. Regarding the other criminal offences that come into consideration in connection with violations of the Protection against

Violence Act, no information can be provided (also not by approximation) about the extent to which the available data also relates to cases of violations of the Protection against Violence Act.

Regarding the criticism of the lack of flow statistics in the field of domestic violence as well, reference is also made to the above comment on Chapter B 3.1.2.

Editorial clarification: The joint press conference on the issue of violence in partner relationships that is planned for November 2016 will be held by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth and the Federal Criminal Police Office and not, as the report states, by the Federal Criminal Police Office and the Federal Ministry of the Interior.

Chapter C II Pay equity

The statements in *Chapter C II.1.2* that in Germany there are no sufficient provisions for the implementation of equal pay which would be specifically binding on wage bargainers are incorrect in their judgmental generality. A disadvantage in remuneration on the basis of gender is impermissible; this is expressly regulated by the Section 2 (1) no. 2 of the General Equal Treatment Act. This provision explicitly refers to collective bargaining agreements. According to Section 15 (1) of the General Equal Treatment Act, those affected by a violation of the prohibition of discrimination may demand compensation, which may also encompass payment of the lost remuneration if applicable. The existing legal commentary on the General Equal Treatment Act criticises it for the fact that the requirement of equal pay only arises from the difficult-to-grasp overall picture of Section 7 (1), Section 2 (1) No. 2, Section 3 and Section 8 (2) of the General Equal Treatment Act. Because of its special importance to employees, the requirement of equal pay should be expressly and transparently regulated in its own specific law, thereby reflecting the importance that legislators attach to the requirement of equal pay.

Regarding *Chapter C.II.2* it should be noted that the “basic right to equal pay between men and women” which it mentions does not exist in the sense of an individual benefit entitlement under the Basic Law. Article 3 of the Basic Law chiefly imparts a right of defence against unequal treatment, which is oriented to the state. Article 3 (2) sent. 2 of the Basic Law furthermore obligates the state to realise the equal status of men and women in fact.

The adjusted gender pay gap of 7 per cent that is mentioned in this chapter and the unadjusted pay gap of 21 per cent that is also mentioned differ in their significance: the calculation of gross hourly pay in the case of the unadjusted pay gap takes into account not only data from full-time employees but also the earnings of those who do part-time work (for older employees), those who are partially employed, trainees and interns. It denotes the simple difference between the average gross hourly wage of men and women, expressed as a percentage of the average gross hourly wage of men. The adjusted pay gap allows for statements on the level of difference in the gross hourly earnings of women and men with comparable attributes. It denotes the difference in pay that results from comparing the pay of women and men with the same individual and occupational characteristics. The adjusted pay gap thus subtracts the portion of the pay gap that results from structural differences (endowment effects) such as, for example, the educational level, professions, and qualifications of men and women.

The adjusted pay gap thus has a different explanatory value than the unadjusted pay gap, which is derived from the simple difference in the average hourly wages of men and women and therefore does not reveal anything about disadvantages or about the level of discrimination in employees' wages. Statements about the level of discrimination on the basis of the adjusted pay gap can only be made tendentially.

The extent to which the pay gap is derived from intentional decisions to pursue a certain professional path remains unclear. What is also neglected is what share of the pay gap in Germany arises from fields without collective agreements. The chapter conveys the impression that the conclusion of collective bargaining agreements generally and systematically causes income disparities between men and women. For the public service in particular, this is not correct.

The transparency in payment systems that is called for already exists by and large for the public service at the federal level. Federal collective agreements and circulars are published on the website of the Federal Ministry of the Interior as well as in the Joint Ministerial Gazette.

The research project on collective agreements and equal pay of the University of Erlangen-Nuremberg and the Institute for Employment Research, which is mentioned in *Chapter C II.3.1*, has already been completed. The project mentioned in the report as a 'pay equity check' fostered the economic independence of women and men through the use of an equal treatment check within the scope of an EU-financed project and was developed by the Federal Anti-Discrimination Agency as an instrument to check whether men and women are treated equally in the workplace. The aim of the project was to support businesses in using the new instrument to check systematically whether men and women are treated equally in the company.

Chapter C II.3.2 mentions the legislation for greater pay equity that was developed by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth during the current electoral term. This description is, however, imprecise. This law is intended to establish an obligation for companies that have 500 or more employees to comment on the advancement of women and pay equity according to legal criteria in their management reports created in accordance with the German Commercial Code. The essence of this draft law is employees' legal right to information about the standards and criteria by which their own pay and the pay of comparable jobs are determined, and about the classification and pay level of these comparable jobs (while preserving data privacy and anonymity).

Regarding *Chapter C II.4* it should be noted that disadvantages due to sexual identity are also covered in the area of protection of the General Equal Treatment Act (cf. expert's assessment by the Federal Anti-Discrimination Agency: Sexual harassment in the higher education context – gaps in protection and recommendations. Expert's assessment by Prof. Dr Eva Kocher/Stefanie Porsche, European University Viadrina, Frankfurt (Oder)).

