



# **European Semester 2022-2023 country fiche on disability equality**

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# **European Semester 2022-2023 country fiche on disability equality**

With comparative data Annex provided by EDE

## **Germany**

Marianne Hirschberg  
Felix Welti<sup>1</sup>

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.

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<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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## 1 Executive summary and recommendations

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

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

The participation of persons with disabilities in the labour market in Germany is still low and unemployment is high in comparison to other groups.

More than 300 000 persons with disabilities are employed in sheltered workshops. They do not have full labour rights, in particular there is no minimum wage, but a reform of sheltered workshop payments has been announced. Their transition rate to the general labour market is very low. There are efforts to increase transition options to the general labour market through the budget for work and the budget for vocational training and through supported employment and single contact units for employers. Still, the effectiveness of these efforts has to be improved.

A quota system with a levy for non-compliance is in force. However, many enterprises fail to employ 5 % of persons with severe disabilities as required. The coalition parties in the new Government have announced a rise in the levy for enterprises which do not employ any persons with severe disabilities. A general right to reasonable workplace accommodation and effective workplace accessibility regulations are still lacking.

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

Recent reforms of healthcare and rehabilitation will improve accessibility and specialised services. However, these efforts have not yet been successful enough. A national action plan for an inclusive, accessible and diverse healthcare system has been announced.

The division between the public and private health insurance systems is still a problem for persons with disabilities. Equal access and non-discrimination in private health insurance are not properly regulated. Pensions for people with a reduced earning capacity are often insufficient to guarantee a minimum living standard. Recent reforms from 2014 to 2019 have only supported new pensioners. An additional reform will now also increase pensions for those who were pensioners with reduced earning capacity before 2014. The Federal Participation Law of 2018 and 2020 aimed to support deinstitutionalisation. However, there are still disadvantages, especially for people who need long-term care.

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

A completely inclusive school system has still not been achieved. Reforms in the Länder include responsibility to close special schools and to invest in inclusive schools but they are proceeding very slowly. Reasonable accommodation and accessibility in the educational system are still inadequate.

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

The National Reform Programme (NRP) 2022 focuses on work transition programmes, including single contact points for employers and innovative rehabilitation programmes. The NRP 2022 includes a national accessibility programme, which is oriented towards accessible mobility, housing, healthcare and private life.

## 1.2 Recommendations for Germany

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

**Recommendation:** Intensify the transformation of sheltered workshops and the enhancement of opportunities for transition to the regular labour market.

Rationale: The transition rate to the regular labour market from sheltered work is low. Remuneration below minimum wage could be considered discriminatory.

**Recommendation:** Regulate reasonable accommodation in anti-discrimination law (AGG) for all employees with disabilities.

Rationale: There is no clear definition and claim for reasonable accommodation.

**Recommendation:** Intensify efforts to achieve accessibility for all healthcare facilities.

Rationale: Many hospitals and primary healthcare facilities are still not accessible for persons with disabilities.

**Recommendation:** Clarify the principle of non-discrimination in access to private health insurance.

Rationale: Risk-dependent premiums in German private health insurance are still allowed (Section 20 AGG). This is discriminatory against persons with disabilities.

**Recommendation:** Equalise the conditions for attaining long-term care for people living in different settings.

Rationale: The present regulation (Section 43a SGB XI) fails to achieve deinstitutionalisation and is discriminative.

**Recommendation:** Introduce a national framework regulation for inclusive education, including reasonable accommodation and accessibility in Länder-regulated schools and universities.

Rationale: Germany fails to have clear responsibilities for reasonable accommodation and accessibility in the educational sector.

**Recommendation:** Conclude a national agreement on accessibility investments in schools.

Rationale: The Länder fail to invest in proper accessibility of schools.

**Recommendation:** Invest in a programme of accessibility.

Rationale: There are important needs to be met for accessible mobility, housing and workplaces.

## **2 Mainstreaming disability equality in the 2022 Semester documents**

### **2.1 Country Report (CR) and Country Specific Recommendation (CSR)**

The following key points highlight where a disability perspective was considered, or should be considered, in the CR/CSR. We address the most relevant of these in the next sections.

In 2022, the Country Report for Germany included the following direct references to disability issues:

- p. 42: The employment gap for persons with disabilities (at 32.4 percentage points) widened in Germany in 2020;
- p. 43: The share of persons with disabilities at risk of poverty or social exclusion (at 31.5 %) was higher than the EU average (28.4 %).

In comparison to the Country Report for Germany in 2020, it is positive that the above-quoted crucial topics were acknowledged in this year's report. On the other hand, a disability perspective was not taken into account regarding many other important points, such as the education system, healthcare system and barrier-free digitalisation. Therefore, the mainstreaming of relevant disability issues needs to be considered more.

In 2022 there was no direct reference to disability issues in the Country Specific Recommendations for Germany. However, the CSR referred to the Recovery and Resilience Plan (RRP) outlined in 2021 and recommended its implementation. In this Plan disability issues were considered, such as accessibility in several areas as well as the inclusion of persons with disabilities in vocational and advanced training (see Section 2.2). In addition, there were recommendations in the CSR for which a disability perspective is relevant, e.g. support for households most vulnerable to energy price increases and support for people fleeing Ukraine. The specific needs of persons with disabilities need to be considered there as well.

### **2.2 National Reform Programme (NRP) and Recovery and Resilience Plan (RRP)**

The following key points highlight where the situation of persons with disabilities or disability policies is relevant to the NRP/RRP. We analyse the most relevant of these in the next sections.

The NRP 2022 included the following relevant disability issues:

- programmes of some *Länder* and municipalities, which promote residential institutions for persons with disability (p. 47);
- improvement of employment opportunities for persons with disabilities (p. 54), especially
  - sheltered workshops are to be geared more towards enabling persons with disabilities to make the transition to the general labour market (p. 55);
  - establishment of single points of contact for employers (Section 185a SGB IX);

- promotion of social labour market through publicly funded employment (p. 55);
- pilot project to strengthen rehabilitation (p. 56);
- regulation of access for people accompanied by assistance dogs (p. 102);
- implementation of the EU Accessibility Act and Promotion of Accessibility in several areas, such as mobility, housing, healthcare and digitalisation (pp. 55, 102-105).

The RRP outlined in 2021 included the following references to disability issues:

- inclusion of persons with disabilities in vocational training is addressed in the German RRP (pp. 43, 48);
- the participation of persons with disabilities in advanced training is a goal of the German RRP (p. 46);
- accessibility of hospitals is mentioned in the German RRP (p. 49);
- accessibility of education is a goal of the RRP (pp. 650, 692);
- accessibility of digitalised public services is a goal of the RRP (pp. 898, 911).

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

### **2.3 Semester links to CRPD and national disability action plans**

It is important that Semester plans align with national disability strategy. In Germany, this refers to the National Action Plan for the UN Convention on the Rights of Persons with Disabilities 2.0 from 2016 (NAP 2.0).<sup>3</sup> Updated in May 2021 with the Status Report on the National Action Plan on the Convention on the Rights of Persons with Disabilities,<sup>4</sup> the NAP 2.0 is to be continuously updated in order to create more transparency and topicality in relation to current issues. The National Action Plan is not mentioned in either the 2022 NRP or the 2021 RRP.

Relevant recommendations arising from participation in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) are highlighted in the following sections. The last UN CRPD Committee recommendations to Germany were in 2015, the most recent submission by Germany was in 2019 and the most recent response from the Committee was the 2018 List of Issues.

<sup>3</sup> Federal Ministry of Labour and Social Affairs (2016) ‘*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 to as ‘NAP 2.0’, <https://www.bmas.de/SharedDocs/Downloads/DE/Teilhabe/inklusion-nationaler-aktionsplan-2.pdf?blob=publicationFile&v=1>.

<sup>4</sup> See Federal Ministry of Labour and Social Affairs (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 to 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.’

The most recent CRPD development is the 2018 List of Issues and the State’s submission in 2019.

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

According to the Social Scoreboard indicator cited in the Semester package, the disability employment gap in Germany was considered a ‘Critical situation’. Microdata from EU-SILC were not available for analysis concerning labour market indicators for persons with disabilities in Germany in 2020, although estimated indicators were considered in the Commission’s Country Report. Consequently, it was not possible to populate parts of the relevant statistical annex accompanying our report (see Section 7). Updated statistics published on the Eurostat database indicate a disability employment gap of 32.4 percentage points in 2020 and 30.3 points in 2021.<sup>5</sup> Due to time series breaks and the impact of the COVID-19 crisis on employment in 2020–2021, some caution is needed when interpreting trend data.

The employment statistics concerning persons with severe disabilities registered with the Federal Employment Agency (*Bundesagentur für Arbeit* – BA) summarise for the year 2020 that 128 533 employers (173 326 in total) employed persons with severe disabilities. The employment rate was 4.6 % – highest in public administration and the motor vehicle and mining sectors, lowest in construction and agriculture and forestry. The rate among private employers was 4.1 % and among public employers 6.4 %.<sup>6</sup>

In the context of labour market statistics, the BA also refers to the unemployment figures of persons with severe disabilities. In 2021, 172 484 persons with severe

<sup>5</sup> Eurostat, Disability employment gap by level of activity limitation and sex (source EU-SILC), 2022 [https://ec.europa.eu/eurostat/databrowser/view/hlth\\_dlm200/default/table](https://ec.europa.eu/eurostat/databrowser/view/hlth_dlm200/default/table).

