



# European Semester 2021-2022 country fiche on disability equality

Germany

March 2022

**EUROPEAN COMMISSION**

Directorate-General for Employment, Social Affairs and Inclusion

Directorate D — Social Rights and Inclusion

Unit D3 — Disability & Inclusion

*European Commission*

*B-1049 Brussels*

# European Semester 2021-2022 country fiche on disability equality

With comparative data Annex provided by EDE

## Germany

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European Disability Expertise (EDE) provides independent scientific support to the Commission's policy Unit responsible for disability issues. It aims to mainstream disability equality in EU policy processes, including implementation of the United Nations Convention on the Rights of Persons with Disabilities.

This country report has been prepared as input for the European Semester in 2022.<sup>2</sup>

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<sup>1</sup> Thanks to Clarissa von Drygalski and Simone Postigo Perez for substantial support.

<sup>2</sup> For an introduction to the Semester process, see <https://www.consilium.europa.eu/en/policies/european-semester/how-european-semester-works/>.

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Manuscript completed in March 2022

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## **1 Executive summary and recommendations**

### **1.1 Key points and main challenges for Germany in 2022**

#### **Disability and the labour market**

The disability employment gap in Germany is wider than the EU average and employment segregation in sheltered workshops also presents a challenge as the number of persons in the workshops increase. The main challenge is to expand the participation of persons with disabilities on the regular labour market to battle exclusion and poverty risks. The quota system, the obligation to reasonable accommodation and workplace accessibility should be strengthened. Sheltered workshops have to be transformed to promote inclusion in the regular labour market. The alternative instrument 'Budget for Work' has to be implemented broadly.

#### **Disability, social policies and healthcare**

The risk of poverty for working age persons with disabilities in Germany is more than double that for other persons of similar age, with an estimated disability poverty gap of approximately 15 percentage points. The main challenge is to strengthen accessibility and inclusivity of social and health care institutions from early child institutions to general practitioners, medical centres and hospitals. The process of digitalization of public authorities and health care institutions has to be designed in a participative and inclusive way with the goal of accessibility and inclusivity.

#### **Disability, education and skills**

One main challenge is to strengthen inclusion in the primary and secondary educational system. Therefore, reasonable accommodation and the accessibility of educational institutions have to be expanded. More persons with disabilities must have the chance to obtain regular grades. Furthermore, the vocational education system has to be made more inclusive, opening ways for persons with disabilities in all professions. Additionally, the 'Budget for vocational training' has to be implemented broadly to open an alternative to sheltered workshops. In all fields of education, the digitalization of educational institutions has to be rolled out in an inclusive and participatory way to reach more accessibility and to open new chances for pupils and students with disabilities.

#### **Investment priorities for inclusion and accessibility**

The main challenge is to address people with disabilities in the reforms and investments in the various social and professional areas inclusively, especially in the ongoing strong investments in the digitalization of the public sector, in public transport, in affordable housing and in a resilient health care system. Above all, participation, cooperation and (digital) networking must (continue to) be pushed and promoted. The recovery package presents opportunities for structural investment in accessibility and inclusion.

## 1.2 Recommendations for Germany

These recommendations are based on the evidence and analysis presented in the following chapters of our report.

**Recommendation:** Promote an inclusive labour market by strengthening reasonable accommodation, workplace accessibility and the quota system.

*Rationale:* The Labour market participation of persons with disabilities is insufficient, leading to poverty risks and exclusion. While economic activity has increased, unemployment rather than employment is a frequent outcome.

**Recommendation:** Transform sheltered workshops to make them part of an inclusive Labour market.

*Rationale:* Too many persons with disabilities in sheltered workshops have no effective chance to change the way of realizing their right to work. Some transitional incentives have been introduced but more decisive action is needed.

**Recommendation:** Strengthen accessibility of Health Care institutions, also in using digitalisation strategies.

*Rationale:* Persons with disabilities need equal access to the health care system and do not currently achieve it. There is unmet need, which has been accentuated by the COVID-19 crisis.

**Recommendation:** Close or transform separated schools into inclusive schools for all children to attend.

*Rationale:* Too many children with disabilities and youth have no chance to receive inclusive, quality and free primary and secondary education on an equal basis with others in the general education system in the communities in which they live.

**Recommendation:** Use investment in digitalisation, mobility – especially public transport – education, affordable housing, health care and social inclusion to promote inclusion and accessibility.

*Rationale:* There is a big gap between the legal and social necessity for accessibility and its realization in Germany. Structural investment through the recovery plan and facility offers an opportunity to achieve this.

## 2 Mainstreaming disability equality in the Semester documents

Country Reports and Country Specific Recommendation of direct relevance to disability policy were not published in this exceptional policy cycle. For a commentary on the last published documents please see our country fiche for the previous Semester 2020-21.

### 2.1 [Recovery and Resilience Plan](#) for Germany (RRP)

The following key points highlight where the situation of people with disabilities or disability policies was considered in these plans. We address the most relevant of these and other issues arising from the RRP/NRP in the next chapters.

- Inclusion of persons with disabilities in vocational training is addressed in the German RRP (43, 48).
- The participation of persons with disabilities in advanced training is a goal of the German RRP (46).
- Accessibility of hospitals is mentioned in the German RRP (49).
- Accessibility of Education is a goal of the RRP (650, 692).
- Accessibility of digitalized public services is a goal of the RRP (898, 911).

The Disability Equality Act (BGG) is applicable on the implementation of the RRP (45, 736). In the BGG, reasonable accommodation and accessibility are regulated for federal public services and for those receiving federal public subsidies.

Disability is also referred to in the National Reform Programme (NRP) as highlighted in the following chapters relevant to the labour market, social policies and education.

### 2.2 Semester links to CRPD and national disability action plans

Relevant recommendations and issues arising from the United Nations Convention on the Rights of Persons with Disabilities (CRPD) are highlighted in each chapter.

It is also important that Semester plans align with the national disability strategy. In Germany, the first 'National Action Plan of the Federal Government for the Implementation of the UN Convention on the Rights of Persons with Disabilities'<sup>3</sup> was adopted by the Federal Cabinet in June 2011. An evaluation was published in 2014.<sup>4</sup>

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<sup>3</sup> Federal Ministry of Labour and Social Affairs (Ed.) (2011), Unser Weg in eine inklusive Gesellschaft. Der Nationale Aktionsplan der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention (Our path to an inclusive society. The Federal Government's National Action Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities), [https://www.gemeinsam-einfach-machen.de/SharedDocs/Downloads/DE/AS/UN\\_BRK/NAP.pdf?\\_\\_blob=publicationFile&v=3](https://www.gemeinsam-einfach-machen.de/SharedDocs/Downloads/DE/AS/UN_BRK/NAP.pdf?__blob=publicationFile&v=3), referred as "NAP 2011".

<sup>4</sup> Federal Ministry of Labour and Social Affairs (Ed.) (2014), Evaluation des Nationalen Aktionsplans der Bundesregierung zur Umsetzung der UN-Behindertenrechtskonvention. Abschlussbericht (Evaluation of the Federal Government's National Action Plan for the Implementation of the UN Convention on the Rights of Persons with Disabilities. Final report), [https://www.gemeinsam-einfach-machen.de/SharedDocs/Downloads/DE/AS/NAP-Bericht.pdf?\\_\\_blob=publicationFile&v=4](https://www.gemeinsam-einfach-machen.de/SharedDocs/Downloads/DE/AS/NAP-Bericht.pdf?__blob=publicationFile&v=4).

The second plan,<sup>5</sup> was adopted in 2016 and updated in May 2021 (it will be continuously updated in order to create more transparency and topicality). The Status Report on the National Action Plan on the Convention on the Rights of Persons with Disabilities<sup>6</sup> lists the implementation of the measures to date and focuses on digitalisation and COVID-19.

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<sup>5</sup> „Unser Weg in eine inklusive Gesellschaft“. Nationaler Aktionsplan 2.0 der Bundesregierung zur UN-Behindertenrechtskonvention (“Our way to an inclusive society”. National Action Plan 2.0 of the Federal Government on the UN Convention on the Rights of Persons with Disabilities), BT-Drs. 18/9000, 29.06.2016, referred as “NAP 2.0.”.

<sup>6</sup> See Federal Ministry of Labour and Social Affairs (Ed.) (2021), Statusbericht zum Nationalen Aktionsplan zur Umsetzung der UN-Behindertenrechtskonvention, (Status Report on the National Action Plan on the UN Convention on the Rights of Persons with Disabilities), [https://www.gemeinsam-einfach-machen.de/SharedDocs/Downloads/DE/AS/NAP2/Statusbericht\\_NAP.pdf?\\_\\_blob=publicationFile&v=2](https://www.gemeinsam-einfach-machen.de/SharedDocs/Downloads/DE/AS/NAP2/Statusbericht_NAP.pdf?__blob=publicationFile&v=2), referred as “Status Report 2021”.

### 3 Disability and the labour market - analysis of the situation and the effectiveness of policies

In 2015, the UN CRPD Committee made the following recommendations to Germany: [Article 27 UN CRPD](#) addresses Work and Employment.

'50. The Committee recommends that the State party provide regulations that effectively create an inclusive labour market in accordance with the Convention by:

- (a) Creating employment opportunities in accessible workplaces, in line with general comment No. 2 of the Committee, in particular for women with disabilities;
- (b) Phasing out sheltered workshops through immediately enforceable exit strategies and timelines and incentives for public and private employment in the mainstream labour market;
- (c) Ensuring that persons with disabilities do not face any reduction in social protection and pension insurance currently tied to sheltered workshops;
- (d) Collecting data on the accessibility of workplaces in the open labour market.'

In 2018 a new List of Issues was raised, requesting the following:

'28. Please provide information on: (a) The policies and achievements since the previous concluding observations aimed at increasing the employment rate of persons with disabilities in the open labour market in the public and private sectors, including specific measures and vocational training; (b) The appointees responsible for the monitoring and evaluation of the system regarding the right to work and employment; (c) The number of workers with disabilities currently recruited and employed on a permanent basis by private sector companies since the application of the Federal Participation Act in 2017; (d) The accessibility of workplaces, including statistical information and information on the legal measures and complaint mechanisms with safeguards, and effective sanctions for non-compliance with binding laws and policies, such as quotas; (e) The transition from unemployment or employment in sheltered workshops to open employment for persons with disabilities, the incentives available for employers, and statistics on the percentage of workers with disabilities that make the transition to the general labour market; (f) The meaningful involvement, consultation and representation of organizations of persons with disabilities in labour-related matters.'

Germany is under review of its second and third combined State party report (submitted in 2019). In its List of Issues, the Committee asked for information regarding the transition from sheltered workshops to the general labour market.<sup>7</sup>

The National Action Plan 2.0 (2016-2021) (pp. 25-50) plans intensified promotion of vocational orientation and training in the education system, more supported employment, integration projects and transition from sheltered workshops to the general labour market, programmes to raise awareness among employers, strengthening the participation of councils with severe disabilities and the evaluation of these initiatives.

#### 3.1 Summary of the labour market situation of persons with disabilities

Data from EU-SILC indicate an employment rate for persons with disabilities in Germany of 53.3 % in 2019, compared to 82.2 % for other persons against a national

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<sup>7</sup> See Committee on the Rights of Persons with Disabilities (2018), *List of issues prior to submission of the combined second and third periodic report of Germany*, CRPD/C/DEU/QPR/2-3, 10.10.2018.

employment target of 77 % and approximately 2.0 points above the EU27 average. This results in an estimated disability employment gap of approximately 29 percentage points (EU27 average gap 24.2 %, see Tables 2-4) or an employment chances ratio of 0.6.

The same data indicate unemployment rates of 20.1 % and 3.5 %, respectively in 2019 (see Tables 5-7) and the economic activity rate for persons with disabilities in Germany was 66.7 %, compared to 85.2 % for other persons (see Tables 8-10). These indications are disaggregated by gender and age in the respective tables in annex (the national and EU sources of data differ regarding its focus and its itemisation).

Although the unemployment rate of people with severe disabilities has decreased, i.e. their integration into the regular labour market is partially successful, they are nevertheless affected by unemployment more than twice as often. They also bear a higher risk of being long-term unemployed. Persons with disabilities often have - even permanently - a low income at their disposal (their median income of EUR 19 920 was below the average of the total population). Women are more likely than men to live in disadvantaged circumstances with disabilities and are at higher risk of poverty.

### 3.2 Analysis of labour market policies relevant to the Semester

The 2021 [National Reform Programme](#) for Germany<sup>8</sup> sees the integration of people into working life as an important goal which is to be supported by inclusive vocational and continuing training support services (No. 212-226). As regards measures especially for persons with disabilities the programme refers to the National Action Plan 2.0 (No. 227). The RRP does not reference the National Action Plan. It refers to the new federal program 'Secure Vocational Training Positions'<sup>9</sup> e.g. which – due to COVID-19 – supports companies providing vocational training positions, including companies offering so-called 'Fachpraktiker' training (§ 66 Vocational Training Act - Berufsbildungsgesetz (BBiG)) for people with disabilities.

Hence, the possibilities of active employment promotion in the job centres and employment agencies are being expanded.<sup>10</sup> Moreover, a single point of contact for employers (§ 185a SGB IX) will be established to inform, advise and support employers in the training, recruitment and employment of severely persons with disabilities.

#### ***Sheltered workshops / budget for work***

The number of people who work in sheltered workshops (*Werkstätten für behinderte Menschen – WfbM*) still increases. The workshops have not succeeded in opening pathways into the general labour market. Under the reform of the Federal Participation Act (*Bundesteilhabegesetz – BTHG*) the Federal Government holds on to the current structure of *WfbM*.<sup>11</sup> However, some gradual reforms were introduced.

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<sup>8</sup> See Nationales Reformprogramm 2021, BT-Drs. 229/21, 24.03.2021.

<sup>9</sup> See „Ausbildungsplätze sichern“, Deutscher Aufbau- und Resilienzplan, BT-Drs. 19/29682, 28.04.2021, p. 48, also National Reform Programme, No. 215.

<sup>10</sup> The provision will come into force on 01.01.2022, see Art. 3, 14 (1), Teilhabestärkungsgesetz.

<sup>11</sup> See Gesetzesentwurf der Bundesregierung zum BTHG, BT-Drs. 18/9522, p. 255.

The rights of the Sheltered Workshop Councils (*Werkstatträte*) were strengthened.<sup>12</sup> They represent the interests of employees, according to the Sheltered Workshops Participation Decree (*Werkstätten-Mitwirkungsverordnung – WMVO*). They monitor legal compliance, take complaints by the employees (§ 4 WMVO), and have certain rights of participation in decision making, e.g. regarding working hours, vacation schedule, or wages in a similar way to works councils (§ 5 WMVO).

To strengthen the choice for benefit recipients further service providers were admitted providing occupational participation assistance as an alternative to the sheltered workshops (§ 60 SGB IX). The budget for work (§ 61 SGB IX) was implemented in 2018 to facilitate the transition to the open labour market.<sup>13</sup> To raise the opportunities to work in the general labour market, the budget for vocational training was implemented in 2020. This budget offers an alternative to the entrance qualification and the vocational training area of *WfbM* (§ 61a SGB IX). With the new Participation Strengthening Act (*TeilhabeStärkungsgesetz*) the budget for vocational training is being expanded. From 2022 onwards, people already working in the *WfbM* will also be able to receive the training budget.

The Budget for work includes a wage subsidy for employers and the costs for assistance and support services. The wage subsidy can amount to 75 % of the gross wage, but not more than 40 % of the monthly reference base (related to the development of salaries as a whole). The *Länder* may increase this percentage of the reference base by their own legislation (§ 61(2) sentence 4 SGB IX) (e.g. Bavaria: 48 %, Rhineland-Palatinate: 60 %).<sup>14</sup>

Persons with disabilities working in *WfbM* do not have employee status but are only quasi-employees. From this it is generally concluded that they are not entitled to the national minimum wage.<sup>15</sup> On average they earn less than EUR 200 per month as remuneration.<sup>16</sup> <sup>17</sup> Additionally they receive benefits: Work Promotion Money (*Arbeitsförderungsgeld*), Basic Income Support (*Grundsicherung*) and/or Reduced Earning Capacity Pension (*Erwerbsminderungsrente*).<sup>18</sup>

In summary, the measures taken so far are not yet sufficient to meet the requirements of Article 27 CRPD. Other options for persons with disabilities, such as supported

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<sup>12</sup> Legal reform of the *Werkstätten-Mitwirkungsverordnung* (WMVO), into force since 01.01.2017.