Chapter C III: Women, peace and security: Germany's implementation of UN Security Council resolution 1325

It is generally to be noted that the Federal Government Action Plan to implement UN Security Council Resolution 1325 (2013-2016) is being discussed in the Interministerial Working Group on the implementation of Security Council Resolution 1325. The Working Group is comprised of representatives of the Federal Foreign Office, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, the Federal Ministry of the Interior, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry of Defence, and the Federal Ministry for Economic Cooperation and Development. The Working Group is currently consulting on the implementation report for the Action Plan and its update. As laid down in the Action Plan, a report on its implementation is to be made to the German Bundestag at the end of its period of validity, that is, at the end of 2016. At least once a year, the Interministerial Working Group invites representatives of the civil society organisations working on this topic to speak about the implementation of UN Security Council Resolution 1325. In this framework, the updating of the Action Plan is also to be discussed. In 2016 joint sessions of the Interministerial Working Group with civil society took place on 4 July 2016 and 14 September 2016.

Regarding the updating of the Action Plan, it is planned for the implementation of UN Security Council Resolution 1325 to continue to be enshrined in foreign, security and development policy as a cross-cutting issue, and increasingly so, in order to make gender-sensitive peace and security policy possible. In this context, the Resolution is also to be taken into account in the framework of the guidelines for engagement in crisis areas and peacebuilding that are to be reworked. The new edition of the white paper in which the guidelines for security policy for the next ten years are formulated also mentions Resolution 1325. The successor Action Plan is to take into account the findings of the October 2015 UN Global Study on the implementation of UN Security Council Resolution 1325. The Federal Government also sees the implementation of UN Security Council Resolution 1325 in the framework of the 2030 Agenda that was adopted last year.

At a regional and international level, Germany continues to advocate for the implementation of UN Security Council Resolution 1325 within the scope of the EU, the OSCE, NATO and the United Nations.

Regarding *Chapter C III.1.2*, it should be noted that the Center for International Peace Operations is currently being expanded into a full sending organisation.

Regarding *Chapter C III.2.2*, it should be noted that the scope of Germany's commitment to development policy cannot be broken down into "relevant topical areas", of which fragile statehood is named as one among many. This also applies to the promotion of gender equality: it is considered an overarching task and attribute of all areas of German development cooperation and it is given high priority.

The proposed interpretation regarding extraterritorial application that is contained in General Recommendation No. 30, which is mentioned in *Chapter C III.2.2*, is — like the CEDAW General Recommendations in general — not binding under international law for the parties to the

Convention. Germany has, however, made a political decision to apply the requirements of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) extraterritorially as well in peacekeeping operations and in development cooperation.

Regarding the statement made in *Chapter C III.3.1* that in 2010-2013 only 10 per cent of all Federal Government expenditures to fund projects contributing to the implementation of Resolution 1325 were in the area of participation, even though particular importance is to be attached to the aspect of participation according to the National Action Plan for 2013-2016, please refer to the different in time periods in question. The 2013-2016 Action Plan specifically sought to counter the low level of importance placed on the aspect of participation in the years 2010-2013. Regarding the categorisation of individual focal points, it should generally be noted that different measures can contribute to several focal points at the same time, but are normally assigned to just one of them, which greatly limits the extent to which conclusions can be drawn about prioritisation among the focal areas. Regarding the statement that the National Action Plan does not include a strategic operative direction and lacks an orientation towards its impact, it should be noted that the National Action Plan has enshrined the topic of women, peace and security more firmly than before in German foreign, security and development policy as a cross-cutting issue. Regular impact monitoring and comprehensive reporting take place for the majority of the projects to implement UN Security Council Resolution 1325, which are implemented in partner countries, for example on behalf of the Federal Ministry for Economic Cooperation and Development.

Regarding *Chapter C III.3.3*, it should be noted that the conclusions based on previous studies on the progress of integrating women into the armed forces are by no means entirely negative. The number of soldiers who tend to see an increase in problems with female soldiers in everyday work is declining. The self-confidence of women in the armed forces regarding their capabilities is increasing, and female soldiers are noticing a normalisation of interactions between men and women. If, on the other hand, there is talk of a darkening mood regarding integration in the chronological comparison of the studies, it is apparent that the vast majority of these “felt” or “believed” impressions are the sensitivities of men who have problems with letting go of their stereotypes. Incidentally, against the backdrop of efforts to increase the appeal of the Federal Armed Forces and the backdrop of the underrepresentation of women in the armed forces, a staff element on equal opportunities in the area of competence of the Federal Ministry of Defence was established on 21 April 2015 under the Director-General for Personnel. Its mission is targeted to the general conditions for and participation in careers at the Federal Ministry of Defence and in its entire subordinate area. Gender-specific, systematic injustices are to be identified, analysed and dismantled as quickly as possible through the development and implementation of effective measures. As of 1 May 2016, the staff element on equal opportunities was expanded to include the topics of diversity and inclusion.

The conclusion drawn in *Chapter C III.4* that consideration for the dimension of gender in the context of violent conflicts is still left largely to development cooperation thus cannot, in the light of the above statements, be supported.

3) Statement on Chapter D: Combatting trafficking in human beings

The statement in *Chapter D.2* that the actual volume of trafficking in children may have increased due to the sharp increase in asylum-seeking minors is an expression of pure speculation, which is not documented by studies or sources.