<sup>6</sup> See: [https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche\\_Formular.html?nn=1262946&topic\\_f=bsbm-bsbm](https://statistik.arbeitsagentur.de/SiteGlobals/Forms/Suche/Einzelheftsuche_Formular.html?nn=1262946&topic_f=bsbm-bsbm); see also REHADAT Statistik, *Beschäftigungsstatistik schwerbehinderter Menschen*, 2022, <https://www.rehadat-statistik.de/statistiken/berufliche-teilhabe/beschaeftigung/beschaeftigungsstatistik-schwerbehinderter-menschen/#:~:text=1.139.503%20Pflichtarbeitspl%C3%A4tze%20waren%20mit,insgesamt%20bei%204%2C6%20%25>.

disabilities were unemployed (share of 6.6 % of all unemployed persons). With a total number of 2 793 persons, this is an increase of 1.6 % compared to the previous year. In addition, the BA provides an insight into the effects of the COVID-19 crisis on the unemployment of persons with severe disabilities. Based on the month of March, there were 8 840 more people unemployed in 2022 (5.6 %) compared to 2020. In terms of the total number, the increase in unemployment among persons with severe disabilities is significantly higher and the exit from unemployment is slower. Overall, the increase in the employment rate of persons with severe disabilities in 2020 came to a halt (initially) due to the pandemic.

Labour market development for persons with severe disabilities strongly depends on the legal framework and demographic developments. Members of this group are more likely to have completed vocational training than non-severely-disabled unemployed people, yet they are less often employed in the primary labour market. The duration of unemployment and thus their share in long-term unemployment is significantly higher. Although there is no official unemployment rate for persons with severe disabilities, an estimate can be made on the basis of selected reference figures, which are based on different surveys and time periods. Accordingly, the unemployment rate for persons with severe disabilities in 2020 was 11.8 %, which is significantly higher than the reference rate of 7.3 %.<sup>7</sup>

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

For reference, see the 2022 National Reform Programme, the RRP for Germany and the NAP 2.0 (2016) as well as the Status Report on the National Action Plan on the Convention on the Rights of Persons with Disabilities (2021). The German Institute for Human Rights criticises the lack of development of a NAP 3.0 after five years, which was due in 2021.<sup>8</sup>

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

The number of people who work in sheltered workshops (*Werkstätten für behinderte Menschen* – WfbM) is still increasing. 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 is holding on to the current structure of WfbM.<sup>9</sup> However, some gradual reforms have been introduced.

The rights of the Sheltered Workshop Councils (*Werkstatträte*) were strengthened.<sup>10</sup> They represent the interests of employees, according to the Sheltered Workshops Participation Decree (*Werkstätten-Mitwirkungsverordnung* – WMVO). They monitor legal compliance, take complaints from employees (Section 4 WMVO) and have certain rights of participation in decision-making, e.g. regarding working hours, vacation schedules or wages, in a similar way to works councils (Section 5 WMVO).

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<sup>7</sup> See REHADAT Statistik (2022), *Bundesagentur für Arbeit: Arbeitslosigkeit*, <https://www.rehadat-statistik.de/statistiken/berufliche-teilhabe/arbeits-und-erwerbslosigkeit/arbeitlos-statistik-der-bundesagentur-fuer-arbeit/>.

<sup>8</sup> Deutsche Institut für Menschenrechte, press release, 5 May 2021, <https://www.institut-fuer-menschenrechte.de/aktuelles/detail/institut-fordert-umfassenden-nationalen-aktionsplan-30-in-der-naechsten-wahlperiode>.

<sup>9</sup> See *Gesetzesentwurf der Bundesregierung zum BTHG*, BT-Drs. 18/9522, p. 255.

<sup>10</sup> Legal reform of the *Werkstätten-Mitwirkungsverordnung* (WMVO), in force since 1 January 2017.

To strengthen the choice for benefit recipients, further service providers were admitted providing occupational participation assistance as an alternative to the sheltered workshops (Section 60 SGB IX). The budget for work (Section 61 Sozialgesetzbuch – SGB IX) was implemented in 2018 to facilitate the transition to the open labour market.<sup>11</sup>

The budget for work includes a wage subsidy for employers and costs for assistance and support services for reasonable accommodation in the workplace. 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 the percentage of the reference base by their own legislation (Section 61(2) sentence 4 SGB IX) (e.g. Bavaria: 48 %, Rhineland-Palatinate: 60 %).<sup>12</sup> However, practice shows that the budget for work is comparatively rarely used. In Hesse, for example, there is a project of cooperation between the Hessian Ministry of Social Affairs and Integration (HMSI) and the *Landesarbeitsgemeinschaft Werkstätten für behinderte Menschen e.V.* (LAG WfbM) to promote the budget for work. The aim is to reduce the information deficit and to analyse the framework conditions and prerequisites in two model regions.<sup>13</sup>

Persons with disabilities working in WfbM (sheltered workshops) 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>14</sup> On average, they earn less than EUR 200 per month as remuneration.<sup>15</sup><sup>16</sup> Additionally they receive benefits: Work Promotion Money (*Arbeitsförderungsgeld*), Basic Income Support (*Grundsicherung*) and/or Reduced Earning Capacity Pension (*Erwerbsminderungsrente*).

In summary, the measures taken so far are not yet sufficient to meet the requirements of Article 27 of the CRPD. Other options for persons with disabilities, such as supported employment (Section 55 SGB IX) and employment in inclusion companies (Section 215 et seq. SGB IX), should be used more widely.

A reorganisation of the sheltered workshops seems to be necessary. More inclusion could be created by making the labour law position of employees in sheltered workshops equal to that of employees in the open labour market and therefore

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<sup>11</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 July 2019, BT-Drs. 19/11745, p. 49. For more detailed information see: Drygalski, C. (2020), *Die Werkstatt für behinderte Menschen in der zweiten Staatenprüfung Deutschlands zur Umsetzung der UN-Behindertenrechtskonvention, D11-2020*, [www.reha-recht.de](http://www.reha-recht.de), 13 May 2020.

<sup>12</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, A. (2019) *Landesrechtliche Abweichungen vom bundesgesetzlichen Lohnkostenzuschuss nach Section 61 Abs. 2 S. 4 SGB IX (Budget für Arbeit) – Ein Überblick zum Umsetzungsstand in den Bundesländern, A2-2019*, [www.reha-recht.de](http://www.reha-recht.de), 17 January 2019.

<sup>13</sup> See: <https://www.lag-wfbm-hessen.de/projekt/>.

<sup>14</sup> See DIMR (2016), *Inklusiver Arbeitsmarkt statt Sonderstrukturen – Warum wir über die Zukunft der Werkstätten sprechen müssen*, p. 1.

<sup>15</sup> See DIMR (2018), *Das Recht auf Arbeit für Menschen mit Behinderungen verwirklichen – Der Arbeitsmarkt muss inklusiv und für alle zugänglich werden*, p. 2.

<sup>16</sup> See BAG WfbM (2018), *Verdienst in Werkstätten*, <https://www.bagwfbm.de/page/101>.

applying minimum wage law.<sup>17</sup> This could be necessary according to EU law as applied by the ECJ in the case of *Fenoll*.<sup>18</sup> The employees should be included in unemployment insurance both in sheltered work and when receiving the budget for work.

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 fewer than 5 % of persons with severe disabilities (Section 160 SGB IX). In 2020, 104 873 companies in Germany had to pay the levy,<sup>19</sup> which is used exclusively for promoting the employment of persons with disabilities. The question arises of whether the measure is suitable to promote an inclusive labour market. There is an ongoing discussion about raising the levy and improving conditions for the employment of persons with disabilities. The coalition agreement of the governing parties includes the announcement of a rise in the levy for those enterprises not employing any persons with severe disabilities, estimated to be a quarter of all enterprises.

At the same time, initiatives such as *Inklusion gelingt!*<sup>20</sup> or *Unternehmens-Netzwerk INKLUSION*<sup>21</sup> encourage employers to create more jobs and apprenticeships for persons with disabilities. To improve opportunities to work in the general labour market, the budget for vocational training was implemented in 2020 (see Section 5.2). Since 2022, the Participation Strengthening Act (*Teilhabestärkungsgesetz*)<sup>22</sup> has improved support for rehabilitation (Section 5 (5) SGB II, Section 22 (2) SGB III, Section 44, 45 SGB III).<sup>23</sup> The job centres are involved more intensively in rehabilitation matters. Existing differences in treatment as regards employment promotion between persons with and without rehabilitant status are to be eliminated in order to increase the sustainable integration of rehabilitants in the general labour market. The Inclusion Act (*Teilhabechancengesetz*),<sup>24</sup> which covers longer-term

<sup>17</sup> See Welti, G. and Nachtschatt, E. (2018), 'Equal rights of persons with disabilities to work per Article 27 of the UN Convention on the Rights of Persons with Disabilities' in Wansing, G., Welti, F. and Schäfers, M. (eds.), *The right to work for persons with disabilities*, 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. See the first Interim Report of the project, <https://www.bmas.de/SharedDocs/Downloads/DE/Publikationen/Forschungsberichte/fb-586-studie-entgeltsystem-menschen-mit-behinderungen-zwischenbericht.pdf;jsessionid=C753E3A36760A6B60ED81CEB195BA262.delivery2-replication?blob=publicationFile&v=3>, 21 August 2022.

<sup>18</sup> See ECJ, C-316/13, *Gérard Fenoll vs. Centre d'aide par le travail 'La Jouvene'*, 26 March 2015; Wendt (2015), *Behinderte Menschen in europäischen Behindertenwerkstätten sind unionsrechtlich Arbeitnehmer*, B 14-2015, [www.reha-recht.de](http://www.reha-recht.de), 2 December 2015.