<sup>13</sup> See Combined Second and Third Periodic Report of the Federal Republic of Germany on the United Nations Convention on the Rights of Persons with Disabilities, 18.07.2019, BT-Drs. 19/11745, p. 49. More detailed information see: Von Drygalski: Die Werkstatt für behinderte Menschen in der zweiten Staatenprüfung Deutschlands zur Umsetzung der UN-Behindertenrechtskonvention, D11-2020, at [www.reha-recht.de](http://www.reha-recht.de), 13.05.2020.

<sup>14</sup> For an overview of the implementation of the BTHG see: <https://umsetzungsbegleitung-bthg.de/gesetz/umsetzung-laender/>. For the budget for work see Falk, Landesrechtliche Abweichungen vom bundesgesetzlichen Lohnkostenzuschuss nach § 61 Abs. 2 S. 4 SGB IX (Budget für Arbeit) – Ein Überblick zum Umsetzungsstand in den Bundesländern, A2-2019, at [www.reha-recht.de](http://www.reha-recht.de), 17.01.2019.

<sup>15</sup> See DIMR (2016), p. 1.

<sup>16</sup> See DIMR (2018), p. 2.

<sup>17</sup> See BAG *WfbM* (2018), Verdienst in Werkstätten, <https://www.bagwfbm.de/page/101>, 18.08.2021.

<sup>18</sup> See the interim report of an ongoing legal and empirical research project on remuneration in the sheltered workshops: <https://www.bmas.de/DE/Service/Publikationen/Forschungsberichte/fb-586-studie-entgeltsystem-fuer-menschen-mit-behinderungen-zwischenbericht.html>, October 2021.

employment (§ 55 SGB IX) and employment in inclusion companies (§ 215 et seq. SGB IX), should be used more widely. A reorganization of the *WfbM* seems to be necessary. More inclusion could be created by equalling the labour law position of the employees in *WfbM* and such in the open labour market and therefore applying the minimum wage law.<sup>19</sup> This could be necessary according to EU law as applied by the ECJ in the case *Fenoll*.<sup>20</sup> The employees should be included in unemployment insurance both in the *WfbM* and when receiving the budget for work.

Sheltered workshops have been strongly affected by the COVID-19 pandemic and were closed for several months. Since the remuneration of the *WfbM*-employees is largely dependent on the income generated by the workshop, the COVID-19-related developments have had a negative impact on their wages. This is aggravated by the fact that, unlike employees in the general labour market, *WfbM*-employees are not entitled to short-time work compensation benefits.<sup>21</sup> This shows the necessity of the alignment of working conditions in sheltered workshops to the open labour market. To back the work of the Workshop Councils in Sheltered Workshops during the pandemic they were temporarily allowed to use telephone- and videoconferences for their work.<sup>22</sup> With the new Works Council Modernisation Act (Betriebsrätemodernisierungsgesetz),<sup>23</sup> in parts these regulations are permanently incorporated into § 33 of the *WMVO*. However, it does not refer to the regulation of the works meeting: A digital works meeting was to be made possible only as an exception for 2020. This also applied only temporarily to works meetings under the Works Constitution Act - Betriebsverfassungsgesetz. It is questionable whether people with disabilities who, e.g. due to a mobility restriction or disability-based part-time work, could not have particularly benefited from digitally conducted works meetings.<sup>24</sup>

### **The compensatory levy**

The compensatory levy (*Ausgleichsabgabe*) is intended to promote an inclusive labour market. It must be paid by companies with more than 20 employees if they employ less than 5 % of persons with severe disabilities (§ 160 SGB IX). In 2019, 104,492 companies in Germany had to pay the levy,<sup>25</sup> which is used for promoting the employment of persons with disabilities exclusively. The question arises, whether the measure is suitable to promote an inclusive labour market. There is an ongoing discussion about raising the levy and improving the conditions for the employment of persons with disabilities. At the same time, initiatives such as 'Inklusion gelingt'<sup>26</sup> or

<sup>19</sup> See Welti/Nachtschatt, Equal Rights of Persons with Disabilities to Work per Article 27 of the UN Convention on the Rights of Persons with Disabilities in Wansing/Welti/Schäfers, The Right to Work for Persons with Disabilities, 2018, p. 78; there is also a current research project on the remuneration system in *WfbM* by the Federal Ministry of Labour and Social Affairs (BMAS) which runs until 2023.

<sup>20</sup> See ECJ, 26/03/2015, C-316/13 (*Gérard Fenoll vs. Centre d'aide par le travail 'La Jouvène'*); Wendt, Behinderte Menschen in europäischen Behindertenwerkstätten sind unionsrechtlich Arbeitnehmer, [www.reha-recht.de](http://www.reha-recht.de), B 14-2015.

<sup>21</sup> See Theben, Kurzarbeitergeld in Werkstätten für Menschen mit Behinderungen - ausgewählte Probleme (nicht nur) in Zeiten von Corona, [www.reha-recht.de](http://www.reha-recht.de), D16-2020.

<sup>22</sup> § 40a *WMVO*.

<sup>23</sup> 14.06.2021, BGBl I, 1762.

<sup>24</sup> See also, BAG *WfbM*, <https://www.bagwfbm.de/article/5363>.

<sup>25</sup> See REHADAT Ausgleichsabgabe, Statistik zur Beschäftigung schwerbehinderter Menschen, <https://www.rehadat-ausgleichsabgabe.de/hintergrund/statistik/>, 18.08.2021.

<sup>26</sup> See <http://www.inklusion-gelingt.de/>, 27.08.2021.

'Wirtschaft Inklusiv'<sup>27</sup> encourage employers to create more jobs and apprenticeships for people with disabilities.

The federal government amended the Regulation on Compensatory Levy for Severely Disabled Persons.<sup>28</sup> The aim of the regulation is to reduce the loss of pay for *WfbM*-employees. To this end, the federal government left 10 per cent more of the income from the compensatory levy for one year to the integration offices of the *Länder*. to support workshops. Disability policy organizations have criticized that this compensation comes from the equalisation levy and not from the tax-financed integration assistance (*Eingliederungshilfe*).<sup>29</sup> The reason for this criticism is that the compensatory levy should actually promote the participation of persons with disabilities in the primary labour market.<sup>30</sup>

### **Reasonable accommodation and workplace accessibility**

For persons with the status of having severe disabilities (by having a degree of 50-100 % disability or having 30-40 % disability but unable to keep or get employment without it) there are specific labour rights, including a clearly defined catalogue of reasonable accommodation at work (§ 164(4) SGB IX). Persons with disabilities without this status fall within the scope of the General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz – AGG*).

The AGG aims to prevent discrimination on the ground of disability (§ 1 AGG). It lays down the principle of non-discrimination (§ 7 AGG) and defines under which circumstances unequal treatment due to occupational requirements is admissible (§ 8 AGG). In case of discrimination, the law obliges the employer to pay compensation (§ 15 AGG). The employer is also obliged to take the necessary measures to protect the employees against discrimination based on disability (§ 12 AGG).

The AGG implemented the Directive 2000/78/EC on non-discrimination in employment and occupation but does not explicitly oblige the employer to reasonable accommodation.

A definition of reasonable accommodation is given in the Act on Equal Opportunities for Persons with Disabilities (*Gesetz zur Gleichstellung von Menschen mit Behinderungen – BGG*, § 7(2)). Directly, this law applies only to federal public authorities. Indirectly, it also can apply to the private sector, i.e. subsidy recipients if the subsidies are awarded as institutional funding (§ 1 (3) BGG). The individual *Länder* have corresponding regulations to the BGG in their state law. In the equality acts of Bavaria, Bremen, Hamburg, Hesse, North Rhine-Westphalia, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia, reasonable accommodations are

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<sup>27</sup> See <https://www.unternehmens-netzwerk-inklusion.de/wirtschaft-inklusion/>, 27.08.2021.

<sup>28</sup> §§ 14, 16 Schwerbehinderten-Ausgleichsabgabenverordnung; vgl. Tabbara, Corona und die Auswirkungen auf Institutionen der Behindertenhilfe und Inklusionsbetriebe, *Soziale Sicherheit* 2020, pp. 344, 345.

<sup>29</sup> 03.02.2021, <https://kobinet-nachrichten.org/2021/02/03/bundesregierung-hat-situation-in-werkstaetten-im-blick/>.

<sup>30</sup> 26.06.2020, <https://kobinet-nachrichten.org/2020/06/26/ausgleichsabgabe-nur-fuer-allgemeinen-arbeitsmarkt-nutzen/>.

defined in line with CRPD, and the denial of reasonable accommodation is recognised as discrimination.<sup>31</sup>

Apart from that, employers employing persons with disabilities are obliged to set up and operate the workplaces taking account special concerns of these employees as regards safety and health (§ 3a (2) Workplace Ordinance – *Arbeitsstättenverordnung*).<sup>32</sup> If these obligations are not met, a fine can be imposed (§ 9(1) No. 5 *Arbeitsstättenverordnung*). Beyond that, persons with severe disabilities can claim necessary technical tools for work under the SGB IX (§ 164(4) sentence 1 No. 5). There are no official statistics available on the accessibility of workplaces. Within the current state party report review the CRPD Committee asked to provide data on accessibility of workplaces,<sup>33</sup> without the Federal government responding to this request.<sup>34</sup>

The Federal Labour Court (BAG) concluded the right to reasonable accommodation can be included in the employer's obligation to provide for the welfare of employees.<sup>35</sup> The employer's obligation is to be interpreted in line with Article 5 of the Directive 2000/78/EC and Article 27(1) sentence 2 lit. i) CRPD. Even though, the case law recognizes the right to reasonable accommodation it should appear verbatim in the AGG. The implementation of EU-law and CRPD requires that the content of reasonable accommodation is clearly defined so it becomes clear to everyone who is affected by it. This has been explained and stated in an expertise for the Federal Anti-Discrimination Agency by *Eberhard Eichenhofer*.<sup>36</sup>

As regards the accessibility of the workplace it is important to take into account the needs of persons with disabilities in the area of digitalisation. The increase in participation opportunities for persons with disabilities is stated as an objective in the NAP 2.0<sup>37</sup> and the new update from May 2021<sup>38</sup> which is to be achieved through various implementation steps and digitalisation projects, especially for people with sensory and mobility impairments.<sup>39</sup> However, there is no systematic discussion of the opportunities and risks of digitalisation for the equal participation of persons with

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<sup>31</sup> § 7(3) Bremisches Behindertengleichstellungsgesetz (BremBGG), § 3 Behindertengleichstellungsgesetz Nordrhein-Westfalen (BGG NRW), § 7(2) Saarländisches Behindertengleichstellungsgesetz (SBGG), § 4(3) Sächsisches Inklusionsgesetz, § 4 Behindertengleichstellungsgesetz Sachsen-Anhalt (BGG LAS), § 4(3) Thüringer Gesetz zur Inklusion und Gleichstellung von Menschen mit Behinderungen (ThürGIG); see also DIMR (2019), 57f.

<sup>32</sup> See Combined Second and Third Periodic Report of the Federal Republic of Germany on the United Nations Convention on the Rights of Persons with Disabilities, 18.07.2019, BT-Drs. 19/11745, p. 48.

<sup>33</sup> CRPD/C/DEU/QPR/2-3, 10.10.2018, para. 28d.

<sup>34</sup> See BT-Drs. 19/11745, 28d.

<sup>35</sup> BAG, 19 December 2013 – 6 AZR 190/12.

<sup>36</sup> Eichenhofer, Angemessene Vorkehrungen als Diskriminierungsdimension im Recht, 2019, see also Rabe-Rosendahl: Die Zuweisung lediglich minderwertiger Tätigkeiten stellt keine behinderungsgerechte Beschäftigung dar – Anmerkung zu LAG Frankfurt, 20. Mai 2020, 18 Sa 170/19; B5-2021, [www.reha-recht.de](http://www.reha-recht.de); 20.07.2021, p. 8.

<sup>37</sup> NAP 2.0 (2016), BT-Drs. 18/9000, 29/06/2016.

<sup>38</sup> Status Report 2021.

<sup>39</sup> See Engels (2016), Chancen und Risiken der Digitalisierung der Arbeitswelt für die Beschäftigung von Menschen mit Behinderung, <https://www.ssoar.info/ssoar/handle/document/47065>.

disabilities in society. Moreover, accessibility and inclusion of persons with disabilities is hardly contained in the government-led digitalisation strategy.<sup>40</sup>

For people with disabilities to participate equally in working life, it is indispensable that IT at the workplace (electronic files, procedures for electronic case processing) is also accessible and usable without barriers. Web conferences, e-learning, eBooks and ePaper editions of daily newspapers have also become an integral part of everyday life. Digital accessibility should therefore be included in the NAP 2.0 as a separate field of action and should also be added in the *government*-led digitalisation strategy.<sup>41</sup>

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<sup>40</sup> Federal Government (2020), Shaping digitalisation – Implementation strategy of the Federal Government (Digitalisierung gestalten – Umsetzungsstrategie der Bundesregierung).

<sup>41</sup> See Carstens, Barrierefreie Informationstechnik (accessible information technology) in: Deinert/Welti, Behindertenrecht (Disability Law), (3rd edition, 2021, still in publication).

#### 4 Disability, social policies and healthcare – analysis of the situation and the effectiveness of policies

In 2015, the UN CRPD Committee made the following recommendations to Germany:

[Article 28 UN CRPD](#) addresses Adequate standard of living and social protection.

'52. The Committee recommends that the State party immediately undertake a review of the personal income used by persons with disabilities to meet their needs and to live independently. The Committee also recommends that the State party provide social services to persons with disabilities that provide the same living standards compared to persons without disabilities on comparable incomes.'

In 2018 a new List of Issues was raised, requesting the following:

'29. Please provide information on: (a) The social protection measures for persons with disabilities, especially families of children or parents with disabilities, to eliminate the additional costs related to disability; (b) The measures to mainstream women, youth and children with disabilities from families at risk of poverty or living in poverty in national poverty-reduction strategies; (c) The effect on claims for integration assistance benefit from persons with disabilities following the adoption of the Federal Participation Act; (d) Equal and comparable social and support services for persons with disabilities regardless of age, especially for adults with disabilities over the age of 65; (e) The measures to address insufficient accessible and affordable housing, especially in densely populated urban areas.'

[Article 19 UN CRPD](#) addresses Living independently in the community.

'42. The Committee recommends that the State party:  
(a) Take steps towards the legal reform of section 13, paragraph 1 (3), of the Twelfth Book of the Social Code for increased social assistance services to enable inclusion, self-determination and the choice to live in the community;  
(b) Allocate sufficient financial resources to facilitate deinstitutionalization and promote independent living, including increased financial resources to provide community-based outpatient services providing the required support to persons with intellectual or psychosocial disabilities based on the free and informed consent of the individual concerned, across the whole country;  
(c) Increase access to programmes and benefits to support living in the community and ensure they cover disability-related costs.'

The 2018 List of Issues requested:

'18. Please provide information, at the national and Land levels, on the legal, policy and other measures — and, when appropriate, their specific time frames for implementation — that have been adopted to: (a) Ensure sufficient, sustainable and long-term funding and support, including a sufficient number of accessible and affordable housing options, for individualized independent living within the community at national, Land and municipal levels; (b) Expedite deinstitutionalization, particularly for persons with intellectual disabilities; (c) Ensure equal access to long-term care insurance benefits for persons with disabilities currently living in communal housing provided by the integration assistance services and describe the measures taken to guarantee their free choices to live independently and be included in the community; (d) Provide personal assistance services based on an assessment of the characteristics, circumstances and requirements of persons with disabilities and whether the

type of impairment, or a person's income or that of his or her family can affect this assessment. Please specify any differences in such provisions at national and Land levels.

19. Please provide information on the initiatives planned to ensure full freedom of movement and inclusion in the community of persons with disabilities, in line with the judgment of the European Court of Justice in the case C-679/16.

20. Please provide data, at the Land and municipal levels, on the number of persons with disabilities below the age of 60 living in residential and nursing homes for the elderly, disaggregated by age, impairment and sex.'

[Article 25 UN CRPD](#) addresses Health.

'48. The Committee recommends that the State party develop and implement plans and allocate resources for the accessibility of health-care services, including services for refugees, rights-based training for health-care professionals, communication, information, respect for free and informed individual consent, and universally designed equipment.'

The 2018 List of Issues requested:

'25. Please explain the initiatives taken to ensure affordable, full and equal access to health-care facilities and services for persons with disabilities, including within the local community, in the light of existing stipulations in the Social Code, particularly section 63b, paragraph 4, of Book XII.

26. Please clarify: (a) Whether health information and education is available in all accessible formats; (b) The measures to train health professionals and support personnel on the human rights-based approach to disability, and to avoid discriminatory and negative attitudes and stereotyping against persons with disabilities, particularly persons with psychosocial or intellectual disabilities; (c) The safeguards that exist to ensure that medical procedures performed on persons with disabilities are carried out with their free and informed consent, particularly on women and girls with disabilities, including effective monitoring and appeal mechanisms for infringements; (d) The terms on which persons with disabilities can be denied access to private health insurance in, for example, section 19 of the General Anti-Discrimination Act (CRPD/C/DEU/1, para. 213) and to what extent expenses related to a disability or an impairment are covered through the statutory health insurance system. Please describe any differences at the national and Land levels.'