The description in *Chapter D 2.1* of the applicable law and current legislative process for the implementation of Directive 2011/36/EU is abbreviated but essentially correct. It should be noted, however, that Section 233a of the Criminal Code (Assisting in human trafficking) does not, as stated in Chapter D 2.1, refer to acts of participation in or advancement of trafficking in human beings, and is also not a catch-all provision as stated in D 3.1.1. In fact, Section 233a of the Criminal Code, despite a heading that is misleading in this respect, represents for German law trafficking in human beings within the meaning of international legal instruments. As correctly described in Chapter D 2.1, trafficking in human beings is redefined in close correlation with international legal instruments in the new version of the provisions on trafficking in human beings.

The statements on trafficking in children are misleading. Despite its heading, Section 236 of the Criminal Code does not claim to cover the criminal law concerning trafficking in children as it is understood in international legal instruments. It only covers a sub-area of it. The evaluation report ignores further penal provisions such as, for example, Section 232 et. seqq. and Section 235 of the Criminal Code, which together with Section 236 of the Criminal Code ensure the full implementation of the corresponding international legal instruments such as the additional protocol to the Convention on the Rights of the Child.

The description of assessment by the authorities in the comments on residence permits for victims of trafficking is misleading. The report states that a residence permit “can” be issued, whereas the actual legal situation under the Residence Act envisages limited discretion (“should”).

In *Chapter D 2.2* the report states that there is a lack of legal possibilities when children are forced to take part in begging or in committing criminal offences. This is not correct, even if such behaviours are not yet currently punishable as trafficking in human beings. It should be noted that such behaviours may be punishable as coercion (Section 240 of the Criminal Code). If children (or adults) are induced to commit crimes, incitement to commit these crimes is possible, and as the case may be, the question of an indirect perpetrator can even arise when children who are not criminally liable for their actions are induced to commit crimes. The statutory offence of Section 171 of the Criminal Code should also be referred to, provided that the perpetrators are persons entitled to custody.

Regarding the question of whether refugee children are affected by trafficking in human beings, a survey conducted by the Federal Criminal Police Office concerning crimes committed against or by refugees for the period of 1 January 2014 to 31 January 2016 revealed that for this time period the federal *Länder* had no information that refugee minors were victims or perpetrators of trafficking in human beings in the area of sexual exploitation or in the area of labour exploitation or of exploitation through begging, through commission of crimes or through forced prostitution.

In *Chapter D 3.1.2*, the report addresses sensitisation offerings for various professional groups in connection with trafficking in human beings. In addition to the aforementioned further training sessions held by the police, in 2016 the Federal Criminal Police Office has also held conferences for case officers on the topic of trafficking in human persons for the purpose of sexual exploitation and trafficking in human persons for the purpose of labour exploitation, with up to 90 external participants. These also serve purposes of further training through their description of successfully conducted investigation proceedings, especially in respect of identifying those affected.

The appraisal that training and instruction for prosecutors and the judiciary on the topic of trafficking in human beings for the purpose of labour exploitation have been offered only on a "very limited scale" is not shared. The German Judicial Academy and the *Länder* regularly offer numerous events on these issues, such that sufficient training offerings exist. The piece of information contained in the report that prosecutors and the judiciary make use of these offerings on a voluntary basis is correct.

In *Chapter D 3.1.2*, the report also names the Federal Office for Migration and Refugees, stating that, "due to high numbers and continuous restructuring within the Federal Office for Migration and Refugees, it is unclear whether special representatives for trafficking in human beings are currently being utilised in all field offices", and that it is unclear whether regular decision-makers are receiving sufficient training. In this regard, footnote 46 notes that a written inquiry of 17 February 2016 was not adequately answered by the Federal Office for Migration and Refugees. The following position is taken on this:

- The structural concept of the Federal Office for Migration and Refugees envisages the utilisation of special representatives for victims of trafficking in human beings at all field offices.
- Currently, 48 special decision-makers for victims of trafficking in human beings are working at the 60 bureaus of the Federal Office for Migration and Refugees.
- Due to the high numbers of applicants, the hiring of a large number of new decision-makers and the development of new field offices, trainings for both longstanding and new special representatives for victims of trafficking in human beings are in preparation for 2016, such that the concept of utilising special decision-makers for victims of trafficking in human beings at all field offices can be maintained.
- The trainings that were held in 2011/2012 as part of the project to improve the identification of victims of trafficking of human beings, which is named in the evaluation report, were trainings for multipliers in order to ensure the sensitisation of all asylum decision-makers. Enlisting employees of the special consultation services for those affected by trafficking in human beings in trainings has also initiated interlinking so that victims – with their consent – can also be put in contact with these offices. Care and support for victims by special consultation services is very important not only in the interest of protecting victims (as necessary, accommodating them in safe housing) and of the criminal proceedings, but also in the interest of stabilising and guiding the asylum process. Subsequent to the project, corresponding special representatives were named.
- The trainings developed by the European Asylum Support Office (EASO), which all prospective decision-makers currently take part in, contain content for interacting with vulnerable groups. A special module on the topic of interacting with vulnerable groups has been available in German translation since the beginning of this year and has been in use for training special decision-

makers since July 2016. The decision-makers thereby acquire foundational knowledge for interacting with groups of people who are especially in need of protection, such as people affected by trafficking in human beings.