<sup>19</sup> See REHADAT, *Ausgleichsabgabe, Statistik zur Beschäftigung schwerbehinderter Menschen*, <https://www.rehadat-ausgleichsabgabe.de/hintergrund/statistik/>.

<sup>20</sup> See: <http://www.inklusion-gelingt.de/>.

<sup>21</sup> See: <https://www.unternehmens-netzwerk-inklusion.de/wirtschaft-inklusiv/>.

<sup>22</sup> Act to Strengthen the Participation of Persons with Disabilities and the Determination of Social Welfare Institutions under State Law (*Gesetz zur Stärkung der Teilhabe von Menschen mit Behinderungen sowie zur landesrechtlichen Bestimmung der Träger der Sozialhilfe (Teilhabestärkungsgesetz)*), 2 June 2021.

<sup>23</sup> See Sellnick, H.-J. (2021), *Das Teilhabestärkungsgesetz und die Leistungen an SGB-II-Leistungsberechtigte mit Behinderungen, Teil I: Die partielle Aufhebung des Verbots von Leistungen nach Section 16a ff. SGB II, Beitrag A23-2021*, [www.reha-recht.de](http://www.reha-recht.de), 6 August 2021.

<sup>24</sup> Tenth Act Amending the Second Book of the Social Code – Creation of New Participation Opportunities for the Long-term Unemployed on the Regular and Social Labour Market (Inclusion Act) *Zehntes Gesetz zur Änderung des Zweiten Buches Sozialgesetzbuch – Schaffung neuer*

publicly funded employment (Section 16 lit. i SGB II), is limited until 2025 (Section 81 SGB II). According to the 2022 NRP this regulation is to be made permanent and developed further, since it is ‘a significant innovation that has closed a funding gap and reaches the right target groups’ (p. 55, No. 172). So far, there are no studies on whether the regulations have led to fewer entries into sheltered work.

Sheltered workshops were severely affected by the COVID-19 pandemic and were closed for several months. Since the remuneration of the sheltered workshop-employees is largely dependent on the income generated by the workshop, the pandemic-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>25</sup> This shows the necessity of the alignment of working conditions in sheltered workshops with the open labour market.

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

For persons with severely disabled status (having a degree of 50-100 % disability or having 30-40 % disability but unable to keep or get employment without the status) there are specific labour rights, including a clearly defined catalogue of reasonable accommodation at work (Section 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 (Section 1 AGG). It lays down the principle of non-discrimination (Section 7 AGG) and defines under which circumstances unequal treatment due to occupational requirements is admissible (Section 8 AGG). In case of discrimination, the law obliges the employer to pay compensation (Section 15 AGG). The employer is also obliged to take the necessary measures to protect employees against discrimination based on disability (Section 12 AGG).

The AGG implemented Directive 2000/78/EC on non-discrimination in employment and occupation but does not explicitly oblige the employer to provide 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, Section 7(2)). Directly, this law applies only to federal public authorities. Indirectly, it can also apply to the private sector, i.e. subsidy recipients if the subsidies are awarded as institutional funding (Section 1(3) BGG). The *Länder* have corresponding regulations to the BGG in their state laws. In the equality acts of Bavaria, Bremen, Hamburg, Hesse, North Rhine-Westphalia, Saarland, Saxony, Saxony-Anhalt, Schleswig-Holstein and Thuringia, reasonable accommodation is

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*Teilhabechancen für Langzeitarbeitslose auf dem allgemeinen und sozialen Arbeitsmarkt (Teilhabechancengesetz)*, 17 December 2018.

<sup>25</sup> See Theben, M. (2020), *Kurzarbeitergeld in Werkstätten für Menschen mit Behinderungen – ausgewählte Probleme (nicht nur) in Zeiten von Corona*, D16-2020, [www.reha-recht.de](http://www.reha-recht.de), 26 June 2020.

defined in line with the CRPD and the denial of reasonable accommodation is recognised as discrimination.<sup>26</sup>

Apart from that, employers employing persons with disabilities are obliged to set up and operate their workplaces taking into account special concerns of these employees as regards health and safety (Section 3a(2) Workplace Ordinance – *Arbeitsstättenverordnung*).<sup>27</sup> If these obligations are not met, a fine can be imposed (Section 9(1) No. 5 *Arbeitsstättenverordnung*). Beyond that, persons with severe disabilities can claim necessary technical tools for work under the SGB IX (Section 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 for data on accessibility of workplaces<sup>28</sup> without the Federal Government responding to this request.<sup>29</sup>

The Federal Labour Court (*Bundesarbeitsgericht* – BAG) concluded that the right to reasonable accommodation can be included in the employer's obligation to provide for the welfare of employees.<sup>30</sup> The employer's obligation is to be interpreted in line with Article 5 of Directive 2000/78/EC and Article 27(1) (i) CRPD. Even though the case law recognises the right to reasonable accommodation, it should appear verbatim in the AGG. The implementation of EU law and the 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 (*Antidiskriminierungsstelle des Bundes*) by Eberhard Eichenhofer.<sup>31</sup>

As regards workplace accessibility, it is important to consider 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>32</sup> and the new update from May 2021<sup>33</sup> and is to be achieved through various implementation steps and digitalisation projects, especially for persons with sensory and mobility

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<sup>26</sup> Section 7(3) *Bremisches Behindertengleichstellungsgesetz* (BremBGG), Section 3 *Behindertengleichstellungsgesetz Nordrhein-Westfalen* (BGG NRW), Section 7(2) *Saarländisches Behindertengleichstellungsgesetz* (SBGG), Section 4(3) *Sächsisches Inklusionsgesetz*, Section 4 *Behindertengleichstellungsgesetz Sachsen-Anhalt* (BGG LAS), Section 4(3) *Thüringer Gesetz zur Inklusion und Gleichstellung von Menschen mit Behinderungen* (ThürGIG); see also DIMR (2019), *Wer Inklusion will, sucht Wege – 10 Jahre UN-Behindertenrechtskonvention in Deutschland*, p. 57-58.

<sup>27</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 July 2019, BT-Drs. 19/11745, p. 48.

<sup>28</sup> CRPD/C/DEU/QPR/2-3, 10 October 2018, para. 28d.

<sup>29</sup> See BT-Drs. 19/11745, 28d.

<sup>30</sup> BAG, 19.12.2013 – 6 AZR 190/12.

<sup>31</sup> Eichenhofer, E. (2019), *Angemessene Vorkehrungen als Diskriminierungsdimension im Recht*; see also Rabe-Rosendahl, C. (2021), *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)*.

<sup>32</sup> NAP 2.0, 2016, BT-Drs. 18/9000, 29 June 2016.

<sup>33</sup> Status Report 2021, Fn 3.

impairments.<sup>34</sup> However, there is no systematic discussion of the opportunities and risks of digitalisation for the equal participation of persons with disabilities in society. Moreover, accessibility and inclusion of persons with disabilities is hardly mentioned in the government-led digitalisation strategy.<sup>35</sup>

For persons with disabilities to participate equally in working life, it is essential that IT in 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>36</sup>

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<sup>34</sup> See Engels, D. (2016), *Chancen und Risiken der Digitalisierung der Arbeitswelt für die Beschäftigung von Menschen mit Behinderung*,  
<https://www.ssoar.info/ssoar/handle/document/47065>.

<sup>35</sup> Federal Government, Shaping digitalisation – Implementation strategy of the Federal Government, 2020.

<sup>36</sup> See Carstens, A. (2022) ‘Barrierefreie Informationstechnik’ (Accessible information technology) in Deinert, O. Welti, F., Luik, S. and Brockmann, J. (eds), *Behindertenrecht*, pp. 176-178.

## **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.’

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.’

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 most recent CRPD development is the 2018 List of Issues and the State’s submission in 2019.

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

Final microdata from EU-SILC 2020 were not available for analysis in preparation for this report but statistical indicators based on this dataset were published on the Eurostat database.<sup>37</sup> These indicate that the poverty risk rate for working age persons with disabilities in Germany was 24.8 % in 2020, compared to 13 % for other persons of similar age – an estimated disability poverty gap of approximately 12 percentage points (see Table 14 of the Annex). For people aged over 65, the disability poverty gap was 5 points (21.3 % for older persons with disabilities and 15.3 % for other persons of similar age). The tables in the Annex also indicate the respective rates of the risk of poverty or social exclusion and break these down by gender as well as age.

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<sup>37</sup> Eurostat Health Database: Disability, 2022,  
<https://ec.europa.eu/eurostat/web/health/data/database>.

Recently, updated data from Eurostat indicate that this relative risk declined slightly for the working age disabled population (23.5 %) and for the older age group (20.8 %) in 2021.<sup>38</sup>

For persons with disabilities of working age in Germany (aged 18-64) the risk of poverty before social transfers was 51.2 % and 26 % after transfers in 2020. The in-work poverty rate for persons with disabilities in this age range was 8.6 %, rising to 10.4 % in 2021 (during the COVID-19 pandemic).

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 but the relevant data for persons with disabilities in Germany in 2020 or 2021 were not available from Eurostat at the time of writing.<sup>39</sup>

The studies of the representative participation survey of the Federal Ministry of Labour and Social Affairs are also dedicated to the subjective assessment of an individual's own health condition. In private households, persons without disabilities largely refer to a very good or good condition, at 94 %. The figure for persons with disabilities is significantly lower at 73 %. At 26 %, they also report a moderate condition of health (6 % for persons without disabilities). A clear difference can be seen with the values of persons with a self-assessed disability:<sup>40</sup> only 25 % assess their condition as very good or good – there is thus a considerable difference in the statements of persons without a self-assessed disability (48 %) as well as of persons without a disability (69 %). A moderate, bad or very bad condition is reported by 75 % of them (see Section 7.2.1, Table B).<sup>41</sup>

## 4.2 Analysis of social policies relevant to the Semester

For reference, see the NRP 2022, the RRP for Germany and the NAP 2.0 (2016) as well as the Status Report on the National Action Plan on the Convention on the Rights of Persons with Disabilities (2021).