The National Action Plan<sup>42</sup> (pp. 64-82) refers to programmes supporting accessibility in primary health care, reforms through the Federal Participation Law, reforms for children's rehabilitation and specific services for persons with disabilities in the health care system. There is no specific reference to the income situation of persons with disabilities. Since May 2021 the Status Report on the National Action Plan on the Convention on the Rights of Persons with Disabilities<sup>43</sup> is available which lists the implementation of the measures to date and contains of an update of the action plan, focusing on digitalisation and COVID-19 in the individual fields of actions.<sup>44</sup>

#### 4.1 Summary of the social situation of persons with disabilities

Data from EU-SILC 2019 indicate the poverty risk rate for working age persons with disabilities in Germany was 27.0 % in 2019, compared to 11.6 % for other persons of

<sup>42</sup> See NAP 2.0.

<sup>43</sup> Status Report 2021.

<sup>44</sup> Status Report 2021, pp. 23-24.

similar age, an estimated disability poverty gap of approximately 15 percentage points (see Table 14). For people aged over 65, the disability poverty gap was 2.8 points (19.7 % for older persons with disabilities and 16.9 % for other persons of similar age). The tables in annex also indicate the respective rates of the risk of poverty or social exclusion and disaggregate these by gender and age.

For persons with disabilities of working age in Germany (age 16-64) the risk of poverty before social transfers was 47.5 %, and 27.0 % after transfers. The in-work poverty rate for persons with disabilities aged under 60 was 10.4 %.

Of interest to health policy are the data on self-reported unmet needs for medical examination (too expensive or too far to travel or waiting list). Disability equality gaps are evident here, too, and, on this basis, the rate for persons with disabilities in Germany was 0.7 %, compared to 0.2 % for other persons, which is below the EU27 average of 1.7 %. The Third Participation Report of the Federal Government on the Living Conditions of People with Disabilities (2021) summarizes that the poverty risk rate for people with disabilities was about 18 % in 2017, 3 % higher than for people without disabilities (15 %) (data basis: Microcensus 2017). Poverty risk ratios between men and women show similar values. In a synopsis of the subgroups of disabilities, people with chronic diseases show a higher poverty risk rate (26 %). In addition, people with disabilities in the younger and middle age groups from 18 to 44 years with 31 % and from 45 to 64 years with 22 % are significantly more affected by poverty than people of the same age without disabilities (see annex, Table 16). Overall, the Report notes the previously recorded increase in the poverty risk rate of people with disabilities has not continued in recent years and remains almost constant in 2017 compared to 2013.<sup>45</sup> The current Poverty and Wealth Report confirms these data.<sup>46</sup>

The RRP states the fact that people with disabilities have a relatively low income and live permanently on a low income more often than the average population (p. 724).

People with disabilities still face discrimination in the health care system and are generally threatened by insufficient medical care. Especially in the outpatient sector, persons with disabilities face difficulties, as only few medical practices are accessible.<sup>47</sup> Also, accessibility is not sufficiently implemented by health insurance authorities, hospitals, and other service providers in the health care system.

## 4.2 Analysis of social policies relevant to the Semester

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<sup>45</sup> See Federal Ministry of Labour and Social Affairs (2021a), Dritter Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen (Third Participation Report of the Federal Government on the Living Conditions of People with Disabilities), pp. 277-279 (referred as 3<sup>rd</sup> Participation Report, 2021).

<sup>46</sup> See Federal Ministry of Labour and Social Affairs (2021b), Lebenslagen in Deutschland. Der Sechste Armuts- und Reichtumsbericht der Bundesregierung, pp. 51-52.

<sup>47</sup> See Federal Ministry of Labour and Social Affairs (2016), Zweiter Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen (Second Participation Report of the Federal Government on the Living Conditions of People with Disabilities), BT-Drs. 18/10940 p. 9, referred as 2nd participation Report 2016.

The 2021 [National Reform Programme](#) for Germany<sup>48</sup> does not mention the health care or income situation of persons with disabilities. It refers to the tax-reductions for persons with disabilities, with the law to double tax-lump-sums for this group.<sup>49</sup> In addition, a disability-related lump sum for travel expenses was introduced. At the same time, the existing lump-sums for care expenses were almost doubled and changed to a system depending on the degree of care, which means that in future a lump-sum can be claimed from degree 2 (No. 178). The RRP does not reference the National Action Plan.<sup>50</sup> It refers to the fact people with disabilities have a relatively low income and live permanently on a low income, more often than the average population (p. 724). It mentions the improvements in the integration assistance by Federal Participation Law (*Bundesteilhabegesetz – BTHG*) (p. 724).

The allowances for assets were significantly increased (§§ 139, 140 SGB IX), spouses and partners are no longer required to contribute towards integration assistance. The RRP also refers to the Relief of the Fee Burden on Relatives Act – *Angehörigenentlastungsgesetz* by which the monetary contribution parents had to make for their adult children (e.g. for assistance services) in the integration assistance was completely abolished (pp. 724-725).

### **Reduced-earning-capacity pension**

Persons whose earning capacity is reduced can receive a reduced-earning-capacity pension (*Erwerbsminderungsrente*) (§ 43 SGB VI statutory pension insurance). Depending on the severity of the incapacity to work, applicants are entitled to either a full pension (inability to work more than three hours a day) or a half pension (ability to work three to six hours a day). The amount of the pension benefit is related to the individual contribution to the statutory pension insurance system and the general pension level being related to the development of salaries as a whole.<sup>51</sup> Persons unable or not sufficiently able to cover their necessary living costs from income and assets can receive basic provision in old age and in the event of reduced earning capacity (*Grundsicherung im Alter und bei dauerhafter Erwerbsminderung*; § 41 SGB XII).

With a new legislation in 2018<sup>52</sup> the Federal Government has increased the reduced-earning-capacity pension benefits for the third time since 2014. Since 2019, newly entitled persons are treated as if they had earned their current average income and therefore had contributed to the statutory pension insurance system up to the standard retirement age for old-age pension. With raising the ‘as-if contribution’ missing contribution periods due to the reduced earning capacity are filled in when calculating old-age pension entitlements. This is an important step towards improving social protection and reducing poverty among the persons receiving reduced-earning-capacity pension. However, there is still a need for further reforms.<sup>53</sup> The improvement

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<sup>48</sup> See Nationales Reformprogramm 2021, BR-Drs. 229/21, 24.03.2021.

<sup>49</sup> See BGBl. I, 2020, 2770.

<sup>50</sup> See BT-Drs. 19/29682, 28.04.2021.

<sup>51</sup> See Welti (2018), Work disability Policy in Germany, The Science and Politics of Work Disability Prevention, in MacEachen, The Science and Politics of Work Disability Prevention.

<sup>52</sup> See Gesetz über Leistungsverbesserungen und Stabilisierung in der gesetzlichen Rentenversicherung, 28.11.2018, BGBl. 2018 I, p. 2016.

<sup>53</sup> See Welti (2019), Erwerbsminderungsrenten: Ein Schritt nach vorn - aber es bleibt noch viel Reformbedarf, Soziale Sicherheit, pp. 339-341.

affects only the reduced-earning-capacity pensions that start from 2019 onwards while the current pensions that started earlier are not covered.

As of January 2021, a new basic pension (*Grundrente*)<sup>54</sup> was introduced. The basic pension provides an individual surcharge to old age pensions for those who contributed payments to the statutory pension insurance system for at least 33-years and had a below-average income. However, periods of reduced-earning-capacity pension benefits, of unemployment or of long-term-sickness without sickness benefit are not taken into account when calculating the duration of contribution. As a result, many pensioners with disabilities do not benefit from the supplements to the basic pension.

### **Accessibility in the healthcare system**

The German government's current report on participation shows that, in 2018, people with disabilities were far less likely to describe their state of health as 'very good' or 'good' (13 %) than people without disabilities (60 %) (data basis: SOEP 2018). 50 % of the people with disabilities rate their health as less good or bad (only 8% for people without disabilities) (see annex, Table 17). The large differences in the self-assessment of health status imply a disadvantaged life situation of people with disabilities in the health sector.<sup>55</sup>

The Act on Equal Opportunities for Persons with Disabilities, various regulations in the Social Code (SGB) and law the General Equal Treatment Act provide a framework for protection against discrimination and to achieve accessibility.<sup>56</sup> The BGG regulates accessibility for institutions of the public sector. Within the framework of their general structural responsibility in the Social Code (§ 17(1) No. 4 SGB I), the public authorities are obliged to ensure accessibility of their administrative and service buildings and to implement measures designed to increase the number of accessible medical practices, hospitals, rehabilitation facilities, pharmacies, etc.<sup>57</sup> The prohibition of discrimination under civil law in the AGG (§§ 1, 19 AGG) also applies to medical treatment and care contracts. Further specifications on the accessibility of health care facilities are provided by building regulations. Up to now, these regulations lack efficiency. The requirements for accessibility of health care facilities are not sufficiently implemented and further regulations and implementation steps are needed.

With a new act<sup>58</sup> the coverage of costs for assistance for persons with severe disabilities during a hospitalisation, long demanded by disability associations, will be regulated. Statutory health insurance now has to pay if relatives accompany the patient. In addition, an entitlement to sick pay is introduced for the assisting relatives. In the case of assistance by employees of institutions for persons with disabilities, the providers of integration assistance have to pay.

<sup>54</sup> See Gesetz zur Einführung der Grundrente für langjährige Versicherung in der gesetzlichen Rentenversicherung mit unterdurchschnittlichem Einkommen und für weitere Maßnahmen zur Erhöhung der Alterseinkommen (Grundrentengesetz), 12.08.2020, BGBl. 2020 I, p. 1879.

<sup>55</sup> See Status Report 2021, pp. 417-418.

<sup>56</sup> See Hlava (2018), Barrierefreie Gesundheitsversorgung – Rechtliche Gewährleistung unter besonderer Berücksichtigung der Rechtsdurchsetzung.

<sup>57</sup> See Welti (2016), Zugänglichkeit und Barrierefreiheit der gesundheitlichen Infrastruktur – rechtliche Anforderungen – Teil 1, D7-2016, [www.reha-recht.de](http://www.reha-recht.de), 09.03.2016.

<sup>58</sup> See BT-Drs.19/28658 (19.04.2021), 19/29632 (12.05.2021).

In recent years, some areas in the health sector have been digitalised and accessibility has been enshrined in law, e.g. the electronic health card (§ 291 SGB V), providing digital data of patients for themselves and health care providers. For this purpose, an insured person must also be able to access the content stored on his or her health card.<sup>59</sup> According to § 311 (4) SGB V – Statutory Health Insurance – compliance with the regulations on accessibility must be ensured. Since December 2019, the Digital Health Care Act (Digitale-Versorgung-Gesetz, DVG) established an entitlement to benefits for insured persons of the statutory health insurance to digital health applications (§§ 33a, 139e SGB V). The entitlement applies to all insured persons (not only to people with disabilities). At the same time, there is also an obligation to design digital health applications (§ 334 (1) SGB V) to be accessible<sup>60</sup> and to enable accessibility to them via the electronic health card (§ 336 (1) SGB V). The Participation Strengthening Act (TeilhabeStärkungsgesetz) also includes digital health applications in the catalogue of benefits for medical rehabilitation (§ 47a SGB IX), which must be designed to be accessible (§ 5 (6) of the Digital Health Applications Ordinance). So far, digital health applications have hardly been used in the field of medical rehabilitation.

In addition, the category raises the question of how people with disabilities reach preventive measures and whether there are any barriers to their use. Unfortunately, currently no reliable data is available on this. Studies on addictive behaviour or healthy nutrition of people with and without disabilities could be starting points here.<sup>61</sup>

The COVID-19 crisis has highlighted the existing problems in access to healthcare.<sup>62</sup> The lack of sufficient protective equipment, masks, disinfectants and testing facilities at the beginning of the pandemic and in particular structural deficits in residential and long-term care facilities have been identified as a risk factor for insufficient access to health care services.

The possible triage procedure, which prioritizes patients according to certain criteria if intensive care resources are insufficient, is disputed. There are no legal criteria for prioritization. In a complaint to the Federal Constitutional Court disability activists claim the necessity of a regulation by law and point out that the criteria set by the guidelines of the German Association for Intensive and Emergency Care<sup>63</sup> could be discriminating when using e.g. the Clinical Frailty Scale for assessing the prospects of success and measuring the priority according to it. The Federal Government argued no prioritization had taken place yet. The Federal Constitutional Court rejected the

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<sup>59</sup> See § 291a Abs. 2 u. 3, § 358 Abs. 1 u. 2 SGB V.

<sup>60</sup> See also § 5 Abs. 6 of the Digital Health Application Regulation (Digitale Gesundheitsanwendungen-Verordnung (DiGAV)), 08.04.2020.

<sup>61</sup> See Federal Ministry of Labour and Social Affairs (2021a), p. 443.

<sup>62</sup> See: Welti (2020), Sozial- und Gesundheitspolitik: Lernen aus Erfahrungen, Das deutsche Gesundheitswesen im Lichte der Corona-Krise. Soziale Sicherheit, pp. 124-126.

<sup>63</sup> See Deutsche Interdisziplinäre Vereinigung für Intensiv- und Notfallmedizin (DIVI) (2020), Entscheidungen über die Zuteilung intensivmedizinischer Ressourcen im Kontext der COVID-19-Pandemie, Version 2, Klinisch-ethische Empfehlungen, 2. überarbeitete Fassung vom 17.04.2020, <https://www.divi.de/joomlatools-files/docman-files/publikationen/covid-19-dokumente/200417-divi-covid-19-ethik-empfehlung-version-2.pdf>.

claim for interim measures by the court<sup>64</sup> and is now assessing the constitutional complaint.<sup>65</sup>

The German law prohibits discrimination because of age, sickness, or disability even in the case of shortage of supply (§ 2a SGB V; § 33c SGB I; §§ 1, 2 p. 1 no. 5, 19 AGG).<sup>66</sup> Prioritisation, following an abstract assessment of success chances, could be discriminating. German legislation should clarify this to ensure compliance with the constitutional prohibition of discrimination and the CRPD.

### ***Independent living***

In 2017, 11.9 million people with disabilities, mostly people with a recognized disability, lived in private households (12.5 million in total). People with disabilities unable to manage their own households have access to various forms of organised living together: ambulant assisted living forms or residential institutions.<sup>67</sup> It should be noted that between the years 2014 and 2018, there was a significant increase of 22 % in the number of people receiving benefits for ambulant assisted living (currently: 50.4 % of benefit recipients) (see annex, Table 18). Compared with residential institutions, ambulant assisted living offers people with disabilities greater self-determination. Accordingly, for some years now, there has been an increased expansion of ambulant forms of living according to the principle 'ambulant before residential institutions'.<sup>68</sup> Evaluation studies summarize moving from a residential institution to ambulant care change living situations positively. People with disabilities strengthen their ability to act, personal responsibility and autonomy.<sup>69</sup> The study also shows primarily people between the ages of 18 and 40 living with ambulant care (56.4 %). People with mental disabilities are most likely (70.6 %), while only 25.3 % of people with intellectual disabilities do (see annex, Table 19). Up to now, there are no representative data on the extent to which people with disabilities can choose between the possible forms of housing according to their needs (Article 19 UNCRPD).<sup>70</sup>

Integration assistance benefits continue to be dependent on income and assets which under certain conditions must be used to finance the benefits. However, the consideration has changed to a contribution system being linked to tax income. The allowances for assets increased (§§ 139,140 SGB IX). Spouses and partners are no longer required to contribute towards integration assistance benefits.

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<sup>64</sup> See BVerfG, Beschluss vom 16.7.2020, 1 BvR 154/20.

<sup>65</sup> A constitutional complaint is pending on the grounds of violation of Articles 1, 2 and 3 (3) sentence 2 of the Basic Law in conjunction with Article 25 of the UNCRPD due to the failure to release state measures and legal regulations, [https://abilitywatch.de/wp-content/uploads/2020/08/Verfassungsbeschwerde\\_COVID\\_19\\_Triage\\_Az\\_1\\_BvR\\_1541\\_20\\_HP.pdf](https://abilitywatch.de/wp-content/uploads/2020/08/Verfassungsbeschwerde_COVID_19_Triage_Az_1_BvR_1541_20_HP.pdf). See the Statements of Theresia Degener and others, <https://www.bodys-wissen.de/corona-protokoll.html>.