- Additionally, at the Federal Office for Migration and Refugees, all cases reported by asylum decision-makers in which there are indications of trafficking in human beings are registered. This process does not separately record the various forms of trafficking in human beings, but it can be assumed that the vast majority of the cases concern victims of trafficking of human beings for the purpose of sexual exploitation.
- No inquiry of 17 February 2016 regarding special representatives for trafficking in human beings has been received by the Federal Office for Migration and Refugees. There is reportedly an inquiry from April 2016, but this does not concern the report on the evaluation of the implementation of OSCE commitments.

As an addition to *Chapter D 3.2*, it should be noted that the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth is currently working together with NGOs to develop a national cooperation concept to improve the protection of minors who are victims of trafficking in human beings. The aim is to ensure adequate protection measures and comprehensive aid measures for minors who are potentially or actually affected by trafficking in human beings, regardless of the purpose or form of their exploitation, and to improve cooperation among all actors who deal with minors who are potential or actual victims of trafficking in human beings.

Via ECPAT, the Federal Government also promotes training sessions for tourism trainees so that (prospective) specialists can be sensitised to the protection of children and training sessions for professionals who come into contact with potential victims of trafficking in children, as well as campaigns to sensitise the public (e.g. the “Don’t Look Away!” campaign).

Regarding the statements on trafficking in children, please refer to the comments on *Chapter D 2.1*.

In 2014, a Federal Government/*Länder* project group addressed the topic of trafficking in human beings and the sexual exploitation of children, and specifically made recommendations for improved data collection and forms of cooperation at the regional level. As a result, an expanded Trafficking in Human Beings Situation Report is being prepared beginning in 2017 with particular attention to minors.

The statement made in *Chapter D 3.2.2* that the Federal Criminal Police Office had only registered a single case of trafficking in asylum-seeking minors in 2013-2015 is taken out of context and conveys a false impression. The following formulation would express the situation accurately: in 2013-2015, the Federal Office for Migration and Refugees only detected evidence of a minor victim of trafficking in human beings in the asylum process in one case (and reported it to the Federal Criminal Police Office).

The report also questions whether special representatives for trafficking in human beings are currently working in all field offices of the Federal Office for Migration and Refugees and whether regular decision-makers or additional personnel in this area are adequately trained in recognising signs of trafficking in children. The following is to be noted regarding this matter: The Federal Office

for Migration and Refugees has no reliable figures or other information on trafficking in children. However, the especially vulnerable situation of minors, especially unaccompanied minors, is being taken into consideration by the Federal Office for Migration and Refugees. This situation is accounted for through various measures (especially through the employment of special representatives for unaccompanied minors). The topic of trafficking in children will be taken into account in the training sessions for special representatives for victims of trafficking in human beings that are currently being planned.

The following is also to be noted on the topic of unaccompanied minor refugees: Under German law, guardianship is to be ordered and a guardian to be appointed if a minor is not subject to parental custody or if the parents are not entitled to represent the minor either in matters affecting the person or in matters affecting property (Section 1773 (1) of the Civil Code). The legal foundation for ordering guardianship has existed since the Civil Code entered into force; its application to the area of unaccompanied minor refugees is recent. The main cases in which a minor is not subject to parental custody are the death of the parents and the withdrawal of custody by the family court. The second group of cases of parents who are not entitled to represent the minor occurs above all when parental custody is suspended. In most cases of unaccompanied minor refugees, parental custody is suspended because of a factual obstacle, Section 1674 of the Civil Code. This is the case when parents cannot in fact exercise parental custody for a long period of time, for example because they live abroad and cannot ensure the appropriate care, supervision and representation of the minor in another way.

The family court checks on a case-by-case basis whether these requirements are satisfied, for the determination of the suspension of parental custody and the appointment of a guardian signify a major intrusion in parental rights. In addition, the Youth Welfare Office is entitled and obligated in accordance with Section 42a (1) of the Social Code Book VIII to take a foreign child or a foreign adolescent into custody after an unaccompanied journey. While the child or adolescent is provisionally taken into custody, the Youth Welfare Office is entitled and obligated to undertake all legal acts that are necessarily for the well-being of the child or adolescent, that is, to ensure the child's or adolescent's representation for a temporary period (Section 42a (3) sent. 1 of the Social Code Book VIII).

If the requirements for guardianship are satisfied, the family court appoints a suitable guardian. If a person suitable as a voluntary sole guardian is not available, the Youth Welfare Office may be appointed as an "official guardian" as per Section 1971b of the Civil Code. This happens often in practice. The qualification of employees within the Youth Welfare Office who take on guardianship tasks within the Youth Welfare Office resides with the employment bodies (municipalities). Official guardians fulfil their task responsibly; knowledge that is specially needed for unaccompanied minor refugees, e.g. in migration law, must, however, be acquired in many cases. Numerous training courses are available for this.

Reliable statistics about the number of and reasons for disappearances of unaccompanied minor refugees do not (yet) exist; it is, however, to be assumed that a portion of this group of people can be attributed to multiple input of the same data and to independent onward travel, e.g. to the Netherlands or Sweden.