### ***Poverty risk and reduced-earning-capacity pension***

In 2022, the final report on the first nationwide representative survey on the participation of persons with disabilities in Germany was published. One result is that there is a clear connection between income situation and disability. Often there are very low incomes and thus a risk of poverty. Households in which persons with disabilities live have significantly fewer financial resources than households with

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<sup>38</sup> Eurostat (2022), People at risk of poverty by level of activity limitation, sex and age, [https://ec.europa.eu/eurostat/databrowser/view/HLTH\\_DPE020\\_custom\\_3348056](https://ec.europa.eu/eurostat/databrowser/view/HLTH_DPE020_custom_3348056).

<sup>39</sup> Eurostat (2022), Self-reported unmet needs for medical examination by level of activity limitation, sex and age, [https://ec.europa.eu/eurostat/databrowser/view/hlth\\_dh030/default/table](https://ec.europa.eu/eurostat/databrowser/view/hlth_dh030/default/table).

<sup>40</sup> The classification 'persons with a self-assessed disability' applies to people when there is at least one functional disability and, according to self-assessment, everyday activities are restricted or there is a severe disability that only restricts everyday activities a little bit (see Ministry of Labour and Social Affairs (2022), p. 17).

<sup>41</sup> See Steinwede, J. and Leinert, J. (2022) 'Empirische Ergebnisse zu Beeinträchtigung und Behinderung' in Federal Ministry of Labour and Social Affairs, *Representative survey on the participation of people with disabilities (Repräsentativbefragung zur Teilhabe von Menschen mit Behinderung)*, pp. 52-53.

persons without disabilities – in terms of monthly net household income and assets as well as the potential for saving, building up reserves and taking on debts. As a result, persons with disabilities assess their economic situation and material security as precarious; 23 % and 40 % of them, respectively, state that they have less money available per month than they need (see Section 7.2.1, Table A).<sup>42</sup>

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

People whose earning capacity is reduced can receive a reduced-earning-capacity pension (*Erwerbsminderungsrente*) (Section 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>43</sup> People who are unable or not sufficiently able to cover their essential 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*; Section 41 SGB XII).

With legislation in 2018<sup>44</sup> the Federal Government 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 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 persons receiving reduced-earning-capacity pension. However, further reforms are still needed.<sup>45</sup> The improvement affected only the reduced-earning-capacity pensions that start from 2019 onwards, while current pensions that started earlier were not covered. To amend this, new legislation was implemented in June 2022.<sup>46</sup> From July 2024 onwards the reduced-earning-capacity pensions that started from 2001 will increase as well.

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<sup>42</sup> See Heisig, J. P., König, C. and Solga, H. (2022) ‘Ökonomische Situation und materielle Sicherheit’ in Federal Ministry of Labour and Social Affairs, *Representative survey on the participation of people with disabilities (Repräsentativbefragung zur Teilhabe von Menschen mit Behinderung)*, pp. 172, 174-175.

<sup>43</sup> See Welti, F. (2018) ‘Work disability policy in Germany. The science and politics of work disability prevention in MacEachen, E. *The science and politics of work disability prevention*, 2018.

<sup>44</sup> See Act on improved benefits and stabilization of the Statutory Pension Insurance, *Gesetz über Leistungsverbesserungen und Stabilisierung in der gesetzlichen Rentenversicherung*, 28 November 2018, BGBl. 2018 I, p. 2016.

<sup>45</sup> See Welti, F. (2019) ‘Erwerbsminderungsrenten: Ein Schritt nach vorn – aber es bleibt noch viel Reformbedarf’, *Soziale Sicherheit*, p. 339-341.

<sup>46</sup> Act on pension adjustment 2022 and for the improvement of benefits for the reduced earning pensioners, *Gesetz zur Rentenanpassung 2022 und zur Verbesserung von Leistungen für den Erwerbsminderungsrentenbestand (Rentenanpassungs- und Erwerbsminderungsrenten-Bestandsverbesserungsgesetz)*, 28 June 2022, BGBl. 2022 I, p. 975.

As of January 2021, a new basic pension (*Grundrente*)<sup>47</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, unemployment or long-term-sickness without sickness benefit are not considered when calculating the duration of contribution. As a result, many pensioners with disabilities do not benefit from the supplements to the basic pension.

### **Access and accessibility in the healthcare system**

Persons with disabilities still face discrimination in the healthcare system and are generally at risk of insufficient medical care. Especially in the outpatient sector, persons with disabilities face difficulties, as only 10-20 % of medical practices are accessible.<sup>48</sup> Furthermore, accessibility is not sufficiently implemented by health insurance authorities, hospitals and other service providers in the healthcare system. The parties in the new government announced in their coalition agreement a federal action plan for an inclusive, accessible and diverse healthcare system.

The Act on Equal Opportunities for Persons with Disabilities, various regulations in the Social Code (SGB) and the General Equal Treatment Act provide a framework for protection against discrimination and to achieve accessibility.<sup>49</sup> The BGG regulates accessibility for institutions in the public sector. A reform of the BGG has been announced by the governing parties with reference to an ongoing evaluation. Within the framework of their general structural responsibility in the Social Code (Section 17(1) No. 4 SGB I), the public authorities are obliged to ensure the 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>50</sup> The prohibition of discrimination under civil law in the AGG (Section 1, 19 AGG) also applies to medical treatment and care contracts. Further specifications on the accessibility of healthcare facilities are provided by building regulations. Up to now, these regulations have lacked efficiency. The requirements for accessibility of healthcare facilities are not sufficiently implemented and further regulations and implementation steps are needed.

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<sup>47</sup> See Act on Introduction of the Basic Pension for long-term insurance in the statutory Pension Insurance with under-average income and for further increase of old-age income, *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 August 2020, BGBl. 2020 I, p. 1879.

<sup>48</sup> See Federal Ministry of Labour and Social Affairs, Participation Report of the Federal Government on the Living Conditions of People with Disabilities (*Teilhabebericht der Bundesregierung über die Lebenslagen von Menschen mit Beeinträchtigungen 2021*), BT-Drs. 19/27890 p. 430, referred as participation Report 2021.

<sup>49</sup> See Hlava, D. (2018) *Barrierefreie Gesundheitsversorgung – Rechtliche Gewährleistung unter besonderer Berücksichtigung der Rechtsdurchsetzung*.

<sup>50</sup> See Welti, F. (2016), *Zugänglichkeit und Barrierefreiheit der gesundheitlichen Infrastruktur – rechtliche Anforderungen – Teil 1*, D7-2016, [www.reha-recht.de](http://www.reha-recht.de), 9 March 2016.

From November 2022 onwards, new legislation<sup>51</sup> will regulate coverage of the costs of assistance for persons with severe disabilities during hospitalisation, which has long been demanded by disability associations. Statutory health insurance now has to pay if relatives accompany the patient, if this is necessary. 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. In August 2022 the Federal Joint Committee is to determine within the framework of a guideline for which group of persons assistance is necessary in this sense (Section 44 b (2) 2 SGB V).

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 (Section 291 SGB V), providing digital data on patients for themselves and healthcare providers. For this purpose, an insured person must also be able to access the content stored on his or her health card.<sup>52</sup> According to Section 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 (Section 33a, 139e SGB V). The entitlement applies to all insured persons (not only to persons with disabilities). At the same time, there is also an obligation to design digital health applications (Section 334 (1) SGB V) to be accessible<sup>53</sup> and to enable accessibility to them via the electronic health card (Section 336 (1) SGB V). The Participation Strengthening Act (*Teilhabestärkungsgesetz*) also includes digital health applications in the catalogue of benefits for medical rehabilitation (Section 47a SGB IX), which must be designed to be accessible (Section 5 (6) of the Digital Health Applications Ordinance). So far, digital health applications have hardly been used in the field of medical rehabilitation.

The COVID-19 crisis highlighted the existing problems in access to healthcare.<sup>54</sup> The lack of sufficient protective equipment, masks, disinfectant and testing facilities at the beginning of the pandemic and, in particular, structural deficits in residential and long-term care facilities were identified as a risk factor for insufficient access to healthcare services.

The possible triage procedure, which prioritises patients according to certain criteria if intensive care resources are insufficient, was disputed. The Federal Constitutional Court decided in 2021 that the legislator must make provisions to protect persons with disabilities in the event of pandemic-related triage.<sup>55</sup> In July 2022, the Federal Ministry of Health presented a draft legislation for a triage regulation. Disability organisations

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<sup>51</sup> Act on Introduction of an Animal Pharmaceutic Law and on the adjustment of pharmaceutic and other regulations, *Gesetz zum Erlass eines Tierarzneimittelgesetzes und zur Anpassung arzneimittelrechtlicher und anderer Vorschriften*, 27 September 2021, BGBl. I 2021, p. 4530.

<sup>52</sup> See Section 291a Abs. 2 u. 3, Section 358 Abs. 1 u. 2 SGB V.

<sup>53</sup> See also Section 5 Abs. 6 of the Digital Health Application Regulation (*Digitale Gesundheitsanwendungen-Verordnung* (DiGAV)), 8 April 2020.