<sup>66</sup> Welti (2020), Sozial- und Gesundheitspolitik: Lernen aus Erfahrungen, Das deutsche Gesundheitswesen im Lichte der Corona-Krise, Soziale Sicherheit, pp. 128-130.

<sup>67</sup> The BTHG in its wording eliminates the previous separation of ambulant assisted living forms and residential institutions. Residential institutions are now called "special"/"communal" forms of living (§ 42a SGBXII).

<sup>68</sup> See Status Report 2021, pp. 338-340.

<sup>69</sup> See exemplary Franz, D. & Beck, I. (2015), Evaluation des Ambulantisierungsprogramms in Hamburg. Hamburg: AGFW Hamburg e.V.

<sup>70</sup> See Status Report 2021, pp. 340-342.

The distinction between integration assistance and long-term care benefits remains problematic. Under § 43a SGB XI, persons in need of long-term care in institutional living facilities for persons with disabilities receive considerably fewer benefits than people in a long-term care facility. With regard to the Basic Law and the CRPD, this is discriminating.<sup>71</sup>

The Participation Strengthening Act (Teilhabestärkungsgesetz, 2021) includes a provision on violence protection. Providers of rehabilitation and participation services are to take appropriate measures to ensure protection against violence, especially for women.

With the Digital Modernisation of Care Act (2021)<sup>72</sup> digital forms for care consultations will be made possible. Both care applications and care consultations are to be made available in an accessible way (§ 40 a (4), § 7 a (2) SGB XI).

To secure the existence of social service providers, the Social Service Provider Engagement Act<sup>73</sup> was enacted on 27 March 2020, as part of the Social Protection Package I (see 5.1.). It provides regulations for the financial protection of service providers of integration assistance and other social service providers of the Social Code (with the exception of the statutory health insurance (SGB V),<sup>74</sup> and the social long-term care insurance (SGB XI) who can no longer provide their services or cannot provide them to the same extent as a result of the COVID-19 pandemic (§§ 2, 3, 9 SodEG). Funding is conditional on them providing on-site support in coping with the effects of the pandemic and making manpower, premises and material resources available to a reasonable extent for this purpose (§ 1 SodEG). For people in need of care and outpatient care facilities, relief was created by the 'Act to Compensate for COVID-19-related Financial Burdens on Hospitals and Other Health Care Facilities' of 27 March 2020.<sup>75</sup> If outpatient care cannot be provided by the previous care service or a substitute, care can now also be provided by other service providers. The long-term care insurance may grant reimbursement of costs in the amount of the outpatient payments in kind according to § 36 SGB IX for up to three months in order to avoid shortfall in care at home (§ 150 p. 5 SGB XI). Nursing facilities are reimbursed for additional expenses and reduced income (§ 150 p. 2 SGB XI). Based on the Second Population Protection Act in cases of epidemic situation of national relevance of 19 May 2020 providers<sup>76</sup> of everyday support services (§ 45a SGB XI) have a claim against the social long-term care insurance for reimbursement of the shortfall in income and additional expenses caused by the COVID-19 pandemic, if these are not financed elsewhere (§ 150 para. 5a of the Social Code Book XI).

More than one in five people in Germany is older than 65, and one in four of them has a severe disability. In the course of demographic developments, the number of people

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<sup>71</sup> See Welti (2018), [Verstößt § 43a SGB XI gegen das Grundgesetz und die UN-Behindertenrechtskonvention?](#), Soziale Sicherheit 2018, pp. 418-420.

<sup>72</sup> See Gesetz zur digitalen Modernisierung von Versorgung und Pflege v. 03.06.2021, BGBl. I, 1309.

<sup>73</sup> See Sozialdienstleister-Einsatzgesetz.

<sup>74</sup> In so far as they provide services other than complex services of interdisciplinary early detection and early support.

<sup>75</sup> See Gesetz zum Ausgleich COVID-19 bedingter finanzieller Belastungen der Krankenhäuser und weiterer Gesundheitseinrichtungen (COVID-19-Krankenhauserlastungsgesetz).

<sup>76</sup> Which are admitted by Länder law.

with age-related disabilities (especially sensory disabilities and mobility disabilities) will increase in the future.<sup>77</sup> This correlates with an increasing need for low-barrier and barrier-free housing in the sense of a holistic (age-appropriate) housing and urban development policy. The goal of the German government is to enable people of advanced age and/or with disabilities to live at home and thus in familiar surroundings for as long as possible.<sup>78</sup> For example, the German government and *Kreditanstalt für Wiederaufbau* (KfW) are promoting the removal of barriers in residential buildings in their program *Altersgerecht Umbauen* (Age-Appropriate Conversion) by means of low-interest loans and investment grants and will make around EUR 130 million available in 2021.

### **Statutory Health Insurance system (SHI) / Private Insurance system (PHI)**

Since 2009, people in Germany have a general obligation to health insurance, either from a public body (§ 5(1) No. 13 SGB V – Statutory Health Insurance), or from a private company (§ 193(3) *Versicherungsvertragsgesetz* (VVG) – Insurance Contract Act), therefore only a small part of the population is without insurance cover. The statutory health insurance system (SHI) is the compulsory insurance for all persons who are not classified by law as exempt from that obligation and who have no other entitlement to cover in the event of illness. The SHI contains of a broad range of benefits that provide insured persons with all necessary medical services (SGB V). The law of the statutory health insurance system also enshrines the principle the special interests of people with disabilities must be taken into account (§ 2a SGB V).

In private health insurance (PHI), the principle of freedom of contract prevails, i.e. the contractual partners can be freely chosen, or it can be decided not to conclude a contract with certain persons. The scope of benefits depends on the agreed tariffs. The PHIs check the individual risk of the person to be insured when concluding the contract. Age and state of health, e.g. previous illnesses or underlying diseases are taken into account. The insurance contributions are calculated according to the identified individual risk of illness.

The protection against discrimination under civil law in the AGG (§§ 1, 19 AGG) applies to insurance contracts, also. Therefore, it is not permitted to refuse an insurance contract or to place a person in a less favourable position within an existing insurance contract on the grounds of disability. Difficulties exist in the differentiation between disability and pre-existing disease. The latter allows unequal treatment (including refusal to conclude a contract) under insurance law. Therefore, there is a risk of discrimination on this issue. Problems arise in cases diseases led to a disability or diseases lead to a risk of disability. If then the PHI refuses to conclude the contract, there might be an indirect discrimination.

Unequal treatment of a person with disabilities is legal when determining the amount of contributions and insurance benefits (§ 20(2) AGG), provided that this is based on recognised principles of risk-adequate calculation. As a result of the individual health check, people with disabilities therefore often will be affected by risk surcharges and/or

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<sup>77</sup> See Deutsches Zentrum für Altersfragen (2016), Deutscher Alterssurvey 2014. Zentrale Befunde, <https://www.bmfsfj.de/blob/jump/77122/deutscher-alterssurvey-2014-vielfalt-und-wandel-des-alters-zentrale-befunde-data.pdf>, pp. 23-24.

<sup>78</sup> 3<sup>rd</sup> Participation Report 2021, p. 322.

exclusions of benefits. Concluding, their access to private health insurance de facto is more difficult or even factual impossible.

Since 2009, the PHIs have to offer a basic tariff standardized in the insurance-sector. Exclusions of benefits or risk surcharges are not permitted in this tariff (§ 203(1) sentence 2 VVG) and there is an obligation to enter into a contract (§ 193(5) sentence 1 VVG). The benefits must be comparable in type, scope and amount to those of statutory health insurance (§ 152(1) sentence 1 Versicherungsaufsichtsgesetz – Insurance Supervision Act). The basic tariff is quite expensive and does not compensate the discrimination of persons with disabilities in the general system.

## 5 Disability, education and skills – analysis of the situation and the effectiveness of policies

In 2015, the UN CRPD Committee made the following recommendations to Germany: [Article 24 UN CRPD](#) addresses Education.

'46. The Committee recommends that the State party:

- (a) Immediately develop a strategy, action plan, timeline and targets to provide access to a high-quality, inclusive education system across all Länder, including the required financial resources and personnel at all levels;
- (b) Scale down segregated schools to facilitate inclusion and ensure that the law and policies uphold the duty that mainstream schools enrol children with disabilities with immediate effect if that is their choice;
- (c) Ensure that reasonable accommodation is provided at all levels of education and that the right to such accommodation is legally enforceable and justiciable before the courts;
- (d) Ensure the training of all teachers in inclusive education, increased accessibility of the school environment, materials and curricula, and the provision of sign language in mainstream schools, including at the post-doctoral level.'

In 2018 a new List of Issues was raised, requesting the following:

'24. Please provide information on: (a) The efforts and time frames to ensure that all professionals within and around the education system are sufficiently aware of and receive adequate training to contribute to high-quality inclusive education; (b) The identifiable resources available to ensure adequate staff, supervision and training to guarantee support for students with disabilities in mainstream schools, including higher education and sports activities; (c) The efforts to promote the employment of teachers and assistants with disabilities in mainstream schools; (d) The education establishments that have been transformed into inclusive settings since 2009 (number/percentage/types); (e) The Länder that guarantee the right of persons with disabilities to attend mainstream schools with reasonable accommodation as a legal entitlement with safeguards.'

### 5.1 Summary of the educational situation of persons with disabilities

The EU-SILC 2019 estimates concerning educational attainment should be treated with additional caution due to relatively wide confidence intervals, but they consistently indicate disability equality gaps (an average of 2-3 years provides a more stable indication). Table 20 indicates early school leaving rates disaggregated by disability status in Germany. Youth with disabilities (aged 18-24) tend to leave school significantly more than peers without disabilities of the same age groups (reinforced by widening the sample size to age 18-29). Table 21 shows completion rate of tertiary education disaggregated by disability and age group. Persons with disabilities (age 30-34) are less likely to complete tertiary education than their peers (reinforced in the wider age range 30-39).

The proportion of children and young people with disabilities in mainstream schools increased by 31% between 2014 and 2017 (data basis: KMK). Alongside this, the inclusion rate, i.e. their share of all pupils with special educational needs, grew by 7.6 % to 41.7 %. However, inclusion cannot be described as a blanket approach; the majority of children and young people with support needs continued to attend a special school: over the same period, the number of pupils in special schools fell by only

5.2 % (see annex, Table 22). The decision whether a child receives special education in a mainstream school or in a special school is made in a complex interaction between parents, teachers and school authorities and varies greatly depending on where the child lives.<sup>79</sup>

Furthermore, large differences are noted with regard to the school-leaving qualifications of people with and without disabilities: In 2017, 8 % of 20-64 year olds with disabilities did not (yet) have a high school diploma (compared to 4.1 % of people without disabilities), 38.3 % had a secondary school diploma (compared to 22.7 % of people without disabilities) (data basis: Microcensus 2017). In 2016, 71.1 % of students left a special school without a diploma (see annex, Table 23) – the majority from the learning specialisation (58 %) (data basis: KMK).<sup>80</sup> Around 71 % of young people without a school-leaving certificate found themselves in vocational preparation programs, most being offered by the Federal Employment Agency or by other providers on its behalf (general and rehabilitation-specific).<sup>81</sup> In 2017, 20.5 % of people with disabilities do not have a vocational qualification (compared to 15.0 % of people without disabilities) (data basis: Microcensus 2017). This correlates with lower labour force participation, lower occupational status and lower levels of work among people with disabilities; an increased risk of poverty is the result.<sup>82</sup>

At 10.3 %, people with disabilities also had a lower proportion of academic degrees compared to people without disabilities at 23.3 %. According to the 21st Social Survey of the German Student Union, 23 % of students had a disability in 2016, and for 11 % this had a negative impact on their studies. The majority of these were caused by mental, psycho-social or psycho-somatic disabilities. Study-related disabilities had a high impact on the course of studies: Students with disabilities that made their studies more difficult changed their course of studies (31 % to 21 %) or their university (22 % to 16 %) more often than students without disabilities. They were also twice as likely to interrupt their studies (32 % to 13 %). A central reason was an acute health problem.<sup>83</sup>

In terms of lifelong learning, adult education programs also play an important role in this category. They promote personal development and social participation. Adult education centres are the most common institutions of public adult education in Germany and offer general and vocational courses. Predominantly, the institutions have a broad understanding of inclusion, which refers primarily to traditional target groups such as people with a migration background, the long-term unemployed, the

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<sup>79</sup> Status Report 2021, p. 142.

<sup>80</sup> Status Report 2021, pp. 163-164, 169-170.

<sup>81</sup> Deutsches Institut für Menschenrechte (2020), Entwicklung der Menschenrechtssituation in Deutschland, Juli 2019 – Juni 2020, Bericht an den Deutschen Bundestag gemäß § 2 Absatz 5 DIMRG, [https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Menschenrechtsbericht/Menschenrechtsbericht\\_2020.pdf](https://www.institut-fuer-menschenrechte.de/fileadmin/Redaktion/Publikationen/Menschenrechtsbericht/Menschenrechtsbericht_2020.pdf), p. 58.

<sup>82</sup> Status Report 2021, pp. 171-172.

<sup>83</sup> See Middendorff et al. (2017), Die wirtschaftliche und soziale Lage der Studierenden in Deutschland 2016. 21. Sozialerhebung des Deutschen Studentenwerks – durchgeführt vom Deutschen Zentrum für Hochschul- und Wissenschaftsforschung. Berlin: Bundesministerium für Bildung und Forschung (BMBF), pp. 36-37.

illiterate or the elderly.<sup>84</sup> Target group orientation tends to include special courses with a focus on integrating disadvantaged groups. A general target group approach to people with disabilities has the challenge that individuals differ greatly in the form and degree of their disabilities.<sup>85</sup> In addition, there is a growing need for assistance within other target groups, such as the elderly. In the 2018, reporting year of Adult Education statistics, the total course enrolment of individuals over the age of 65 is 18.4 %.<sup>86</sup> Providers of disability assistance, e.g. sheltered workshops for people with disabilities, also offer courses for adults. To date, there has been no empirical analysis of the number and content of educational offerings.

The participation of persons with disabilities requires special political, social, societal and professional support. An imbalance exists, for example, in the school sector: the proportion of pupils with special educational needs is increasing, as is their percentage in special schools. This means that they continue to achieve a secondary school leaving certificate far less often than young people without disabilities.

## 5.2 Analysis of education policies relevant to the Semester

The 2021 [National Reform Programme](#)<sup>87</sup> for Germany intends to improve infrastructure and quality of education in daycare centres and schools and enable digital learning opportunities (No. 147). Digitalisation is promoted in schools, taking accessibility into account. The School Digital Pact (DigitalPakt Schule) of May 2019 is an administrative agreement between the Federal Government and the Länder that tie in with older digitalisation strategies of the Federal Ministry of Education and Research and the Standing Conference of the Ministers of Education and Cultural Affairs (Kultusministerkonferenz) of the Länder. On the basis of Article 104c of the Basic Law (Grundgesetz, GG), the Federal Government grants financial assistance to the Länder to create a digital education infrastructure. In particular, uniform interface standards are to be ensured, also to ensure accessibility ('universal design').<sup>88</sup>

An important field in the National Reform Programme is the vocational training, being essential for people to get integrated into working life, which is to be supported by a bundle of e.g. vocational and continuing training support services applying to both persons without disabilities and persons with disabilities (No. 212-226). As regards measures especially for persons with disabilities the programme refers to the National Action Plan 2.0 (No. 227). The Recovery and Resilience Plan for Germany refers to the new federal programme 'Secure Vocational Training Positions'<sup>89</sup> which – due to COVID-19 – provides financial support for companies that provide vocational training positions, including companies that offer so-called 'Fachpraktiker' training (§ 66 Vocational Training Act - Berufsbildungsgesetz (BBiG)) for people with disabilities.

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<sup>84</sup> See Seitter, W. & Franz, J. (2019), Inklusive Erwachsenenbildung. Hessische Blätter für Volksbildung, 69(1), p. 4.

<sup>85</sup> See Babilon, R. (2018), Inklusive Erwachsenenbildung mit Menschen mit Lernschwierigkeiten – eine qualitative Studie in England [Dissertation]. Landau: Universität Koblenz-Landau, p. 65.

<sup>86</sup> See Reichart, E., Huntemann, H. & Lux, T. (2020), Volkshochschul-Statistik. 57. Folge, Berichtsjahr 2018 (2. Auflage). Bielefeld: wbv Publikation, p. 88.

<sup>87</sup> See Nationales Reformprogramm 2021, BT-Drs. 229/21, 24.03.2021.

<sup>88</sup> See <https://www.digitalpaktschule.de/de/was-ist-der-digitalpakt-schule-1701.html>.

<sup>89</sup> See „Ausbildungsplätze sichern“, Deutscher Aufbau- und Resilienzplan, BT-Drs. 19/29682, 28.04.2021, p. 48, also National Reform Programme, No. 215.