The statement in *Chapter D 3.3.1* that police crime statistics are compiled by the Federal Statistical Office is not correct. The police crime statistics for the Federal Republic of Germany are compiled by the Federal Criminal Police Office on the basis of the *Land*-level data provided by the 16 *Land* Criminal Police Offices.

Regarding the criticism of the lack of flow statistics in the field of domestic violence, please refer to the statement above concerning *Chapter B 3.1.2*.

Chapter D 3.3.2 correctly states that no national rapporteur on all forms of trafficking in human beings which is specially established for this purpose has yet been established in Germany. Contrary to what was apparently assumed in the evaluation report, however, in this respect a compulsory need to implement the establishment of an (independent) national rapporteur follows from neither Directive 2011/36 nor the Council of Europe Convention on Action against Trafficking in Human Beings. The affected Ministries under lead responsibility of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth have heretofore administered the function of "National rapporteurs or equivalent mechanisms" in accordance with Article 19 of EU Directive 2011/36 together and with a divisions of responsibilities. Since 2011, the Ministries have represented Germany in the EU Network of National Rapporteurs and Equivalent Mechanisms and have jointly communicated the information that is coordinated within the Federal Government by the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth to the EU Anti-Trafficking Coordinator (EU-ATC) in accordance with Article 20 of Directive 2011/36.

In reference to the recommendations from the first GRETA monitoring process and in reference to the extension of the concept of trafficking in human beings to include further forms of exploitation, which is associated with the implementation of the Directive, the further development of structures for national reporting and for coordination of all strategies and measures on all forms of trafficking in human beings at the federal level might be sensible. The configuration of the corresponding reporting and coordination mechanisms is currently being discussed within the Federal Government and is to be discussed further in the Federal Government/*Länder* Working Group on Trafficking in Human Beings.

4) Statement on Chapter E Voting rights: Voting rights of persons with disabilities

Regarding *Chapter E 1.3 and Chapter E 2:* The principle of generality of voting in Article 38 (1) of the Basic Law is not restricted by the minimum voting age stated in Article 38 (2) of the Basic Law, but rather allows for objectively legitimate exceptions; this principle is not subject to any absolute prohibition of differentiation (decision of the Federal Constitutional Court: BVerfGE 132, 39 (47)).

In Germany, persons with disabilities naturally have unrestricted voting rights in accordance with the legal view (cf. Bundestag Printed Paper 16/10808, p. 63-64) expressed by the Federal Government with the ratification of the UN Convention on the Rights of Persons with Disabilities. The legal exceptions, which apply to all people, are in accordance with the UN Convention on the Rights of Persons with Disabilities.

The appointment of a custodian—even if comprehensive—does not lead to the loss of voting rights. For this to occur, it is necessary that by legal decision in the individual case (Section 1896 of the Civil Code), a custodian has had to be appointed to take care of all affairs, and not only by a temporary order. People who live in a psychiatric hospital are also not deprived of voting rights. This applies only to people who are in a psychiatric hospital because of an order in accordance with Section 63 in connection with Section 20 of the Criminal Code. It should also be noted that the application for a ballot to vote in a different, barrier-free polling place takes place directly at the municipal authority or by postal vote without the applicant having to state any reasons for doing so.

Regarding *Chapter E 3.1*, it should be noted that in the implementation of European legal standards, the *Länder* laid down for public service broadcasting in Section 3 of the Interstate Broadcasting Treaty that the broadcasters ARD, ZDF and Deutschlandradio and all operators of nationally broadcast programmes are to increase their inclusion of barrier-free offerings beyond their existing commitment within the scope of their technical and financial possibilities. In corresponding voluntary commitments, the broadcasters ARD and ZDF have both committed to facilitating barrier-free access to their broadcast and online programming.

With the introduction of the public broadcasting fee (*Rundfunkbeitrag*), persons with disabilities who are financially capable of paying the fee pay only a reduced sum of one-third of the broadcasting fee unless they are able to claim a reason to be exempted from the fee. Through this fee, the barrier-free offerings of ARD, ZDF and Deutschlandradio are to be further supported. The federal *Länder* and state media authorities periodically review the progress of developments in this area.

The mentioned Ordinance on Barrier-Free Information Technology applies only to federal authorities.

Regarding *Chapter E 3.2:* The exercise of voting rights in the context of in-patient services for persons with disabilities is not contingent on whether enough personnel are available to support people with disabilities in finding their polling station, for the exercise of the right to vote is not contingent on finding a polling station. Section 36 of the Federal Electoral Act envisages equal entitlement to the option of postal voting for all eligible voters.

The assertion that tactile voting templates created by associations for the visually impaired are sometimes faulty or do not fit onto the ballot is not substantiated and is not in line with the Federal Government's knowledge. The templates are created by the associations before each election without complaint and are paid for by the Federal Government. The fact that the tactile voting templates are created by the associations of those affected by visual impairments in consultation with the electoral authorities is not a deficiency, but rather a strength of the established process in Germany. The state harnesses the associations' knowledge and closeness to the issue while bearing the costs itself.