<sup>54</sup> See Welti, F. (2020) 'Sozial- und Gesundheitspolitik: Lernen aus Erfahrungen, Das deutsche Gesundheitswesen im Lichte der Corona-Krise', *Soziale Sicherheit*, pp. 124-126.

<sup>55</sup> BVerfG, 16 December 2021, 1 BvR 1541/20, [https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/12/rs20211216\\_1bvr154120.html](https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2021/12/rs20211216_1bvr154120.html).

not only criticised its insufficient participation in advance, but still see a possible disadvantage for persons with disabilities in case of an overload of the health system.<sup>56</sup>

German law prohibits discrimination because of age, sickness or disability even in the case of shortage of supply (Section 2a SGB V; Section 33c SGB I; Section 1, 2 p. 1 no. 5, 19 AGG).<sup>57</sup> Prioritisation, following an abstract assessment of the chances of success, could be discriminating. German legislation should clarify this to ensure compliance with the constitutional prohibition of discrimination and the CRPD.

### ***Independent living***

The participation survey of the Federal Ministry of Labour and Social Affairs shows a clear difference between the living environments of persons with and without disabilities who live in private households or in assisted living forms and residential institutions.

A first conclusion can be drawn regarding age structure and gender ratios: in private households there is a balanced gender ratio, whereas in assisted living settings and residential institutions for persons with disabilities, on average, men are more likely to be represented. More women live in older people's and nursing homes; this is due to the difference in life expectancy between the sexes. The largest age groups, both in private households and in institutions, are 16 to 44 and 45 to 64.

A second result is illustrated by cohabitation and marital status data: half of the people in private households – regardless of disability – are married or live in a registered cohabitation, whereas in institutions this applies only to every tenth person. In assisted living settings and residential institutions, over 80 % of residents are single and there are rarely couple relationships. In addition, about two thirds of persons with disabilities or a self-assessed disability in private households have children, whereas this applies to only 9 % of residents in residential institutions and 22 % of residents in assisted living settings.

A third deduction results from the data on satisfaction with one's own living environment: overall, most persons with disabilities (80 %) and a self-assessed disability (67 %) in private households are very satisfied with their living situation. The difference compared to residents with a self-assessed disability in institutions is striking: only half of them (53 %) are very satisfied with their environment (see Section 7.2.1, Table 3). This correlates with the possibility of having chosen their housing situation themselves – 40 % of the residents had no choice. About a quarter of the respondents are in favour of a different environment. In addition, the assessments are influenced by the possibilities of privacy (own room, furnishings, lockable bathroom) as well as support and social interaction in the institutions.

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<sup>56</sup> See: <https://www.caritas.de/fuerprofis/stellungnahmen/07-25-2022-stellungnahme-zur-aenderung-des-infektionsschutzgesetzes-tr>; <https://www.aerzteblatt.de/nachrichten/136148/Geteiltes-Echo-zum-Referentenentwurf-fuer-ein-Triage-Gesetz>, <https://www.bodys-wissen.de/beitrag-anzeigen/dringende-und-erhebliche-bedenken-bodys-stellungnahme-zum-triage-gesetzentwurf.html>.

<sup>57</sup> Welti, F. (2020) 'Sozial- und Gesundheitspolitik: Lernen aus Erfahrungen, Das deutsche Gesundheitswesen im Lichte der Corona-Krise', *Soziale Sicherheit*, p. 128-130.

A fourth result is that, overall, persons with self-assessed disabilities can pursue activities significantly less often than persons with or without disabilities because of economic or infrastructural aspects. Furthermore, residents of institutions complain about a lack of accompaniment and support, e.g. personal assistance, when carrying out leisure activities (especially outside the institutions).

A fifth finding refers to life satisfaction, which is increasingly limited by the presence of disabilities – especially among persons with a self-assessed disability. In summary, the following factors influencing social and cultural participation can be identified in the results: the setting (older people's and nursing homes, assisted living and residential institutions), as well as being alone and lonely in the institutions, which can be attributed to the lack of a couple relationship or parenthood, for example. In addition, the wishes of persons with (self-assessed) disabilities have so far not been sufficiently considered in the choice of living arrangements.<sup>58</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 linked to tax income. The allowances for assets has increased (Section 139, 140 SGB IX). Spouses and partners are no longer required to contribute towards integration assistance benefits.

The distinction between integration assistance and long-term care benefits remains problematic. Under Section 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. Regarding the Basic Law and the CRPD, this is discriminatory.<sup>59</sup>

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

With the Digital Modernisation of Care Act (2021)<sup>60</sup> digital forms of care consultations will be made possible. Both care applications and care consultations must be made available in an accessible way (Section 40 a (4), Section 7 a (2) SGB XI).

To secure the existence of social service providers, the Social Service Provider Engagement Act<sup>61</sup> was enacted on 27 March 2020 as part of the Social Protection Package I. It provides regulations for the financial protection of service providers of integration assistance and other social service providers of the Social Code (except

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<sup>58</sup> See Harand, J., Steinwede, J. and Kleudgen, M. (2022) 'Die Lebenssituation in Privathaushalten und Einrichtungen' in Federal Ministry of Labour and Social Affairs, *Representative survey on the participation of people with disabilities (Repräsentativbefragung zur Teilhabe von Menschen mit Behinderung)*, pp. 86-89.

<sup>59</sup> See Welti, F. (2018) 'Verstößt Section 43a SGB XI gegen das Grundgesetz und die UN-Behindertenrechtskonvention?', *Soziale Sicherheit*, pp. 418-420.

<sup>60</sup> See Digital Modernisation of Care Act (*Gesetz zur digitalen Modernisierung von Versorgung und Pflege*) v. 3 June 2021.

<sup>61</sup> See Social Service Provider Engagement Act (*Sozialdienstleister-Einsatzgesetz*).

for the statutory health insurance (SGB V),<sup>62</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 (Section 2, 3, 9 SodEG). Funding is conditional on them providing on-site support in coping with the effects of the pandemic and making staff, premises, and material resources available to a reasonable extent for this purpose (Section 1 SodEG). For people in need of care and outpatient care facilities, relief was created by the Act of 27 March 2020.<sup>63</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 equal to the outpatient payments in kind according to Section 36 SGB IX for up to three months to avoid a shortfall in care at home (Section 150 p. 5 SGB XI). Nursing facilities are reimbursed for additional expenses and reduced income (Section 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>64</sup> of everyday support services (Section 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 (Section 150 para. 5a of the Social Code Book XI).

### ***Statutory health insurance system (SHI) / private insurance system (PHI)***

Since 2009, people in Germany have a general obligation to have health insurance, either from a public body (Section 5(1) No. 13 SGB V – Statutory Health Insurance), or from a private company (Section 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 a broad range of benefits that provide insured persons with all necessary medical services (SGB V). The law on the statutory health insurance system also enshrines the principle that the special interests of persons with disabilities must be considered (Section 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 considered. The insurance contributions are calculated according to the identified individual risk of illness.

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<sup>62</sup> In so far as they provide services other than complex services of interdisciplinary early detection and early support.

<sup>63</sup> See Act to Compensate for COVID-19-related Financial Burdens on Hospitals and Other Health Care Facilities, *Gesetz zum Ausgleich COVID-19 bedingter finanzieller Belastungen der Krankenhäuser und weiterer Gesundheitseinrichtungen (COVID-19-Krankenhausentlastungsgesetz)*.

<sup>64</sup> Which are admitted by *Länder* law.

The protection provided against discrimination under civil law in the AGG (Section 1, 19 AGG) also applies to insurance contracts. Therefore, it is not permitted to refuse to provide 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 in this area. Problems arise in cases where health conditions lead to a disability or a risk of disability. If the PHI then refuses to conclude the contract, it could be indirect discrimination.

Unequal treatment of a person with disabilities is legal when determining the amount of contributions and insurance benefits (Section 20(2) AGG), provided that this is based on recognised principles of risk-adequate calculation. As a result of the individual health check, persons with disabilities will therefore often be affected by risk surcharges and/or exclusions of benefits. In conclusion, their access to private health insurance is de facto more difficult or even impossible.

Since 2009, the PHIs have had to offer a basic tariff standardised in the insurance-sector. Exclusions of benefits or risk surcharges are not permitted in this tariff (Section 203(1) sentence 2 VVG) and there is an obligation to enter a contract (Section 193(5) sentence 1 VVG). The benefits must be comparable in type, scope and amount to those of the statutory health insurance (Section 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.’

The most recent CRPD development is the 2018 List of Issues and the State’s submission in 2019.

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

Microdata from EU-SILC were not available for analysis concerning educational indicators for persons with disabilities in Germany in 2020. Consequently, it was not possible to populate parts of the relevant statistical annex accompanying our report. The indicators for 2019, which we reported last year, may be considered for context. The EU-SILC estimates concerning educational attainment should be treated with 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 16 indicates early school leaving rates disaggregated by disability status in Germany. Young people with disabilities (aged 18-24) tend to leave school early significantly more than their non-disabled peers in the same age groups (and this is reinforced by widening the sample size to age 18-29). Table 17 shows completion rates of tertiary education disaggregated by disability and age group. Persons with disabilities (aged 30-34) are less likely to complete tertiary education than their peers (and this is reinforced in the wider age range 30-39). These illustrations precede the COVID-19 pandemic.