### **Budget for vocational training**

In 2020, the budget for vocational training (§ 61 a SGB IX) was introduced within the framework of the Relief of the Fee Burden on Relatives Act – *Angehörigenentlastungsgesetz*. The budget for vocational training offers persons with disabilities an alternative to the entrance qualification and the vocational training area of *WfbM* (§ 61 a SGB IX). With the Participation Strengthening Act (Teilhabestärkungsgesetz)<sup>90</sup> the budget for vocational training is being expanded. From 2022, persons who are already working in the working area of *WfbM* will also be able to receive support through this budget. Strengthening career guidance and promoting inclusive vocational training and work is part of the National Action Plan.<sup>91</sup>

Persons with disabilities who are entitled to the entry procedure or to the vocational training area (and from 2022 also to the working area) are entitled for the budget for vocational training. The budget for vocational training covers training relationships subject to compulsory social security both in recognized training courses and in courses with less theoretical content but a focus on the practical content for a certain profession (regulated in § 66 Vocational Training Act (BBiG) and § 42m Crafts Code (HWO), so called '*Fachpraktikerberufe*').

The budget for vocational training can be a suitable instrument to make training more inclusive and to reduce the attendants of *WfbM*. It is problematic, however, only persons with entitlement to benefits in the entry procedure or vocational training area (and from 2022 also to the working area) of a *WfbM* are entitled to the budget for training. This excludes young people with a special need or rehabilitation status who are not entitled to the *WfbM*. Young people being not even entitled to a *WfbM* because of the severity of their disability are excluded, as well. Therefore, the budget for vocational training should be designed as a low-threshold offer to which all people with disabilities are entitled.<sup>92</sup>

So far, only training subject to compulsory social security in recognized programmes and the so-called *Fachpraktikerberufe* are covered by the budget for vocational training. This, potentially, excludes the majority of pupils at special need schools who leave these schools without a lower secondary school degree, as they find it more difficult to obtain a training relationship. In order to reduce the exclusion risk, vocational training preparation, further vocational training and retraining could also be included in the promotion.

To date, there is no representative database on the design of transitions between school and training for people with disabilities. Data on the form of school-based training are also scarcely available.<sup>93</sup>

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<sup>90</sup> Gesetz zur Stärkung der Teilhabe von Menschen mit Behinderungen sowie zur landesrechtlichen Bestimmung der Träger der Sozialhilfe (Teilhabestärkungsgesetz), 02.06.2021, BGBl. I, 1387.

<sup>91</sup> NAP 2.0. 2016, p. 26; see also Zwischenbericht zum NAP 2.0, 25.10.2018, BT-Drs. 19/5260, p. 5.

<sup>92</sup> See for the discussion in the legislation process, Gast-Schimank, Das Budget für Ausbildung im Angehörigen-Entlastungsgesetz – Teil I: Analyse des Gesetzentwurfs und der Stellungnahmen, D18-2019, <https://www.reha-recht.de/>, 15.10.2019.

<sup>93</sup> See status Report 2021, 157.

### **School assistance / study assistance**

In order to ensure the schooling of children with disabilities and young people, school assistance is the main tool used. This applies to both, the regular school and the special needs school, also lacking adequate personal and constructional accessible infrastructure. The same applies to the higher education sector. Germany has increased the training capacities of special needs teachers and created corresponding positions in schools but refers to the provision of the integration assistance with regard to the needs specific to disabilities.<sup>94</sup>

Statutory benefits for the school sector were previously classified as social participation and regulated in the Book of Social Assistance (SGB XII). These benefits are regulated in a separate chapter entitled 'Educational participation assistance' in Book IX of the Social Code – Rehabilitation and Participation of Persons with Disabilities (§§ 75, 112 SGB IX). They include study and school assistance. They can be provided within the framework of general school education and attendance of secondary schools up to university entrance qualification, including preparation for this, independently whether or not there is still compulsory school attendance.<sup>95</sup> In addition, the benefit also can refer to all-day programmes in open form and may include an assistance for the way to school or with school events.<sup>96</sup> The new legislation extended the scope of integration assistance to the area of school-based and university-based continuing vocational training. Provision of the integration assistance now regularly encompasses Master's programmes. A second degree or PhD studies is also included in justified cases (§ 112 (2) sentence 2 and sentence 1, No. 3 SGB IX).<sup>97</sup> The previously required certificates of performance and competence for the choice of degree programme are no longer required. The pooling of benefits for the area of school support is now possible by the new legislation and can be provided – if it is reasonable – against the will of the benefit recipients.<sup>98</sup>

Legislative competence in the education sector for school and university laws lies with the Länder (Article 70(1) of the Basic Law – *Grundgesetz*), so there are no uniform federation-wide regulations for school or study inclusion. As a result of Article 24 CRPD demanding for an inclusive education system, many school legislations have been amended and regulations on inclusion of pupils with special needs have been inserted. School assistance is not regulated in the school laws but in social law. However, school authorities may be obliged with regard to the equality of persons with disabilities to provide assistance as reasonable accommodation.<sup>99</sup>

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<sup>94</sup> See Combined Second and Third Periodic Report of the Federal Republic of Germany on the United Nations Convention on the Rights of Persons with Disabilities, 18.07.2019, BT-Drs. 19/11745, p. 31.

<sup>95</sup> See Entwurf eines Gesetzes zur Stärkung der Teilhabe und Selbstbestimmung von Menschen mit Behinderungen (Bundesteilhabegesetz – BTHG), BT-Drs. 18/9522, p. 284.

<sup>96</sup> See Deutscher Städtetag, Deutscher Landkreistag, Bundesarbeitsgemeinschaft der überörtlichen Sozialhilfeträger (BAGüS), Orientierungshilfe zur Schulbegleitung unter besonderer Berücksichtigung der Bildung von Schulbegleiterpools, Stand: Juni 2019.

<sup>97</sup> See Entwurf eines Gesetzes zur Stärkung der Teilhabe und Selbstbestimmung von Menschen mit Behinderungen (Bundesteilhabegesetz – BTHG), BT-Drs. 18/9522, p. 284.

<sup>98</sup> The effects of this regulation should be closely monitored.

<sup>99</sup> See Conrad-Giese, Teilhabe durch Persönliche Assistenz für Kinder mit Behinderungen – Teil III: Assistenzleistungen in Bildungseinrichtungen; A13-2019, [www.reha-recht.de](http://www.reha-recht.de), 06.08.2019, p. 8. See also: Combined Second and Third Periodic Report of the Federal Republic of Germany on the

For this reason, school assistance is predominantly a provision of integration assistance (§§ 75, 112 SGB IX). For school assistance at general and secondary schools (§ 138 (1) No. 4 SGB IX), the children's parents are not required to pay a contribution. However, this privilege applies to study assistance only insofar as the services are provided day and night for people with disabilities in special training centres. This should be critically examined in the light of Article 24 CRPD.

Children or young people with a mental disability are also entitled to integration assistance. In this case, the authorities of child and youth services are primarily responsible (§ 35a SGB VIII). In exceptional cases, the statutory health insurance and the long-term care insurance may also be the legally obliged authorities if the focus is on medical treatment care or long-term care. Shared responsibilities can lead to difficult coordination processes between the authorities involved.

School assistance only includes activities outside lessons. The core pedagogical work lies solely in the responsibility of the school authorities. The school assistance is not aimed at conveying content, but at enabling the children to participate in lessons. It is often difficult to distinguish between school assistance as a social benefit and special educational needs as part of the school's responsibility. This can result in difficulties for those affected to obtain the help they need. Legally, the obligations of the school take precedence over integration assistance. However, the determination of this priority in proceedings before the social courts or under Child and Youth Services law does not yet result in an enforceable claim by the child with disabilities to the provision.<sup>100</sup> Currently, the prevailing system still consists of mainstream schools and separated special need schools. It can also be seen that the proportion of people who are included in the education system steadily decreases in the course of an educational career, i.e. with increasing age of the affected people. Students who have health problems during their studies have often a longer duration of study and a higher risk of breaking off their studies. There is no sufficient school infrastructure for the inclusion of pupils with disabilities. Mostly, inclusive schooling is only possible with integration assistance.

### ***Inclusive child day care centres***

Child day-care centres are facilities children are cared for and supported for part of the day or the whole day. In contrast to inclusive schooling of children with and without special needs, the proportion of inclusive care in day-care centres is much higher.<sup>101</sup> In 2018, the majority of children with disabilities were cared for in a regular day-care centre (91.5 %). The integrative concept aims to care for children with disabilities and children without disabilities together. Specialized staff are responsible for the individual promotion and support of the children with disabilities. 8.5% of children with disabilities attended special institutions for children with disabilities. In 2018, 20.623 institutions are orientated inclusively in Germany; this is accompanied by an increase of

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United Nations Convention on the Rights of Persons with Disabilities, 18.07.2019, BT-Drs.19/11745, p. 32.

<sup>100</sup> See Welti (2015), Verantwortlichkeit für angemessene Vorkehrungen und Barrierefreiheit in der Bildung, RdJB 2015, pp. 34, 43, 44.

<sup>101</sup> In 2013/14, 67.0 percent of children in Germany with special needs attended integrative day-care centers; in the 2013/14 school year, the proportion of children in primary schools in Germany was significantly lower at 46.9 percent, and in secondary level schools it fell once again to just 29.9 percent, see Bertelsmann Stiftung (2015), Inklusion in Deutschland, Daten und Fakten, p. 35.

approximately 15%. The number of special institutions for children with disabilities recorded a decrease of about 5 %. In summary, the trend of inclusive care continues (data basis: Child and youth welfare statistics) (see annex, Table 24).<sup>102</sup>

The legislative competence is shared between the *Länder* and the Federation (Article 7 4 (1) No. 7 Basic Law – *Grundgesetz*) with details of the tasks and services provided by day-care centres regulated by the *Länder* (§ 26 sentence 1 SGB VIII – Child and Youth Services). The basic principles and development of the day-care system are regulated by federal law, clearly showing the high political significance of the promotion of children within the framework of child and youth services (SGB VIII).

Children with and without disabilities in day-care centres are to be fostered together, as far as their respective need permits it (§ 22a(4) sentence 1 SGB VIII). The providers of child and youth services are to cooperate with the providers of integration assistance in the planning, conceptual design and financing of the respective benefit (§ 22a, (4) sentence 2 SGB VIII). This objective is also enshrined in § 4(3) sentence 1 SGB IX, which stipulates that services for children with disabilities or children at risk of getting disabilities are developed in such a way children not separating from their social environment and caring for them together with children without disabilities.

In recent years, all *Länder* have included the development of inclusive day-care of children as a goal in their legislation (e.g., § 2(2) KiTaG – Baden Wuerttemberg, § 2(4) SächsKitaG – Saxony, § 1(3) No. 6 KitaFöG – Berlin). The legal claim on day-care benefits is enshrined in law (§ 24 SGB VIII) and also applies to children with disabilities. According to the social case law, such a claim is subject to available resources.<sup>103</sup> The *Länder* legislation expressly lists inclusive day-care centres as being preferable.<sup>104</sup>

The organisational forms of day care centres vary greatly among the *Länder*. In some *Länder* there are special school kindergartens also only accepting children with disabilities and extra needs (e.g. § 20 School Act – Baden-Württemberg). As in the school sector, benefits are provided primarily by the authorities of the child and youth services and the integration assistance. Support for extra needs due to disability is provided mainly within the framework of integration assistance. Coordination between the different providers therefore is important and can have a negative impact on the granting of benefits (as it does on school assistance).

Since the CRPD came into force, there has been a noticeable improvement towards greater inclusion in day care centres for children. Nevertheless, a good 30 % of children with extra needs are still taken care of in separate systems.<sup>105</sup>

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<sup>102</sup> See Status Report 2021, pp. 134-135.

<sup>103</sup> See BVerfG, 10.02.2006 – 1 BvR 91/06; BVerfG, 8.10.1997 – 1 BvR 9/97 (Sonderschulzuweisung), BVerfGE 96, 288.

<sup>104</sup> E.g. (Article 12(1) BayKiBiG – Bavaria, § 2(2) KiTaG – Baden-Wuerttemberg, § 19 s. 1 SächsKitaG – Saxony, § 6(1) s. 2 KitaFöG – Berlin, § 3(7) s. 1 KiTaG – Lower Saxony).

<sup>105</sup> See Federal Ministry of Education and Research (2014), *Bildung in Deutschland 2014. Ein indikatorengestützter Bericht mit einer Analyse zur Bildung von Menschen mit Behinderungen*, p. 169.

In order to further improvement of the structural quality of the day-care system, care also must be taken to ensure in sufficient number a supply of vocational and continuing training for specialist staff with regard to inclusion.<sup>106</sup>

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<sup>106</sup> See Federal Ministry of Education and Research (2014), pp. 189-190.

## 6 Investment priorities in relation to disability

### 6.1 Updates on use of existing EU funds (up to 2021)

In the field of education, the Federal Ministry of Education and Research has been funding programmes for digitalisation in vocational education and training from the European Social Fund since 2012 (the programme ended in 2019, but funding will continue until 2022). In order to support the implementation of the goals of the CRPD, the NAP 2.0 and the Federal Participation Law (Bundesteilhabegesetz, BTHG) funding has been provided since 2017 under this programme for projects that support persons with disabilities in learning and exercising a professional activity in the long term through the innovative use of digital media.<sup>107</sup>

The federal programme 'Establishment of further training networks'<sup>108</sup> should be mentioned: Exchange, information, analysis of needs and coordination of joint offers is intended to increase the participation in further education of employees who participate less frequently in vocational qualification measures, e.g. people with disabilities.

In the school sector, the adaptation of the DigitalPakt Schule (Digital Pact for Schools) should be mentioned, which in 2020 will also refer to equipping pupils with mobile devices in a supplementary agreement between the Federal Government and the Länder. The measure is intended to make it possible for disadvantaged groups in particular to participate in distance learning.

The Participation Fund<sup>109</sup> aims to promote the participation of people with disabilities in social and political processes. Self-help organisations in particular receive financial and human resources through the funding programme.

The development of an electronic portal for the Digital Pension Overview is intended to improve the transparency of one's own pension entitlements and, in particular, to ensure accessibility so that information can be found, accessed and used by people with disabilities without a fundamental impediment.

The analysis of the European Structural and Investment Funds (ESIF) - for Germany the European Regional Development Fund (ERDF) and the European Social Fund (ESF) are of central importance - shows that disability is hardly mentioned and is often not an issue from a holistic inclusive perspective. The focal points of the following funding guidelines and exemplary selected projects confirm this: within the framework of ERDF funding (2014-2020), (small) projects to compensate for structural development deficits and to remedy infrastructure problems can be found again and again throughout Germany. A frequent example is the creation of parking spaces for

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<sup>107</sup> Federal Ministry for Research and Education (2017), Förderrichtlinie "Inklusion durch digitale Medien in der beruflichen Bildung" (Funding Guideline "Inclusion through Digital Media in Vocational Education and Training").

<sup>108</sup> See <https://www.bmas.de/DE/Arbeit/Aus-und-Weiterbildung/Weiterbildungsrepublik/Weiterbildungsverbuende/weiterbildungsverbuende-art.html>.

<sup>109</sup> § 19 BGG.

people with disabilities (see exemplary ERDF projects of the Hanseatic City of Wismar, Mecklenburg-Western Pomerania).<sup>110</sup>

Improving equal opportunities and non-discrimination of people with disabilities is a prominent cross-cutting objective of all funding guidelines of the Länder. The creation of sustainably competitive permanent jobs subject to social insurance contributions also receives support (e.g. 'IWB-EFRE Programme Hessen').<sup>111</sup>

The federal ESF programme 'Akti(F) - Active for Families and their Children' (2020-2022) aims to improve the living situation and social participation of families at risk of exclusion and poverty. The offers are primarily aimed at parents and children, including single parents and parents with disabilities (with full or partial reduction in earning capacity). They receive support in finding and taking up employment and assistance offers (local and regional). By the end of 2020, approximately 1 280 people who were at risk of or affected by exclusion and poverty were registered in the programme.<sup>112</sup>

For Berlin, the completion-oriented ESF model project 'Inclusive Vocational Training' is exemplary. The target group is young people (under 25) with learning disabilities (§19 SGB III). Within three years, they complete a dual training programme to become 'Fachpraktiker Hauswirtschaft' and acquire knowledge in basic care and everyday assistance (especially in the field of care for people with disabilities and senior citizens). A total of 12 training places are available.<sup>113</sup>

In Lower Saxony, there is the funding guideline 'Youth workshops: supporting young people with integration barriers in the transition from school to work', in which a total of 283 projects have been listed so far. The target group is young people up to 27 years of age who have completed their compulsory education and are unemployed or in a year of vocational preparation. In addition to youth workshops, measures for the further development of youth vocational assistance also receive funding.<sup>114</sup>

In summary, the underrepresentation of investments in projects for people with disabilities, even from a holistic inclusive perspective, stands out above all. Frequently, the projects - especially ESF - support people with specific disabilities in institutions.