The assertion that a general commitment to barrier-free access cannot be found in German law and that this represents a legal limitation of the right to vote is contested. The regulation in Section 46 of the Federal Electoral Code stating that polling places are to be selected and equipped according to local conditions in a way that facilitates the ability of all eligible voters, especially persons with

disabilities and other persons with limited mobility, to participate in elections as much as possible means that barrier-free spaces are to be used to the extent that they are available. The right to vote may be exercised in a different, barrier-free polling place in the constituency, at the municipal authority or by postal vote. For this purpose, poll cards include advance notification of whether the polling place is barrier-free and under what telephone number of the municipal authority information may be obtained about the nearest barrier-free polling place (Section 19 (1) No. 2 and 7 of the Federal Electoral Code).

The assertion that those affected must first identify themselves as “disabled” in order to receive the corresponding support services is incorrect: the possibility of applying for a ballot to vote in a different polling place—for example, a barrier-free polling place—or in advance at a local authority or by postal vote is available to all voters *without* any requirement to give reasons for this.

Regarding alternative voting scenarios, it should be noted that the right to vote already envisages the possibilities of moving polling place staff, voting in a different polling place or at the municipal authority and voting by post. In Germany voting with voting machines and e-voting are, according to case law of the Federal Constitutional Court (decision of the Federal Constitutional Court: BVerfGE 123, 39, 71), only compatible with the Basic Law under strict conditions.

For persons with disabilities who have significant needs for assistance, that is, also for the assistance for people with disabilities who are running for office that is mentioned in *Chapter E 3.3*, work assistance is one of several components of a broad-ranging approach to personal assistance with the activities of daily living and with participation in working life and in social life. The disabled people themselves are the ones who assign the various personal assistance services; thus, personal assistance is also an expression of the right to self-determination and the right to express wishes and to make choices (Section 9 of the Social Code Book IX).

The amendment of the law regarding people with severe disabilities (Part 2 of the Social Code Book IX) introduced a legal entitlement of people with severe disabilities for the costs of necessary work assistance to be assumed by the integration offices (Section 102 (4) of the Social Code Book IX) as part of the accompanying assistance in working life. This is a monetary payment, not a contribution in kind that is organised by the public service provider. In fact, employees with severe disabilities have organisational and instructional competence themselves and are themselves responsible for this. The employee with a severe disability thus either hires the assistant themselves (employer model) or commissions work assistance from a provider of assistance services at their own expense (commission or service model).

Regarding *Chapter E 4 – conclusion:* The voting rights of persons with disabilities are not curtailed. The existing limitations on voting rights apply generally to all groups of voters. The state’s partial funding of parties exists to fulfil responsibilities in terms of the formation of political will that are assigned to the parties by the Basic Law in accordance with the principle of strict formal equality and therefore cannot be used as a means of control for the benefit of other objectives.

5) Statement on Chapter F Transparency and democratic institutions: Income transparency of political parties and representatives and of political advocacy groups

Even if the prescribed framework of the evaluation report does not allow for a comprehensive and well-founded description of and engagement with the key regulations concerning German political party financing law, individual phenomena such as, for example, political party sponsoring are arranged unclearly in *Chapter F* in terms of their economic and legal significance.

The reference to a secondary source such as "abgeordnetenwatch" in the description of functional situations (gifts from legal persons – amounts of major donations) can be regarded as methodologically dubious in such an evaluation report. The interpretation of the major donor behaviour described as manipulative evasion (dividing large donations into multiple smaller donations) contains an insinuation that gives the impression of a certain bias. The approach and points of critique of "Lobbycontrol" and "abgeordnetenwatch" should not be taken on in such a report without developing one's own position on the reasonableness of demands such as the legislative footprint.

The report seems to labour under the preconception that only advocates for companies are lobbyists, whereas NGOs, for example, are not lobbyists. Furthermore, the report offers no precise definitions of the terms 'lobbying' and 'lobbyists' which could be discussed.

The report's analysis of the concrete positions of GRECO, the Bundestag President and the Bundestag parliamentary groups is not complete and thus not fully correct. GRECO, for example, has refrained from its related regulatory recommendations in the course of the process of monitoring the implementation of its recommendations due to corresponding remarks by the Bundestag Committee on Internal Affairs.

In *Chapter F 1.2.1*, the statement by the Federal Constitutional Court on the transparency requirement of the Basic Law is placed in a general context. This statement by the Federal Constitutional Court, however, relates to the requirements concerning the legislative process for the compensation of Members of the Bundestag.

The heading of the point "Members of the Bundestag and members of the government" in *Chapter F 1.2.2* (also in Chapter F 2.2) is broader in scope than the content of these paragraphs. The statements only apply to members of the government if they are Members of the Bundestag at the same time. Insofar as their position as members of the government is addressed, the applicable waiting period regulation, for example, is not taken into consideration.

In *Chapter F 1.2.2* it is mentioned that the next report by the Bundestag President on developments in party funding and on the political parties' financial reports is expected with a one-year delay in autumn 2016. This delay arises from the most recent amendment of the Law on Political Parties in December 2015.