‘National findings also point to the fact that persons with disabilities are at a considerable disadvantage in the school, vocational training and higher education systems. The representative survey of the Federal Ministry of Labour and Social Affairs summarises that persons with disabilities have, on average, a lower level of schooling and training than persons without disabilities – they complete vocational training more often, for example, and (technical) university studies less often. The current survey records the highest school and training qualifications at the time of the interview. Educational biographies, occupations or fields of study were not recorded (see Section 5.2).’<sup>65</sup>

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<sup>65</sup> See Heisig, J. P., König, C. and Solga, H. (2022) ‘Bildung’ in Federal Ministry of Labour and Social Affairs, *Representative survey on the participation of people with disabilities*, pp. 135, 143, 148.

## 5.2 Analysis of education policies relevant to the Semester

For reference, see the NRP 2022, the RRP for Germany and the NAP 2.0 (2016) as well as the Status Report on the National Action Plan on the Convention on the Rights of Persons with Disabilities (2021).

The NRP 2022<sup>66</sup> intends to improve infrastructure and quality of education in daycare centres and schools and enable digital learning opportunities (pp. 67, 68). 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 ties 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*. Based on Article 104c of the Basic Law (*Grundgesetz*, GG), the Federal Government grants financial assistance to the *Länder* to create a digital education infrastructure. Uniform interface standards are to be ensured, also to ensure accessibility ('universal design').<sup>67</sup>

The NRP 2022 acknowledges vocational training as essential for people to integrate into working life. The RRP refers to the federal programme 'Secure Vocational Training Positions'<sup>68</sup> which – due to COVID-19 – provides financial support for companies that provide vocational training positions, including companies that offer so-called *Fachpraktiker* training (Section 66 Vocational Training Act – *Berufsbildungsgesetz* (BBiG)) for persons with disabilities.

### ***Inclusive child daycare centres***

Child daycare centres are facilities where 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 daycare centres is much higher.<sup>69</sup> The legislative competence is shared between the *Länder* and the Federal Government (Article 7 4 (1) No. 7 Basic Law – *Grundgesetz*) with details of the tasks and services provided by daycare centres regulated by the *Länder* (Section 26 s. 1 SGB VIII – Child and Youth Services). The basic principles and development of the daycare system are regulated by federal law, clearly showing the high political significance of support for children within the framework of child and youth services (SGB VIII).

Children with and without disabilities in daycare centres should be cared for together, as far as their respective needs permits this (Section 22 a (4) s. 1 SGB VIII). The providers of child and youth services should cooperate with the providers of integration assistance in the planning, conceptual design and financing of the respective benefit (Section 22 a (4) s. 2 SGB VIII). This objective is also enshrined in Section 4(3) s. 1

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<sup>66</sup> See: [https://ec.europa.eu/info/sites/default/files/germany-national-reform-programme-2022\\_en.pdf](https://ec.europa.eu/info/sites/default/files/germany-national-reform-programme-2022_en.pdf).

<sup>67</sup> See: <https://www.digitalpactschule.de/de/was-ist-der-digitalpakt-schule-1701.html>.

<sup>68</sup> See 'Ausbildungsplätze sichern', Deutscher Aufbau- und Resilienzplan, BT-Drs. 19/29682, 28 April 2021, p. 48; see also National Reform Programme, p. 62, No. 200.

<sup>69</sup> In 2013/14, 67.0 % of children in Germany with special support attended integrative daycare centres; in the 2013/14 school year, the proportion of children in primary schools in Germany was significantly lower at 46.9 %, and in secondary level schools it fell once again to just 29.9 %, see Bertelsmann Stiftung (2015), *Inklusion in Deutschland, Daten und Fakten*, p. 35.

SGB IX, which stipulates that services for children with disabilities or children at risk of becoming disabled are developed in such a way that children are not separated from their social environment and are cared for together with children without disabilities.

In recent years, all *Länder* have included the development of inclusive daycare for children as a goal in their legislation (e.g. Section 2(2) KiTaG – Baden Wuertemberg, Section 2(4) SächsKitaG – Saxony, Section 1(3) No. 6 KitaFöG – Berlin). The legal claim to daycare benefits is enshrined in federal law (Section 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>70</sup> The *Länder* legislation expressly lists inclusive daycare centres as being preferable.<sup>71</sup>

The organisational forms of daycare centres vary greatly among the *Länder*. In some *Länder* there are also special school kindergartens which only accept children with disabilities and additional needs (e.g. Section 20 School Act – Baden-Württemberg). As in the school sector, benefits are provided primarily by the children and young people's services authority and integration assistance. Support for additional needs due to disability is provided mainly within the framework of integration assistance. Coordination between the different providers is therefore 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 daycare centres for children. To ensure further improvement of the structural quality of the daycare system, care also must be taken to ensure sufficient vocational and continuing training for specialist staff with regard to inclusion.<sup>72</sup> In 2021, there was a total of 22 428 daycare institutions providing inclusive care and 216 institutions explicitly for children with disabilities.<sup>73</sup>

### ***Special education support in special and mainstream schools***

In the school year 2020/21, there was a further increase in the support rate of 7.7 % (1.5 % higher than a decade earlier). Of the approximately 580 000 pupils with special education support, 44 % are to be found in mainstream schools, so that the inclusion rate has almost doubled since the school year 2010/11. Although the joint schooling of pupils with and without special education support is increasing nationwide, explicit special school offers are not being reduced across the board. For example, 3.2 % of children were sent directly to a special school in the school year 2020/21, so that the value has remained at a constant level for years. The proportion of children with special education support enrolled in primary schools is low at 1.4 %.

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<sup>70</sup> See BVerfG, 10.02.2006 – 1 BvR 91/06; BVerfG, 8.10.1997 – 1 BvR 9/97 (*Sonderschulzuweisung*), BVerfGE 96, 288.

<sup>71</sup> E.g. (Article 12(1) BayKiBiG – Bavaria, Section 2(2) KiTaG – Baden-Wuerttemberg, Section 19 s. 1 SächsKitaG – Saxony, Section 6(1) s. 2 KitaFöG – Berlin, Section 3(7) s. 1 KiTaG – Lower Saxony).

<sup>72</sup> See Federal Ministry of Education and Research (2014), pp. 189-190.

<sup>73</sup> See DESTATIS – Statistisches Bundesamt (2021), *Kinderfangesbetreuung, Tageseinrichtungen für Kinder nach Art und Trägern*, <https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Soziales/Kindertagesbetreuung/Tabellen/kindertageseinrichtungen-traeger.html;jsessionid=C48F74FFD0DB30BF321BE95B883168BF.live711>.

The proportion of inclusive schools varies greatly between the *Länder* (31 % and 90 %): in Baden-Württemberg, Bavaria and Rhineland-Palatinate, for example, more pupils were taught separately in special schools compared to a decade ago, so that a contrary development can be seen there. Furthermore, the legal frameworks for inclusive education of children and young persons with disabilities differ between the *Länder*: the legal entitlement according to the UN CRPD, a central requirement for non-discriminatory access to education, has so far only been fully implemented in Bremen and Hamburg. More than half of the *Länder* give legal priority to joint schooling, but make it dependent, for example, on the financial or spatial capacities of the schools. In Baden-Württemberg, Bavaria, Rhineland-Palatinate, Saxony and Saxony-Anhalt, on the other hand, no explicit priority for inclusive schooling has been formulated in the amendments to the school laws.

Furthermore, the way in which additional financial, human or material resources for special needs education are allocated has an influence on implementation. The range extends from a systematic allocation independent of individual needs (only in Saarland) to mixed forms per special focus, to an individual allocation per pupil. There are also different procedures for determining special education support in the *Länder* (school supervisory authority, special school) as well as different measures for prevention (counselling, guidance or support). Overall, the developments towards an inclusive school system are limited.<sup>74</sup>

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

In order to ensure the schooling of children and young persons with disabilities, school assistance is the main tool used. This applies to both the mainstream school and the special needs school. Schools also lack adequate personell and constructional accessible infrastructure. The same applies to the higher education sector. Germany has increased training capacity for special needs teachers and created corresponding positions in schools.<sup>75</sup> Study and school assistance are regulated in the provisions on integration assistance in Book IX of the Social Code – Rehabilitation and Participation of Persons with Disabilities (Section 75, 112 SGB IX). They can be provided within the framework of mainstream school education and attendance at secondary schools up to university entrance qualification, including preparation for this, independently whether or not there is still compulsory school attendance.<sup>76</sup> In addition, the benefit can also apply to all-day programmes in open form and may include assistance for travel to school or with school events.<sup>77</sup> The provisions encompass school-based and university-based continuing vocational training, e.g. Master's programmes. A second degree or PhD studies are also included in justified cases (Section 112(2) sentence 2 and sentence 1, No. 3 SGB IX).<sup>78</sup> The pooling of benefits for the area of school support

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<sup>74</sup> See Autor:innengruppe Bildungsberichterstattung (2022), *Bildung in Deutschland 2022, Ein indikatorengestützter Bericht mit einer Analyse zum Bildungspersonal*, pp. 115, 128-131.

<sup>75</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 July 2019, BT-Drs. 19/11745, p. 31.

<sup>76</sup> See *Entwurf eines Gesetzes zur Stärkung der Teilhabe und Selbstbestimmung von Menschen mit Behinderungen (Bundesteilhabegesetz – BTHG)*, BT-Drs. 18/9522, p. 284.

<sup>77</sup> See Deutscher Städtetag, Deutscher Landkreistag, *Bundesarbeitsgemeinschaft der überörtlichen Sozialhilfeträger (BAGÜS), Orientierungshilfe zur Schulbegleitung unter besonderer Berücksichtigung der Bildung von Schulbegleiterpools*, Stand, June 2019.