## 6.2 Priorities for future investment (after 2021)

DARP's focus is on addressing two key challenges: Climate change and digital transformation. Climate-friendly measures range from decarbonisation through renewable hydrogen, to climate-friendly mobility, to climate-friendly construction. The needs of people with disabilities must always be taken into account - under the catchwords such as 'equal opportunities', 'participation' or 'accessibility'. Social

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<sup>110</sup> See <https://www.wismar.de/B%C3%BCrger/Aktuelles/Aktuelle-Stadtentwicklung/EU-Projekte/EFRE-Projekte/>.

<sup>111</sup> See [https://wirtschaft.hessen.de/sites/default/files/media/hmwvl/2.02\\_hmwewv\\_broschuere\\_efre\\_19\\_screen\\_1.pdf](https://wirtschaft.hessen.de/sites/default/files/media/hmwvl/2.02_hmwewv_broschuere_efre_19_screen_1.pdf).

<sup>112</sup> See <https://www.esf.de/portal/DE/ESF-2014-2020/F%C3%B6rderprogramme/bmas/aktiv.html>.

<sup>113</sup> See [https://www.cooperative-mensch.de/fileadmin/Dokumente\\_Website/PDF/Projektflyer.pdf](https://www.cooperative-mensch.de/fileadmin/Dokumente_Website/PDF/Projektflyer.pdf).

<sup>114</sup> See <https://projektatlas.europa-fuer-niedersachsen.de/foerderprogramme/jugendwerkstaetten/>.

resilience also includes a strong public health system and pandemic protection. Digitalisation is also a permanent topic in the DARF, including a national digital education offensive, and opens up opportunities for full participation of persons with disabilities.

In summary, the example selected reforms and investments - which are described in detail in the chapters of the report - show only sporadic improvements in participation efforts and point to stagnation, in some cases even regression, in the various areas of life. No or low educational attainment correlates with lower labour force participation, occupational status and work levels among persons with disabilities. An increased risk of poverty and/or poorer health can simultaneously be a consequence, but also a cause and a trigger. A holistic view from the perspective of inclusion makes sense: inclusion not only understood as an attitude and cross-cutting issue, but also as the promotion of individual measures in the different areas of life and their synthesis (education, health, economy, politics or culture). In this context, cooperation and (digital) networking between systems and institutions is an essential success factor. In the future, the focus should be both on the design of transitions for people with disabilities (as selectively funded primarily through ESF) and on model projects in (previously) underrepresented areas of life (study, further education, etc.).<sup>115</sup>

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<sup>115</sup> See as an example the programme "Digitisation of VHS and recognised further education institutions" in North Rhine-Westphalia, <https://www.efre.nrw.de/wege-zur-foerderung/react-eu/richtlinie-ueber-die-foerderung-von-digitalen-sofortausstattungen-in-kursen-zum-nachtraeglichen-erwerb-von-schulabschluessen-der-sekundarstufe-i/>.

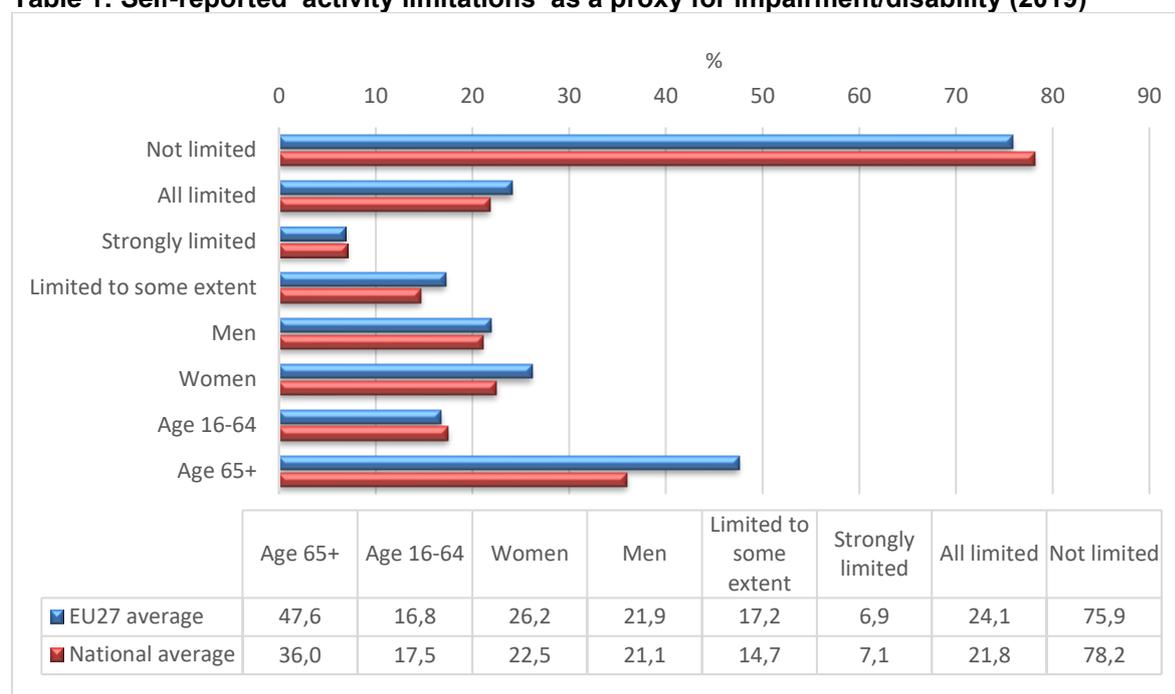
## 7 Annex: disability data relevant to the Semester

See also disability data published in the Eurostat database<sup>116</sup> and statistical reports.<sup>117</sup>

Unless specified, the summary statistics are drawn from the most recent EU-SILC data available to researchers from Eurostat. The EU-SILC sample includes people living in private households and does not include people living in institutions (congregative households). The sampling methods vary somewhat in each country.

The proxy used to identify people with disabilities (impairments) is whether ‘for at least the past 6 months’ the respondent reports that they have been ‘limited because of a health problem in activities people usually do’.<sup>118</sup>

**Table 1: Self-reported ‘activity limitations’ as a proxy for impairment/disability (2019)**



Source: EU-SILC 2019 Release 2021 version 1.

In subsequent tables, these data are used to indicate ‘disability’ equality gaps and trends relevant to the analytical chapters – for the labour market, social policies and healthcare, and education – by comparing outcomes for persons who report and do not report ‘activity limitations’.<sup>119</sup> National estimates for Germany are compared with EU27 mean averages for the most recent year.<sup>120</sup> The proportion of persons

<sup>116</sup> Eurostat health Database, <https://ec.europa.eu/eurostat/web/health/data/database>.

<sup>117</sup> Eurostat (2019) Disability Statistics [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability\\_statistics](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Disability_statistics).

<sup>118</sup> The SILC survey questions are contained in the Minimum European Health Module (MEHM) [https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Special:WhatLinksHere/Glossary:Minimum\\_European\\_Health\\_Module\\_\(MEHM\)](https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Special:WhatLinksHere/Glossary:Minimum_European_Health_Module_(MEHM)).

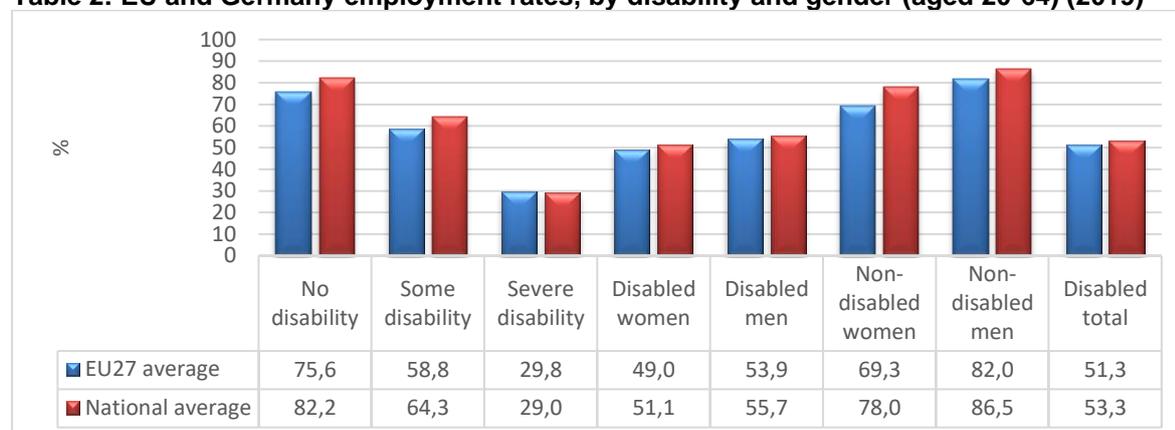
<sup>119</sup> This methodology was developed in the annual statistical reports of ANED, available at <http://www.disability-europe.net/theme/statistical-indicators>.

<sup>120</sup> The exit of the United Kingdom from the EU changes the EU average. Averages were also affected in 2015 by a discontinuity in the German disability data due to a definitional change.

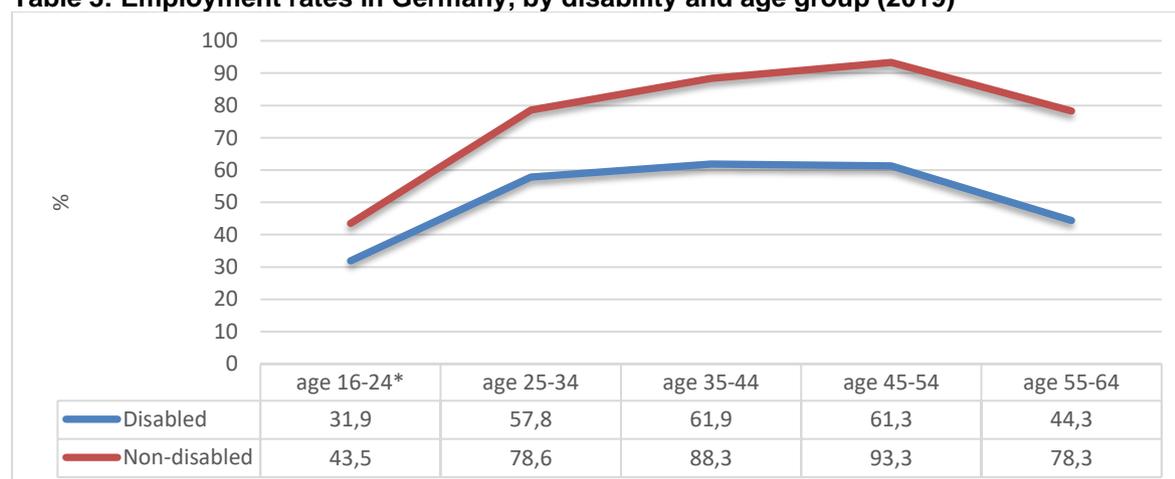
reporting limitation was lower in Germany than the EU average, notably among older persons.

## 7.1 Data relevant to disability and the labour market

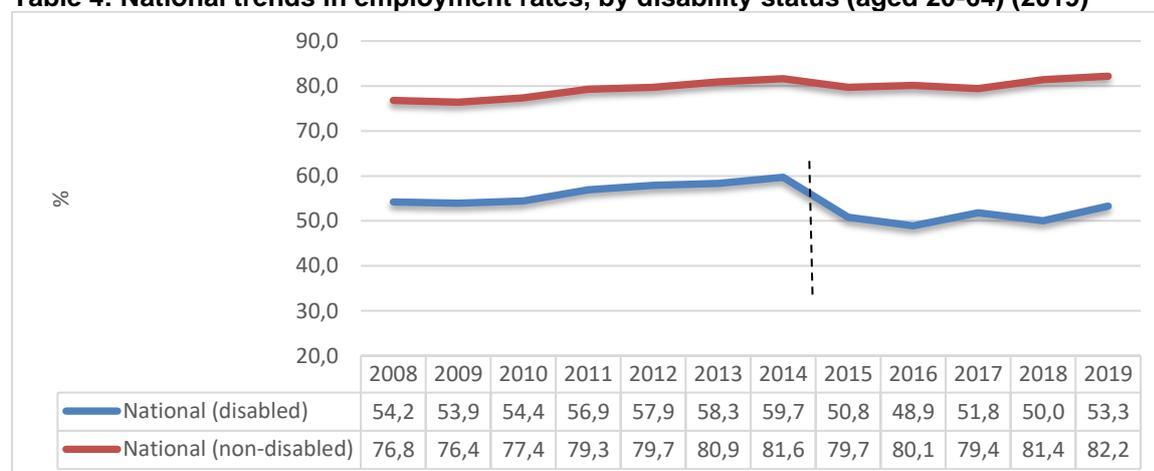
**Table 2: EU and Germany employment rates, by disability and gender (aged 20-64) (2019)**



**Table 3: Employment rates in Germany, by disability and age group (2019)**



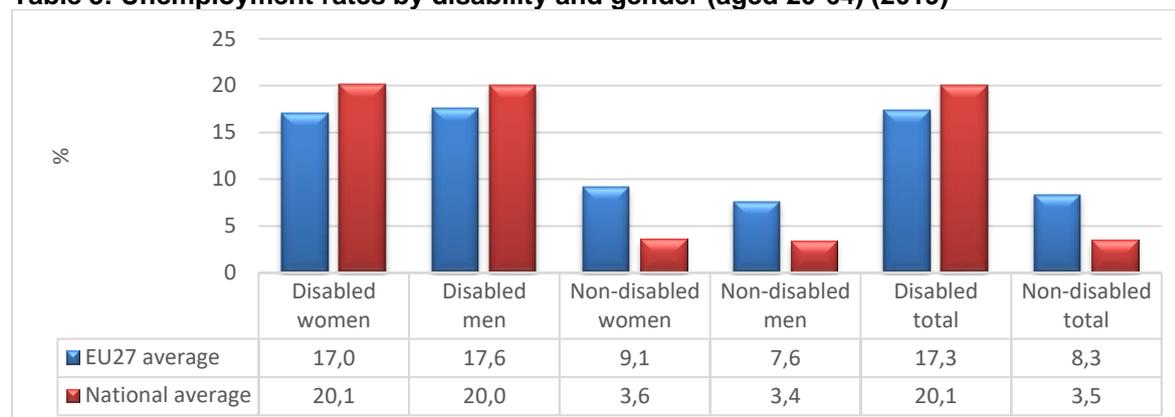
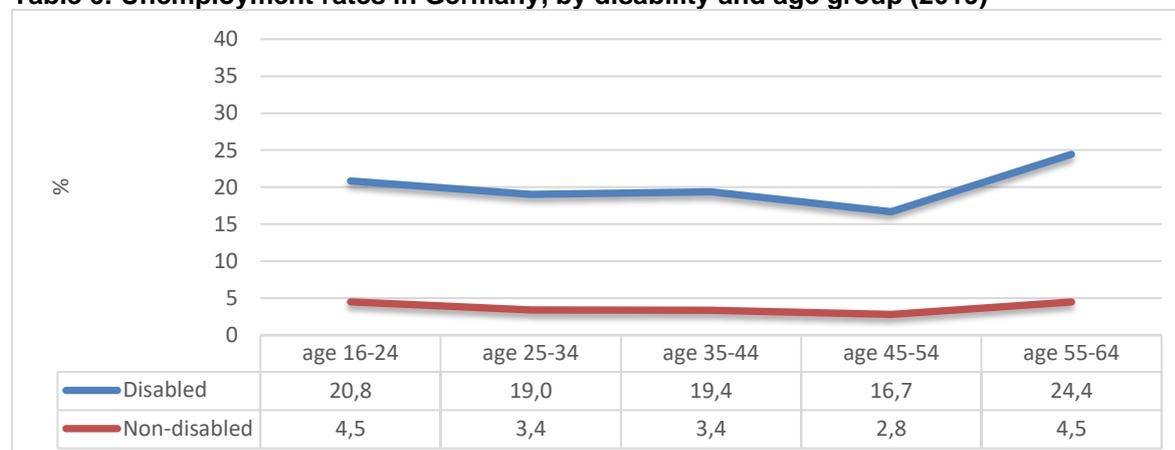
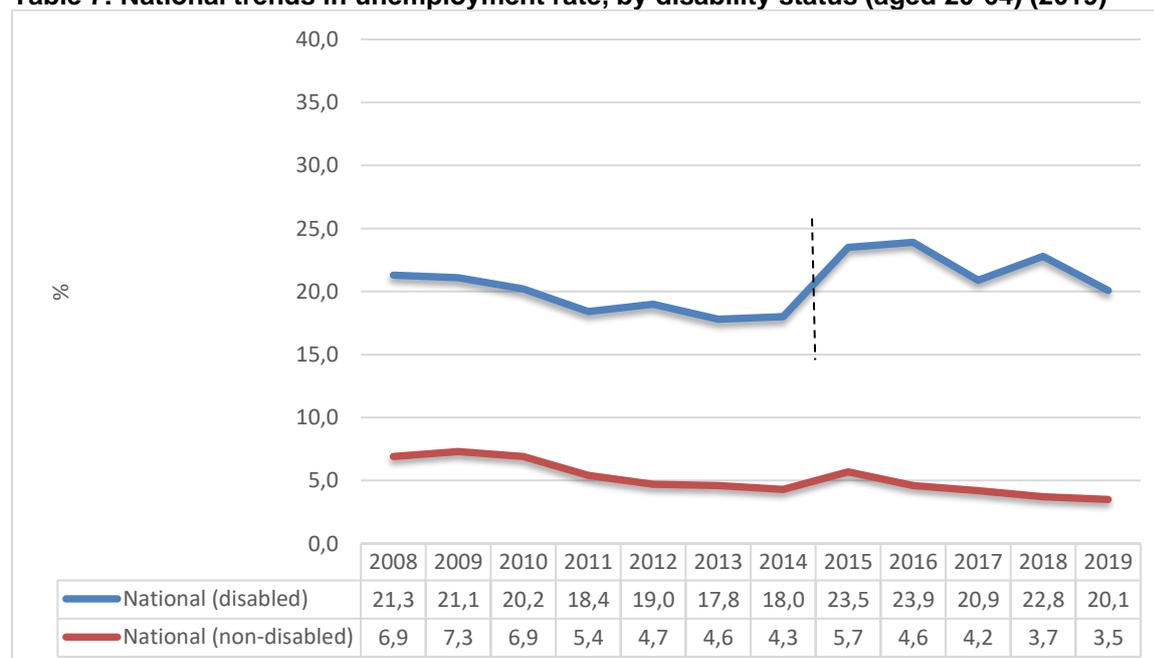
**Table 4: National trends in employment rates, by disability status (aged 20-64) (2019)**



Source: EU-SILC 2019 Release 2021 version 1 (and preceding UDBs).