Regarding the list for associations that is mentioned in *Chapter F 1.2.2*, it is to be noted that in accordance with a German Bundestag decision of 21 September 1972, the President of the German

Bundestag maintains a public list on which associations that represent interests to the Bundestag or to the Federal Government can be recorded. In principle, only associations that have applied to be registered of their own initiative can be registered on the list. Institutions, bodies and foundations under public law and their umbrella organisations are not registered, nor are organisations that already engage in political advocacy at a national level. The same applies to associations affiliated with an already registered umbrella organisation and to individual clubs and individual enterprises. Registering is not connected with any rights or any obligations. In accordance with Annex 2 (4) of the Rules of Procedure of the German Bundestag, enrolment on the list does not constitute any right to be heard or be issued a Bundestag pass.

The evaluation report states that political advocacy that goes beyond registered associations is not specifically regulated under law. Here it is to be noted that Section 44a (2) sent. 2 of the Members of the Bundestag Act prohibits any Member of the Bundestag to "accept money or allowances with monetary value which are only granted in the expectation that the interests of the payer will be represented and asserted in the Bundestag". In accordance with Rule 1 (2) no. 4 of the Code of Conduct for Members of the German Bundestag, Members of the Bundestag also must inform the Bundestag President of activities as members of a board of management or other managerial or advisory body of a club, association or similar organisation. This also applies if activities in such bodies are not connected with any income. If income is derived from these activities, this income is in principle also to be declared (Rule 1 (3) of the Code of Conduct). Memberships and the income associated with them are to be published in the Official Handbook and on the website of the German Bundestag in accordance with Rule 3 of the Code of Conduct. In this way, established relationships between Members of the Bundestag and organised interest groups are disclosed. Rule 1 (2) no. 2 of the Code of Conduct contains the same disclosure requirement for activities as a member of company boards and Rule 1 (2) no. 3 contains the same disclosure requirement for activities as a member of an institution under public law.

The factual basis for the description of the income of political parties represented in the Bundestag in *Chapter F 2.1* is dubious. Only donations that exceed an annual total of 10,000 euros to one political party can be designated on the basis of statements of accounts. Income from sponsoring agreements is part of the income listed as a total sum in the category of income from events, distribution of printed matter and publications; therefore, its scope cannot be clearly delimited.

It is furthermore to be noted that political party donations exceeding 50,000 euros are subject to a stricter disclosure obligation in accordance with the Law on Political Parties. The formulations that are described as unclear in the evaluation report are unproblematic in practice: the "individual case" encompasses those donation payments to a political party by a donor which are to be ascribed to a unitary decision of the donor's will. In legal usage, "promptly" means "without culpable hesitation". The "timely" publication of these major donations has for quite some time taken place online within one to two business days after the receipt of the notification and by the next month at the latest as a Bundestag printed paper.

Political party donations that exceed a total value of 10,000 euros in one year are to be published with the name and address of the donor in the statement of accounts of the political party (Section 25 (4) of the Political Parties Act). The publication obligation cannot be circumvented by splitting up

donations because the publication obligation hinges on the total sum of donations from a donor to all divisions of a party in a calendar year. Single donations of more than 50,000 euros are published immediately.

The German term *Stückelung* used in the report to designate splitting up donations suggests that the donor and the donation recipient are aware of the intended total donation sum and have divided it into multiple donations to avoid disclosing it promptly. However, this requires evidence of a will to avoid the disclosure obligation. The publication obligation would exist all the same in the case of such behaviour.

So-called sponsoring, that is, the paid opportunity to advertise e.g. at a political party conference is not unregulated under German law on political parties. In accordance with Section 24 (4) no. 7 of the Political Parties Act, income from sponsoring is to be accounted for in the political parties' statements of accounts and published with them. If there is a gross disparity between the service of the sponsor and the return service, this is considered not to be sponsoring, but rather a donation within the meaning of Section 25 (4) of the Political Parties Act. The sponsor's service is then to be published in the statement of accounts as a donation in accordance with Section 24 (4) no. 3 and no. 4 in conjunction with Section 23 (2) sent. 3 of the Political Parties Act.

Regarding the disclosure obligation in relation to the activities and income of Members of the Bundestag, as described in *Chapter F 2.2*, it should be noted that the Bundestag has in its rules of conduct established the requirement to disclose and publish activities and income without this being dependent on the presence of shared interests in an individual case.

In *Chapter F 2.3* (and in *Chapter F 3.3*) it is stated that the informal practice has been established of having Bundestag passes issued by the Parliamentary Secretary of the parliamentary groups and that being registered on the list of associations establishes the right to a Bundestag pass. This description is incorrect. The rules of access and conduct for the area of Bundestag property in the version of 30 June 2011 state that for lobbyists it is necessary for applicants to demonstrate through an application signed by a Parliamentary Secretary of a parliamentary group that they frequently must visit the building of the German Bundestag, not least in the interest of the parliament. While this rule has been criticised by certain associations such as "abgeordnetenwatch" and "Lobbycontrol", it has not been an informal practice, but has rather been regulated in a positive statutory manner on the basis of a decision by the Council of Elders.

It is furthermore to be noted that representatives of associations, companies and other organisations that are not registered on the public list no longer receive personalised Bundestag passes. The process of endorsement by Parliamentary Secretaries of a parliamentary group has been abolished.