<sup>78</sup> See *Entwurf eines Gesetzes zur Stärkung der Teilhabe und Selbstbestimmung von Menschen mit Behinderungen (Bundesteilhabegesetz – BTHG)*, BT-Drs. 18/9522, p. 284.

is possible and can be provided – if it is reasonable – against the will of the benefit recipients.<sup>79</sup>

Legislative competence in the education sector for school and university regulation lies with the *Länder* (Article 70(1) of the Basic Law – *Grundgesetz*), so there are no uniform nationwide regulations for inclusion in school or higher education. As a result of Article 24 of the CRPD demanding an inclusive education system, many pieces of school-related legislation 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>80</sup>

For this reason, school assistance is predominantly the provision of integration assistance (Section 75, 112 SGB IX). For school assistance at mainstream and secondary schools (Section 138 (1) No. 4 SGB IX), 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 persons with disabilities in special training centres. This should be critically examined in the light of Article 24 of the CRPD.

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

School assistance only includes activities that lie outside the pure teaching of classes. The core pedagogical work is solely the responsibility of the school authorities. School assistance is not aimed at conveying content, but at enabling 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 has not yet resulted in an enforceable claim to the provision by a child with disabilities.<sup>81</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 mainstream education system steadily decreases over the course of an educational career, i.e. with increasing age of the affected people. Students who have health problems during their studies often have a longer duration

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<sup>79</sup> The effects of this regulation should be closely monitored.

<sup>80</sup> See Conrad-Giese, M. (2019), *Teilhabe durch Persönliche Assistenz für Kinder mit Behinderungen – Teil III: Assistenzleistungen in Bildungseinrichtungen; A13-2019*, [www.reha-recht.de](http://www.reha-recht.de), 6 August 2019; see also: 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 July 2019, BT-Drs.19/11745, p. 32.

<sup>81</sup> See Welti, F. (2015), *Verantwortlichkeit für angemessene Vorkehrungen und Barrierefreiheit in der Bildung*, RdJB 2015, pp. 34, 43, 44.

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.

### **Budget for vocational training**

Persons with disabilities should in principle be eligible for recognised vocational training. For people who are unable to pursue such training due to the specific nature and severity of their disability, the institutions may agree on training regulations in accordance with Section 66 BBiG and Section 42r HwO. The data report of the Federal Institute for Vocational Education and Training (BIBB) on the Vocational Education and Training Report recorded a total of 6 969 training contracts in occupations for persons with disabilities for the year 2021; this corresponds to 1.5 % of the total share. Compared to 2020 (7 233), this shows a decrease in contracts of 3.7 %. In total, 64.8 % (4 517) of the contracts were for men and 35.2 % (2 451) for women.<sup>82</sup>

In 2020, the budget for vocational training (Section 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 covers training relationships subject to compulsory social security both in recognised training courses and in courses with less theoretical content but a focus on the practical content for a certain profession (regulated in Section 66 Vocational Training Act (BBiG) and Section 42m Crafts Code (HWO), so called *Fachpraktikerberufe*). The budget was designed to offer persons with disabilities an alternative to the entrance qualification and the vocational training area of the WfbM (Section 61 a SGB IX). With the Participation Strengthening Act (*Teilhabestärkungsgesetz*)<sup>83</sup> the budget has been expanded. Since 2022 it can be received by all persons who would be entitled to the WfbM (also by persons in the working area of the WfbM). Strengthening career guidance and promoting inclusive vocational training and work is part of the National Action Plan.<sup>84</sup>

The budget for vocational training can be a suitable instrument to make training more inclusive and to reduce the attendance at the WfbM.<sup>85</sup> It is problematic, however, that only persons who are entitled to the WfbM can receive the budget for training. This excludes young people with a special need or rehabilitation status who are not entitled to the WfbM.<sup>86</sup> Young people who are not even entitled to a WfbM because of the severity of their disability are also excluded. Therefore, the budget for vocational

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<sup>82</sup> See Bundesinstitut für Berufsbildung (2022), *Datenreport zum Berufsbildungsbericht 2022, Informationen und Analysen zur Entwicklung der beruflichen Bildung*, p. 53.

<sup>83</sup> Gesetz zur Stärkung der Teilhabe von Menschen mit Behinderungen sowie zur landesrechtlichen Bestimmung der Träger der Sozialhilfe (*Teilhabestärkungsgesetz*), 2 June 2021, BGBl. I, 1387.

<sup>84</sup> NAP 2.0, 2016, p. 26; see also *Zwischenbericht zum NAP 2.0*, 25 October 2018, BT-Drs. 19/5260, p. 5.

<sup>85</sup> To date, there is hardly any empirical data on the budget for vocational training. Within the framework of the interdisciplinary research project ‘*Zugänglichkeit. Inklusion. Partizipation – Nachhaltige Teilhabe an Arbeit durch Recht*’ (‘Accessibility. Inclusion. Participation – Sustainable Participation in Work through Law’) the implementation of this service is therefore being investigated. Results will be published on [www.reha-recht.de](http://www.reha-recht.de).

<sup>86</sup> Mattern, L. and Rambausek-Haß, T. (2022), *Zwei Jahre Budget für Ausbildung – Was wir wissen und was nicht*, D9-2022, [www.reha-recht.de](http://www.reha-recht.de), 10 May 2022.

training should be designed as a low-threshold offer to which all persons with disabilities are entitled.<sup>87</sup>

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

### ***School and training qualifications***

According to the representative survey of the Federal Ministry of Labour and Social Affairs, 61 % of persons with disabilities in private households and 44 % of persons with self-assessed disabilities have an intermediate or higher school leaving certificate; about half have a vocational training qualification. A further 34 % and 24 % respectively have a technical school or (technical) university degree. Compared to persons without disabilities, however, they have on average a lower level of schooling and training – they often complete vocational training, but less often have a (technical) university degree. In all, 8 % of persons with disabilities and 15 % of persons with an assessed disability do not have a vocational qualification – especially persons with disabilities in institutions (see 7.3.1, Table D, E).<sup>88</sup> Continuing, the data report of the Vocational Education and Training Report summarises that young people without a lower secondary school leaving certificate are represented with an above-average frequency of 35.1 % in the group of occupations for persons with disabilities. As a result, it can be assumed that persons with disabilities face considerable disadvantages in the school, vocational training and higher education systems.<sup>89</sup>

### ***Further education and training***

In the sense of lifelong learning, job-related, in-company or general further education and training for persons with disabilities should also be considered. The aim is to maintain and expand knowledge and qualifications, to deal with new requirements or to advance professionally. Educational measures for persons with (severe) disabilities can be funded by the Integration Office (if no rehabilitation agency is responsible) or by the employer, or they can be provided through in-company offers. Regarding adult education, adult education centres are traditional institutions in Germany. They have the mandate to promote personal development and social participation and provide both general and vocational education. In the current adult education statistics, approximately 106 000 courses for special target groups are noted (27 % of the total); of these, only 1 % are aimed at persons with disabilities. The programme sector 'Basic Education' is most frequently represented with 27.6 %, followed by 'Culture – Design' with 22.9 % and 'Health' with 21.6 %, while 17 % are courses for older people, a group

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<sup>87</sup> See for the discussion of the legislation process, Gast-Schimank, C. (2019), *Das Budget für Ausbildung im Angehörigen-Entlastungsgesetz – Teil I: Analyse des Gesetzentwurfs und der Stellungnahmen, D18-2019*, [www.reha-recht.de](http://www.reha-recht.de), 15 October 2019.

<sup>88</sup> See Heisig, J. P., König, C. and Solga, H. (2022) 'Bildung' in Federal Ministry of Labour and Social Affairs, *Representative survey on the participation of people with disabilities (Repräsentativbefragung zur Teilhabe von Menschen mit Behinderung)*, pp. 135, 143.

<sup>89</sup> See Bundesinstitut für Berufsbildung, *Datenreport zum Berufsbildungsbericht 2022, Informationen und Analysen zur Entwicklung der beruflichen Bildung*, 2022, p. 127.

that (in the course of time) increasingly has support needs, especially due to sensory disabilities (see Section 7.3.1, Table F). The age groups of 65 to 74 years and 75 years and older are represented by a total of 21.8 % at adult education centres.<sup>90</sup>

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<sup>90</sup> See Echarti, N., Huntemann, H., Lux, T. and Reichart, E. (2022) *Volkshochschul-Statistik, 59. Folge, Berichtsjahr 2020*, pp. 37, 89, 91.

## 6 Investment priorities in relation to disability

The NRP 2022 focuses on increasing labour force participation, strengthening qualifications and shaping the pension system and labour market for the future (see Section 2.2). In this regard, the federal government aims to improve vocational transition and employment opportunities for disadvantaged groups, such as persons with disabilities – combined with the creation of educational opportunities. The web portal ‘*einfach teilhaben*’ of the Federal Ministry of Labour and Social Affairs, for example, provides employers with information and advice on hiring and employing persons with (severe) disabilities. The aim is to make it easier for people to (re)enter the labour market (trial employment, integration grants) and to create new jobs and make them disability-friendly.<sup>91</sup> In addition, a federal accessibility programme is intended to promote barrier-free design in all public and private areas. This includes the priorities of the coalition agreement of the governing parties ‘mobility’, ‘housing’, ‘health’ and ‘digital’. In future, contact points for employers who proactively approach them are to provide information and advice on the training, recruitment and employment of persons with severe disabilities and assist them in applying for funding and support services (pp. 54, 56).<sup>92</sup> With the Federal Programme ‘Innovative Ways for Workplace Participation – Rehapro’ rehabilitation will be strengthened, especially through cooperation of medical and vocational rehabilitation.