Note: There was a significant discontinuity in the German data in 2015 due to a change of disability definition in the survey.

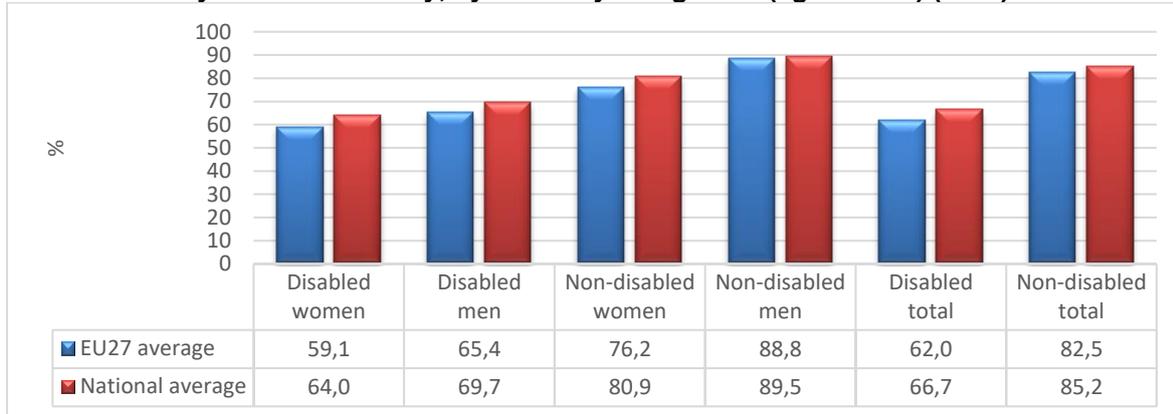
## 7.1.1 Unemployment

**Table 5: Unemployment rates by disability and gender (aged 20-64) (2019)**

**Table 6: Unemployment rates in Germany, by disability and age group (2019)**

**Table 7: National trends in unemployment rate, by disability status (aged 20-64) (2019)**


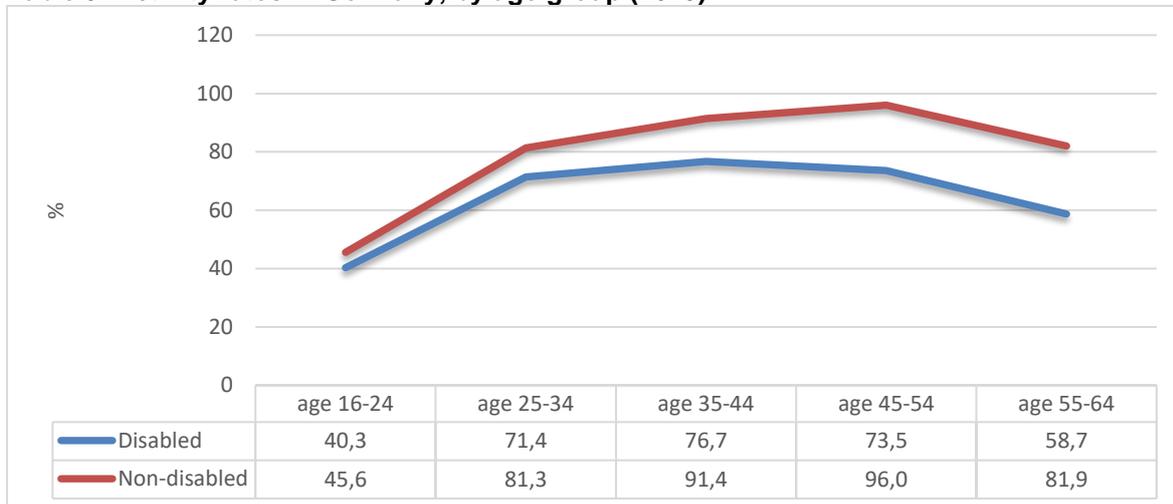
Source: EU-SILC 2019 Release 2021 version 1 (and preceding UDBs).

### 7.1.2 Economic activity

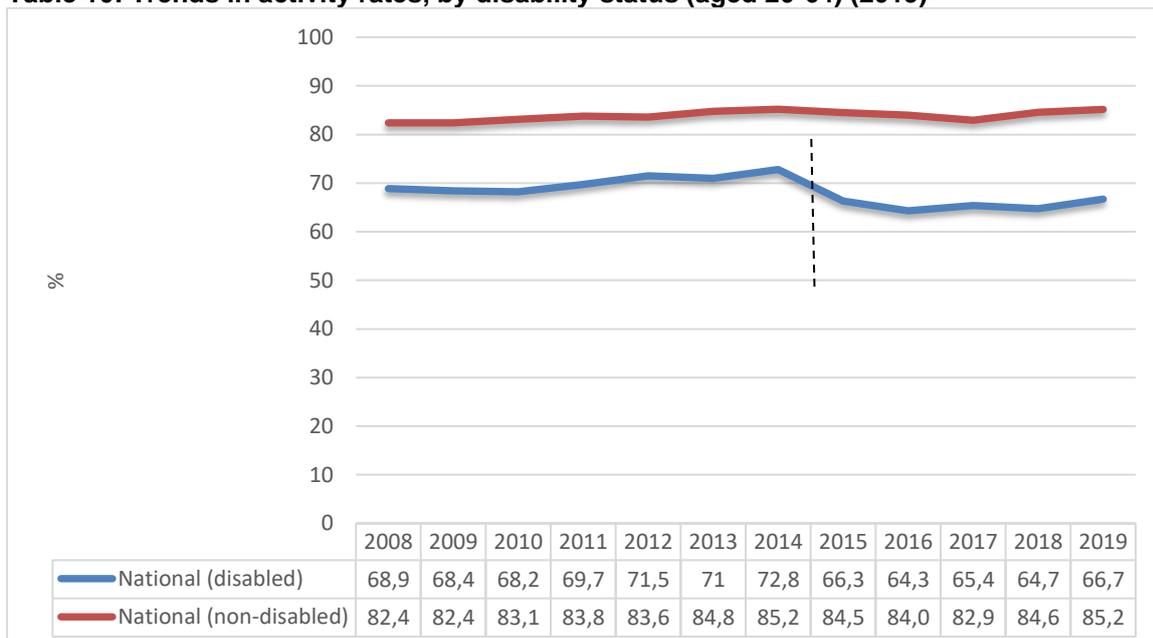
**Table 8: Activity rates in Germany, by disability and gender (aged 20-64) (2019)**



**Table 9: Activity rates in Germany, by age group (2019)**



**Table 10: Trends in activity rates, by disability status (aged 20-64) (2019)**



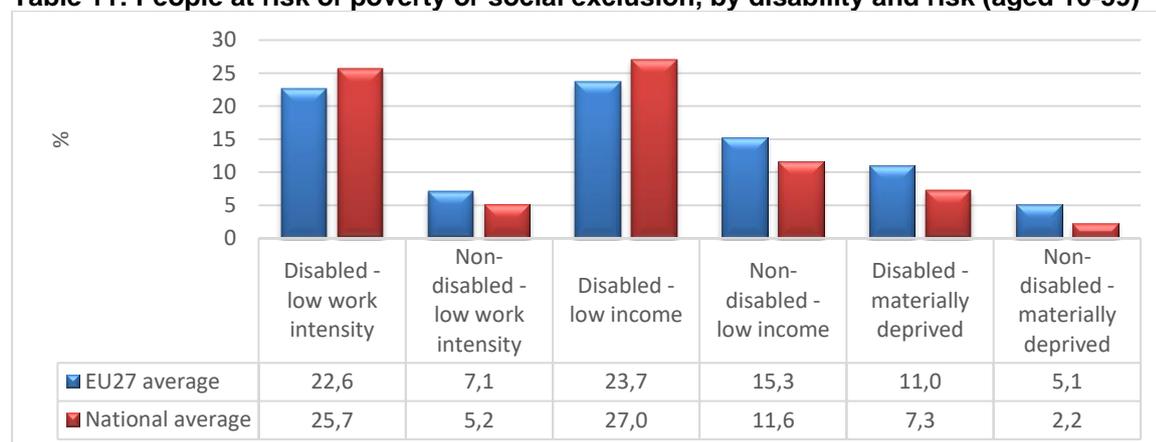
Source: EU-SILC 2019 Release 2021 version 1 (and preceding UDBs).

### 7.1.3 Alternative sources of labour market data in Germany

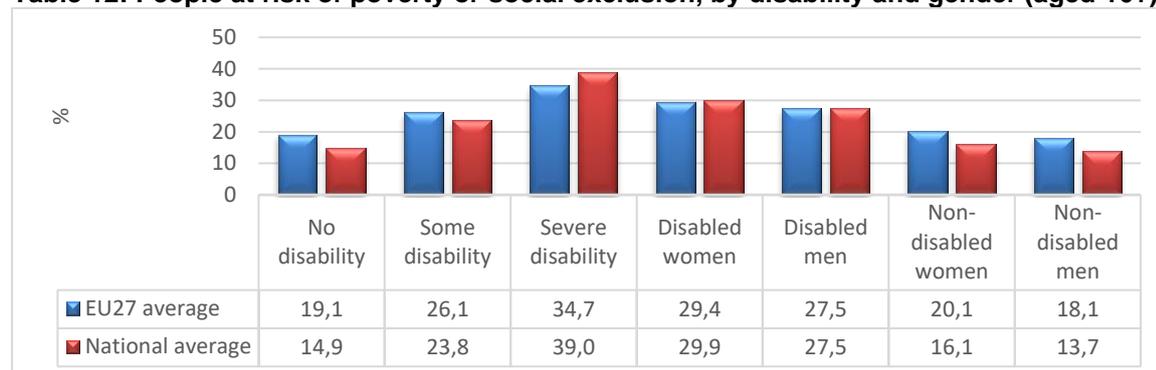
Disability data is not yet available from the core European Labour Force Survey but labour market indicators for Germany were disaggregated from ad modules conducted in 2001 and 2011. These can be found in the Eurostat disability database.<sup>121</sup>

## 7.2 EU data relevant to disability, social policies and healthcare (2019)

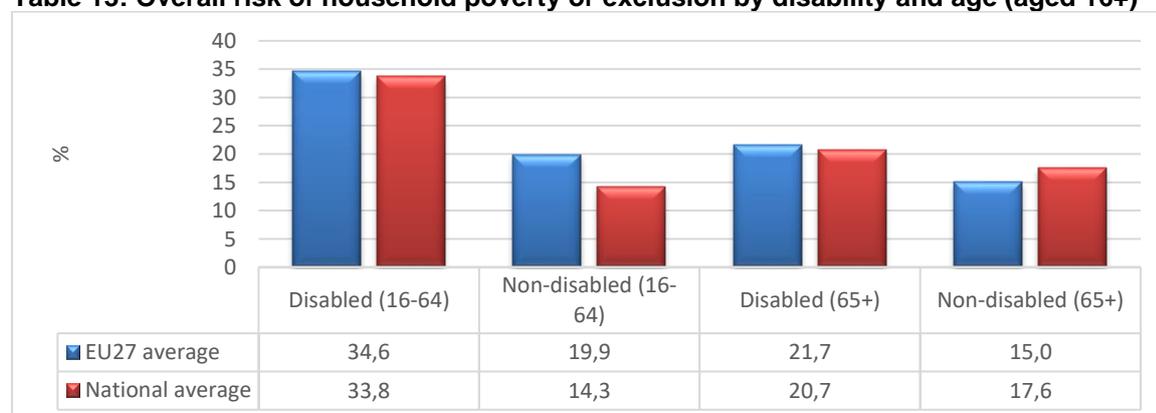
**Table 11: People at risk of poverty or social exclusion, by disability and risk (aged 16-59)**



**Table 12: People at risk of poverty or social exclusion, by disability and gender (aged 16+)**

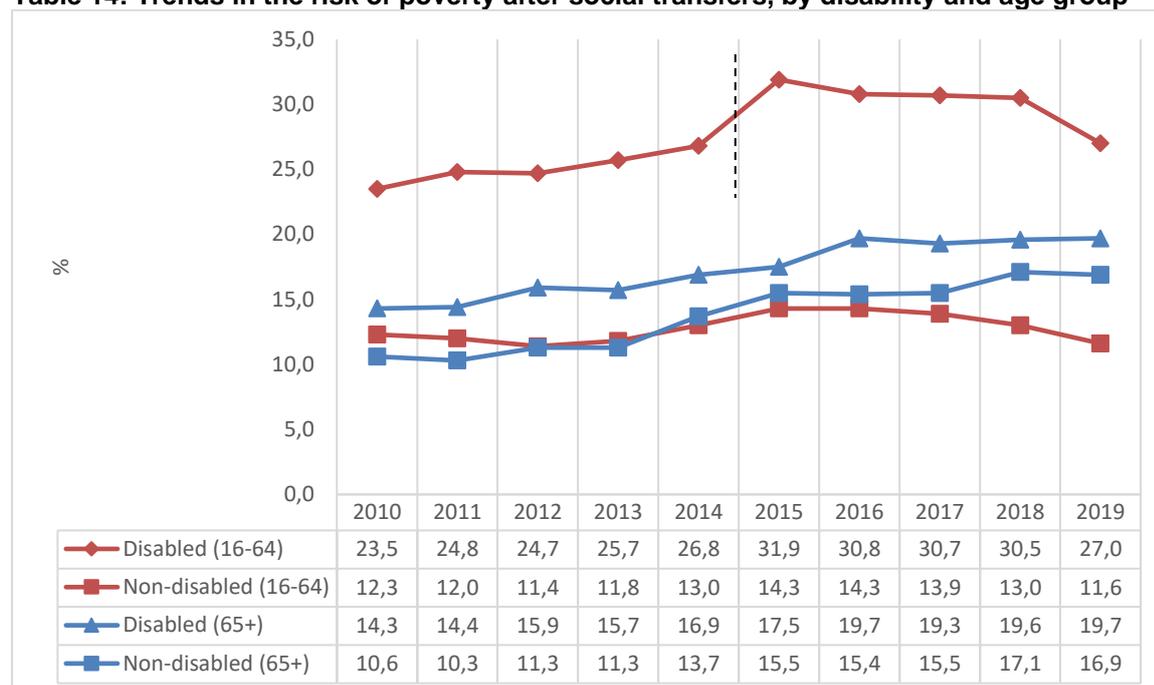


**Table 13: Overall risk of household poverty or exclusion by disability and age (aged 16+)**



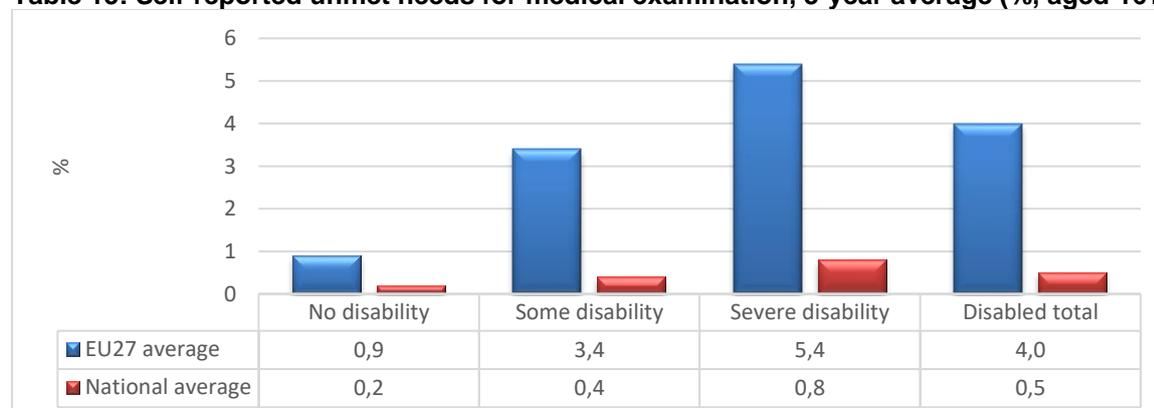
Source: EU-SILC 2019 Release 2021 version 1 (and previous UDB).