Additionally, in February 2016 the access rules for lobbyists were altered by decision of the Council of Elders of the German Bundestag. Under the new rules, only lobbyists representing associations that are recorded on the list published in the Federal Gazette (public list) and have a representative office in Berlin — which indicates frequent entry — can receive personalised Bundestag passes. An association now can receive only up to two Bundestag passes rather than up to five, as was previously the case.

Inclusion on the public list does not provide a basis for the entitlement to be issued a personalised Bundestag pass. The aforementioned rule and the limitation of associations to two Bundestag passes were the subject of strong political will and were supported by all the parliamentary groups of the German Bundestag. Beyond this, the administration was asked to establish a strict standard for the scrutiny of application requirements in order to reduce the number of Bundestag passes issued as much as possible.

Independent of this, lobbyists are able to receive access to the property of the German Bundestag within the framework of the regulation of individual visitors in accordance with Section 2 (6) of the internal regulations for a legitimate reason (e.g. an appointment with a Member of the Bundestag or a parliamentary group, a visit to a meeting of a body or working group) following prior registration.

The statement made in *Chapter F 3.1* that there are only limited powers of intervention for supervisory authorities is incorrect. The Bundestag President can impose financial sanctions for erroneous statements of accounts, violations of transparency, and the acceptance of impermissible donations, and has since 1 January 2016 also been able to impose penalty payments to enforce the accounting obligation: In accordance with Section 23a (1)-(3) of the Act on Political Parties, the Bundestag President can check submitted statements of accounts, require confirmation from the political party's certified auditor, and commission a certified auditor of his/her choice, whom the political party must permit to access and inspect its records. In the case of inaccurate statements, state funds shall be reclaimed in accordance with Section 31a of the Act on Political Parties and the party shall be liable for penalty payments of twice to three times the respective amount in accordance with Sections 31b and 31c of the Act on Political Parties. Those committing such acts shall be punishable in accordance with Section 31d of the Act on Political Parties.

There is no risk of political parties and donors circumventing the publication obligations via sponsoring. Political parties' income from sponsoring is to be reported in the parties' statements of accounts and published along with these in accordance with Section 24 (4) no. 7 of the Act on Political Parties. If there is a gross disparity between the sponsoring and the political party's return service, this is considered to be a donation and is to be published in accordance with Section 25 (4) of the Political Parties Act.

The statement on GRECO made in *Chapter F 3.1* is incorrect. In 2009 GRECO did not recommend legally regulating sponsoring. Rather, it recommended that the conditions under which sponsoring to the benefit of political parties is permitted should be clarified. Since the hearing of the Bundestag Committee on Internal Affairs on 7 June 2010, GRECO has considered this recommendation to have been fulfilled and has not repeated it since the December 2011 Compliance Report.

In *Chapter F 3.2*, official duties from the parliamentary mandate are intermingled with those of a government member. It also is not known that violations of duties by Members of the Bundestag are communicated in a Bundestag printed paper. The reference to the waiting period regulation for members of the Federal Government is insufficient. In a case in which a conflict of interest is feared, it is not the Bundestag President but rather the Federal Government that can impose a blocking period of 12 months and in exceptional cases of 18 months.

It should also be noted that paid lobbying for Members of the Bundestag already is permitted only with restrictions (cf. remarks on Chapter F 1.2.2).

Regarding *Chapter F 3.3*, it should be noted that the introduction of a binding lobbyist register and a so-called legislative footprint in the Bundestag has been discussed both in the last electoral term and in the present electoral term.

The quoted statement by the Federal Constitutional Court relates, as mentioned above in the remarks on *Chapter F 1.2.1*, to the requirements concerning the legislative process for the compensation of Members of the Bundestag.

The account of the former process of issuing Bundestag passes via the Parliamentary Secretary of the parliamentary group is, as noted above regarding *Chapter F 2.3*, imprecise and incorrect.

Regarding *Chapter F 4 – Conclusion:* It is not the task of the Federal Government to legislate. To the extent that the parliament is affected, providing for the necessary regulations is a matter for the parliament alone.

In this chapter it is mentioned several times that there is no regulation of sponsoring. This is misleading in the sense that there is such a regulation for the federal administration in the form of the General administrative regulation to promote activities by the Federal Government through contributions from the private sector (sponsoring, donations and other gifts) of 7 July 2003. The sponsoring of political parties also is not unregulated. Political parties' income from sponsoring is to be accounted for in the parties' statements of accounts and published with them in accordance with Section 24 (4) no. 7 of the Act on Political Parties. The effective control of disclosure obligations in accordance with the Act of Political Parties also is not unregulated, nor are sanctions in the case of violations: in accordance with Section 23a (1) – (3) of the Act on Political Parties, the Bundestag President as a supervisory authority checks the political parties' statements of accounts. In the case of concrete indications of inaccurate statements, he/she can require confirmation by the party's certified auditor and commission a certified auditor of his/her choice. The party is to permit this auditor to access and inspect its records. In the case of inaccurate statements, state funds shall be reclaimed in accordance with Section 31c of the Act on Political Parties and the party shall be liable for penalty payments of twice to three times the respective amount in accordance with Sections 31b and 31c of the Act on Political Parties. Those committing such acts shall be punishable in accordance with Section 31d of the Act on Political Parties.