<sup>121</sup> Eurostat Health Database: <https://ec.europa.eu/eurostat/web/health/data/database>.

**Table 14: Trends in the risk of poverty after social transfers, by disability and age group**

Source: Eurostat Health Database [[hlth\\_dpe020](#)] - People at risk of poverty.

Note: this table shows national trends in financial poverty risk, rather than the general AROPE indicator (which is not as comparable between age groups due to the effect of paid employment); the survey does not distinguish 'activity limitation' for children under 16.

**Table 15: Self-reported unmet needs for medical examination, 3-year average (%), aged 16+**

Source: Eurostat Health Database [[hlth\\_dh030](#)] – 'Too expensive or too far to travel or waiting list'.

Note: due to large variations an average of three years is indicated. EU mean averages are also skewed by high values in a minority of countries within disability groups but median averages for the total disability and no disability groups in 2019 are consistent with the 3-year mean values.

### 7.2.1 Alternative sources of poverty or health care data in Germany

The EU-SILC data provides a comprehensive and reliable source concerning poverty or social exclusion rates. In addition to the summary tables presented so far, the Eurostat disability database also contains breakdowns concerning disability and poverty before and after social transfers, as well as in-work-poverty.<sup>122</sup> National surveys or studies may offer additional information.

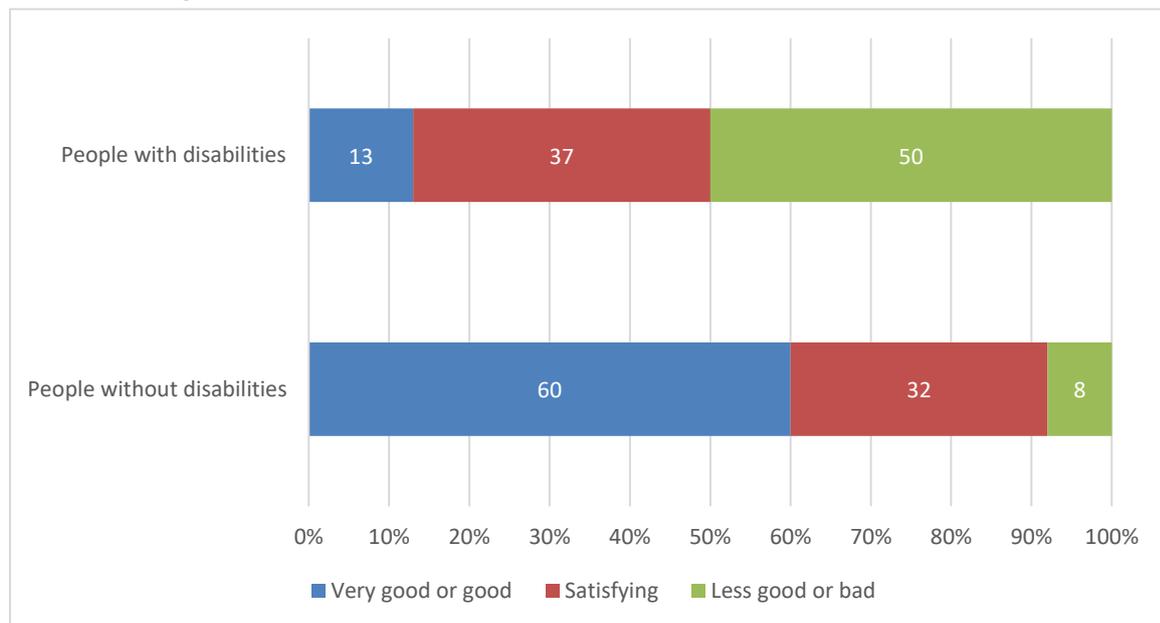
<sup>122</sup> Eurostat Health Database, <https://ec.europa.eu/eurostat/web/health/data/database>.

**Table 16: Poverty risk ratios (age, gender and disability subgroups)**

	People with disabilities			People without disabilities		
	2009	2013	2017	2009	2013	2017
<b>Total</b>	16 %	19 %	18 %	14 %	15 %	15 %
<b>Gender</b>						
male	15 %	19 %	18 %	14 %	14 %	15 %
female	16 %	19 %	19 %	15 %	15 %	16 %
<b>Age</b>						
under 18 years	20 %	21 %	20 %	18 %	19 %	20 %
18 to 44 years	26 %	32 %	31 %	15 %	16 %	17 %
45 to 64 years	18 %	22 %	22 %	11 %	10 %	10 %
from 65 years	11 %	14 %	14 %	12 %	15 %	15 %
<b>Subgroups of disabilities</b>						
chronically ill people	22 %	25 %	26 %			
degree of disability under 50	13 %	16 %	15 %			
degree of disability from 50	15 %	18 %	18 %			

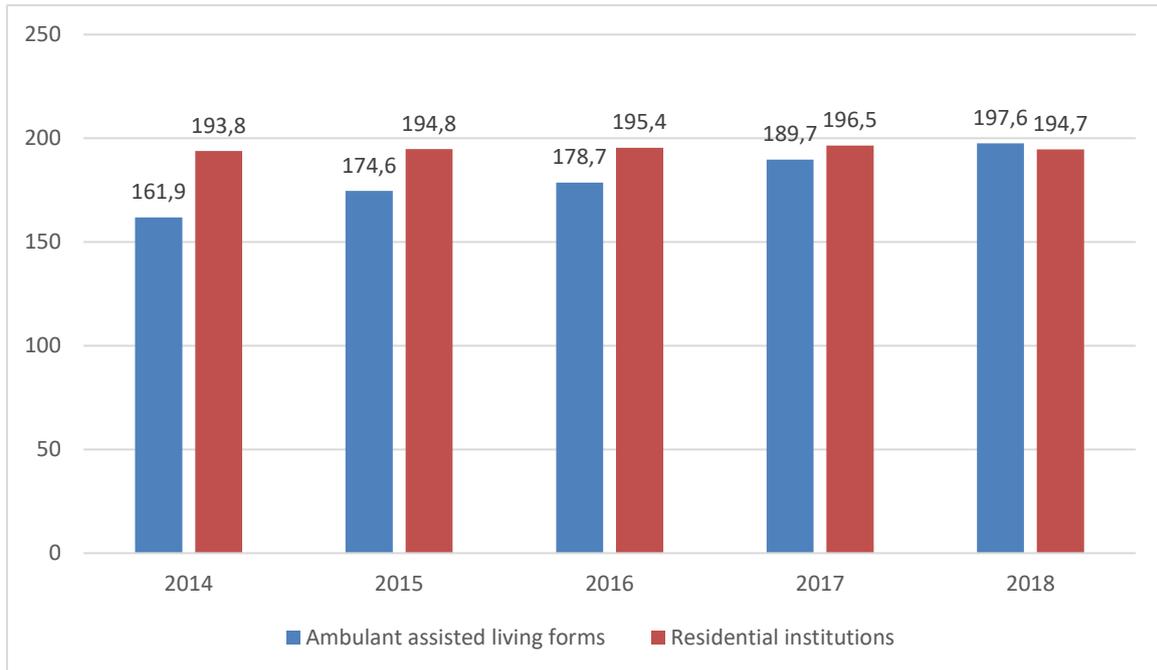
Source: Microcensus (2017), calculation and presentation Prognos (2021) (own presentation).

**Table 17: Subjective assessment of the current state of health**



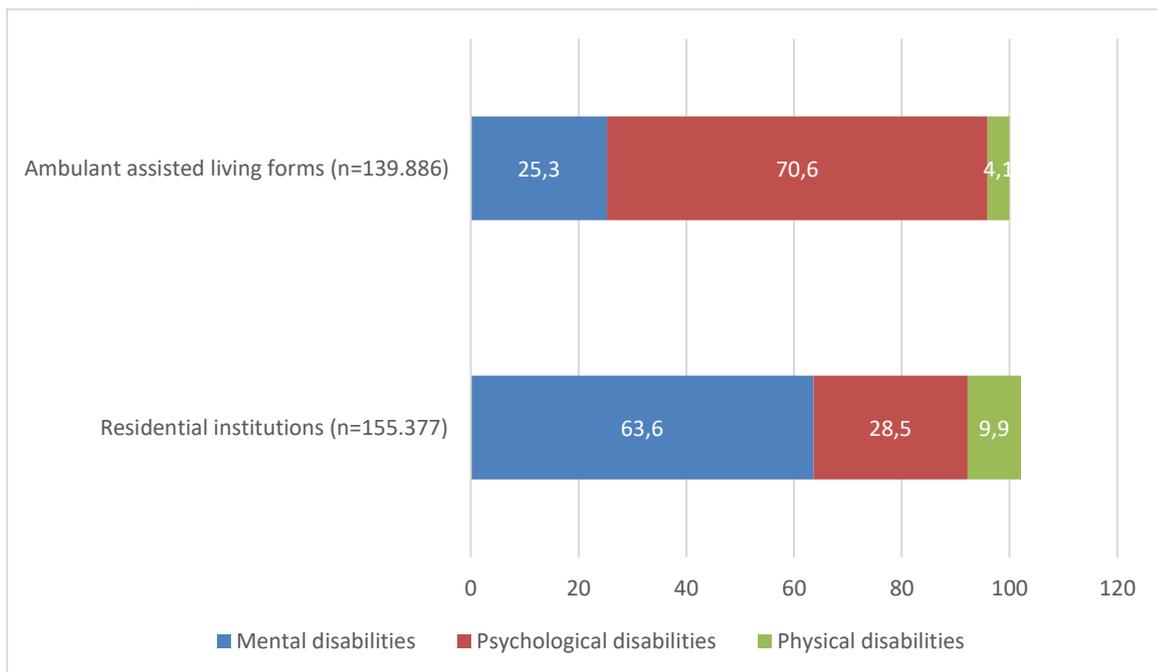
Source: SOEP (2018), calculation and presentation Prognos (2021) (own presentation).

**Table 18: Persons with disabilities in ambulant assisted living forms and residential institutions (development between years)**



Source: Social welfare statistics (2018), calculation and presentation Prognos (2021) (own presentation).

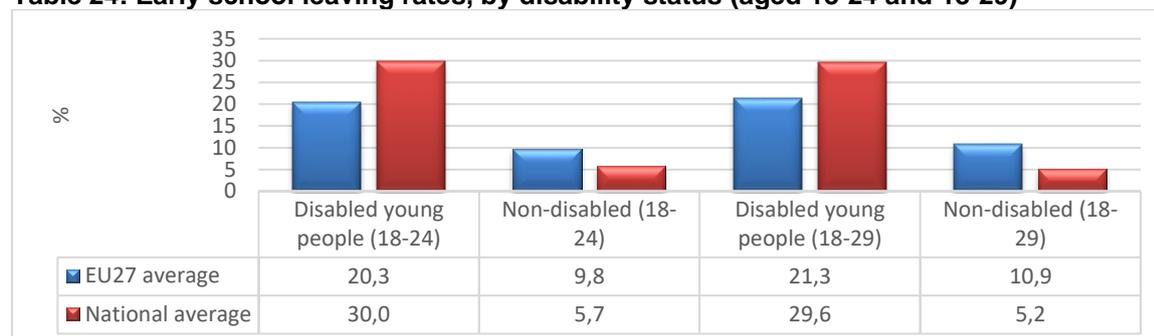
**Table 19: Persons with disabilities in ambulant assisted living forms and residential institutions (disability subgroups)**



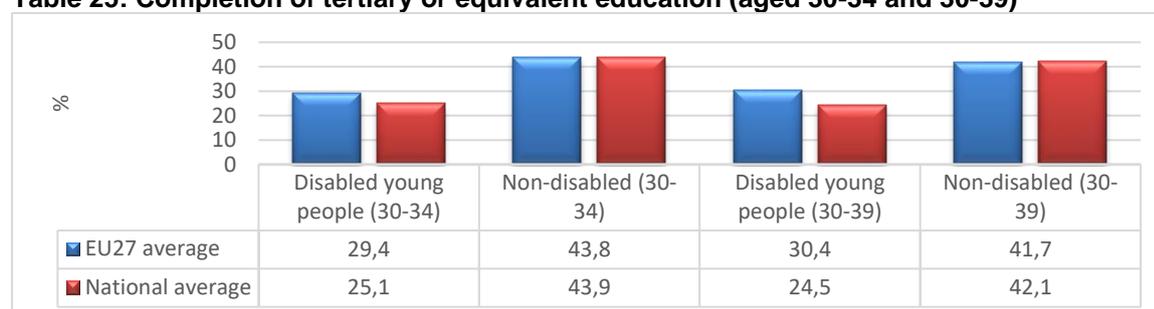
Source: con\_sens (2017), calculation and presentation Prognos (2021) (own presentation).

### 7.3 EU data relevant to disability and education

**Table 24: Early school leaving rates, by disability status (aged 18-24 and 18-29)<sup>123</sup>**



**Table 25: Completion of tertiary or equivalent education (aged 30-34 and 30-39)**



Source: EU-SILC 2019 Release 2021 version 1 (and preceding UDBs).

Note: Confidence intervals for the disability group are large and reliability low (due to the small sample size in the target age group). An average of several years may be needed to establish trends or to compare breakdowns by gender.

#### 7.3.1 Alternative sources of education data in Germany

**Table 22: Pupils with special educational needs in different school types**

Year	Regular school		Special school	
	Quantity	Share	Quantity	Share
2014	173,392	34.1 %	334,994	65.9 %
2015	194,866	37.7 %	322,518	62.3 %
2016	205,811	39.3 %	318,002	60.7 %
2017	227,150	41.7 %	317,480	58.3 %
Change 2014-2017	+ 31.0 %		- 5.2 %	

Source: KMK statistics, calculation and presentation Prognos (2021) (own presentation).

<sup>123</sup> There was a change from ISCED 1997 to ISCED 2011 qualification definitions in 2014 although some Member States continued to use the older definition after this time.

**Table 23: Leavers from special schools by type of qualification (%)**

	2014	2015	2016
Without Secondary General School (Hauptschule)	70.6	71.2	71.1
With Secondary General School (Hauptschule)	25.7	24.8	24.6
With Intermediate Secondary School (Realschule)	3.6	3.8	4.1
With Advanced technical college entrance qualification (Fachhochschulreife)	0.1	0.2	0.2

Source: KMK statistics, calculation and presentation Prognos (2021) (own presentation).

**Table 24: Number of day-care centres and number of children receiving integration assistance**

Year	integrative Day care facilities			Day care facilities for Children with disabilities		
	Number of facilities	Number of children	Inclusion share*	Number of facilities	Number of children	Inclusion share**
2014	17,875	72,392	90.4 %	262	7,704	9.6 %
2015	18,572	72,931	90.8 %	260	7,368	9.2 %
2016	19,209	74,753	91.3 %	252	7,153	8.7 %
2017	19,657	75,470	91.2 %	251	7,312	8.8 %
2018	20,623	77,412	91.5 %	248	7,208	8.5 %
Change 2014 – 2018	+ 15,4 %	+ 6,9 %		- 5,3 %	- 6,4 %	

\* Inclusion rate: Proportion of children receiving inclusion support in inclusive day-care facilities as a percentage of all children receiving inclusion support in day-care facilities.

\*\* Exclusion rate: Proportion of children in day care facilities for children with disabilities among all children receiving integration assistance in day care facilities for children.

Source: Child and youth welfare statistics, calculation and presentation Prognos (2021) (own presentation).

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