The exemplary priorities from the NRP 2022 are also reflected in the current funding guidelines of the ESF Plus Federal Programme 2021-2027. The following calls are of particular interest to persons with disabilities. The EU Commission call ‘Social innovations for a fair green and digital transition’ aims to develop and implement integrated and inclusive approaches to social innovation. This involves schools, training centres, the social economy, workplaces, local communities or other relevant environments. The guiding principle is to promote a just green and digital transition. The funding guideline ‘Strengthening the participation of older people – against loneliness and social isolation’ from the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth focuses on counselling and activity services to prevent loneliness and social isolation for people aged 60 and older. This target group is disproportionately affected by disabilities, especially sensory disabilities (see Section 5.2). The primary goal is to improve the individual income and life situation of older people both in employment and in the post-occupational phase. Local networks are to be created to ensure the participation of older people in all areas of life.

The call ‘Shaping change in work through social partnership: further training and promoting equality (ESF Social Partner Guideline)’ from the Federal Ministry of Labour and Social Affairs aims to sustainably strengthen personnel policy and corporate culture in the world of work. Projects are explicitly invited to increase the participation of previously disadvantaged groups such as persons with disabilities in continuing education by developing needs-oriented offers. The call for proposals ‘Educational Communities’ from the Federal Ministry of Education and Research promotes the

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<sup>91</sup> See: [https://www.einfach-teilhaben.de/DE/AS/Themen/Arbeiten/FoerderungArbeitgeber/foerderungarbeitgeber\\_node.html](https://www.einfach-teilhaben.de/DE/AS/Themen/Arbeiten/FoerderungArbeitgeber/foerderungarbeitgeber_node.html).

<sup>92</sup> See: <https://www.bih.de/integrationsaemter/aufgaben-und-leistungen/einheitliche-ansprechstellen/>.

establishment of digital-analogue educational landscapes for lifelong learning. A specific focus can be e.g. inclusion.<sup>93</sup>

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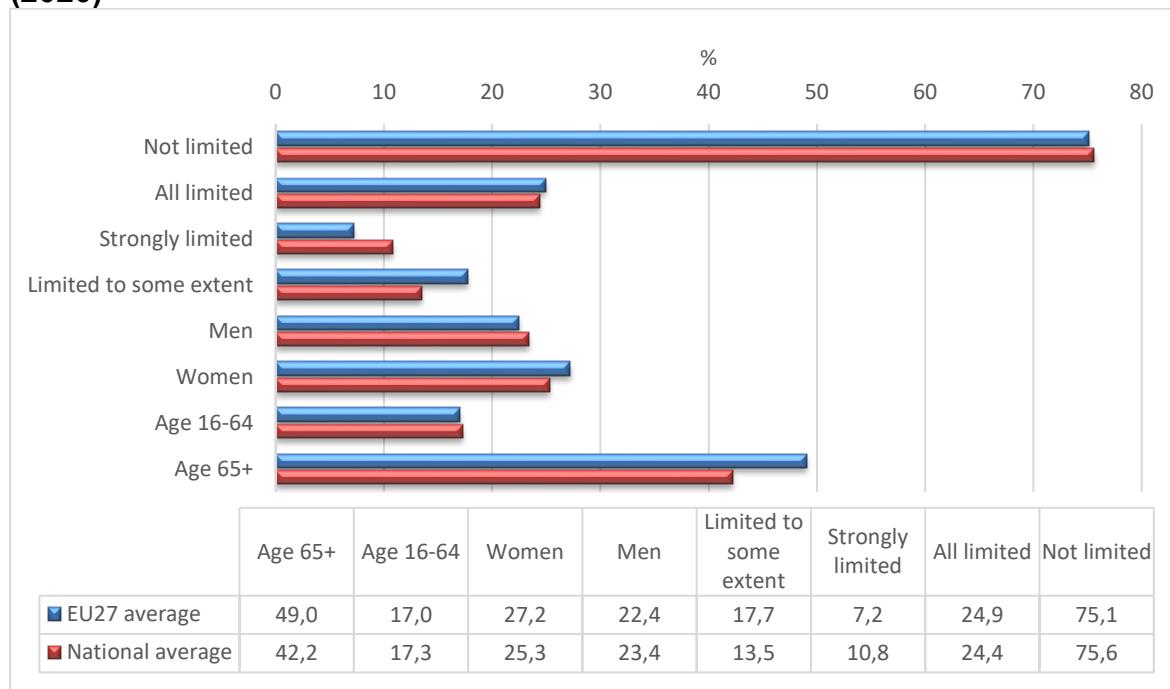
<sup>93</sup> See: <https://www.esf.de/portal/DE/ESF-Plus-2021-2027/Aufrufe/inhalt.html>.

## 7 Annex: disability data relevant to the Semester

See also disability data published in the Eurostat database<sup>94</sup> and statistical reports.<sup>95</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>96</sup>

**Table 1: Self-reported ‘activity limitations’ as a proxy for impairment / disability (2020)**



Source: EU-SILC 2020 Release April 2022

In subsequent tables, these data are used to indicate ‘disability’ equality gaps and trends relevant to the analytical sections – for the labour market, social policies and healthcare, and education – by comparing outcomes for persons who report and do not report ‘activity limitations’.<sup>97</sup> National estimates for Germany are compared with EU27 mean averages for the most recent year.<sup>98</sup>

<sup>94</sup> Eurostat Health Database: <https://ec.europa.eu/eurostat/web/health/data/database>.

<sup>95</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>96</sup> The EU-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)).

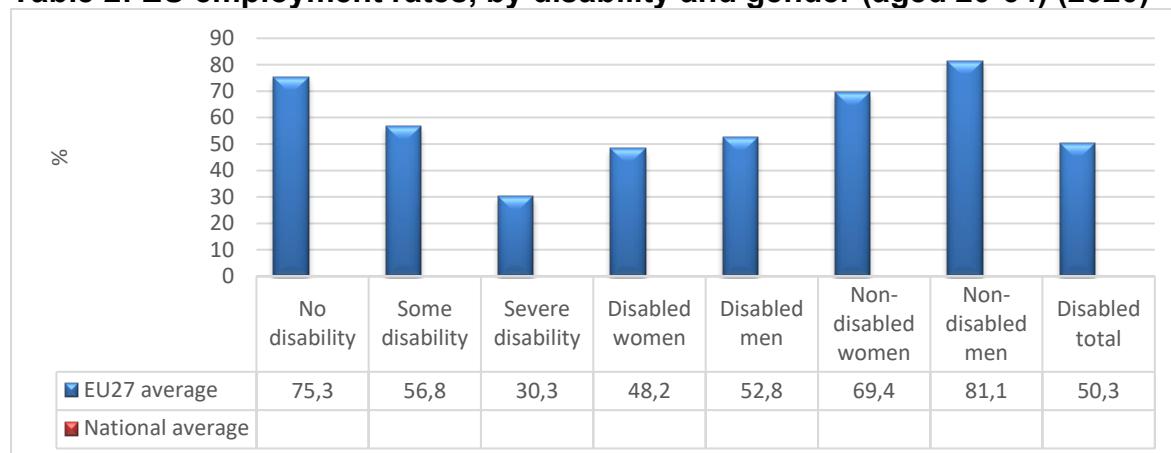
<sup>97</sup> This methodology was developed in the annual statistical reports of ANED, available at: <http://www.disability-europe.net/theme/statistical-indicators>.

<sup>98</sup> The exit of the United Kingdom from the EU changed the EU average. EU27 averages have also been affected by time series breaks in other large countries, such as Germany.

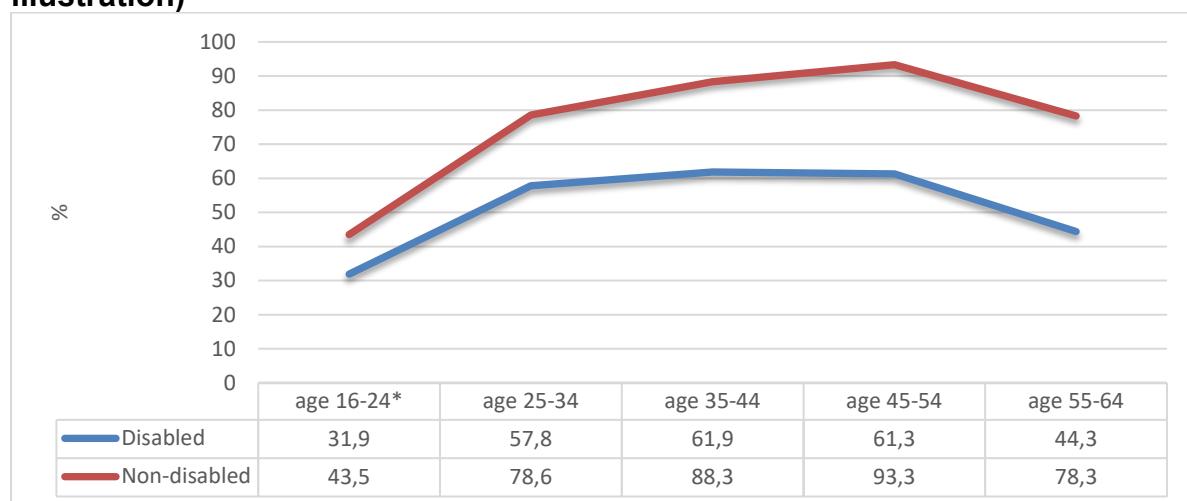
## 7.1 Data relevant to disability and the labour market

Microdata from EU-SILC were not available for analysis of labour market indicators in Germany in 2020, so it was not possible to populate these parts of the statistical annex.

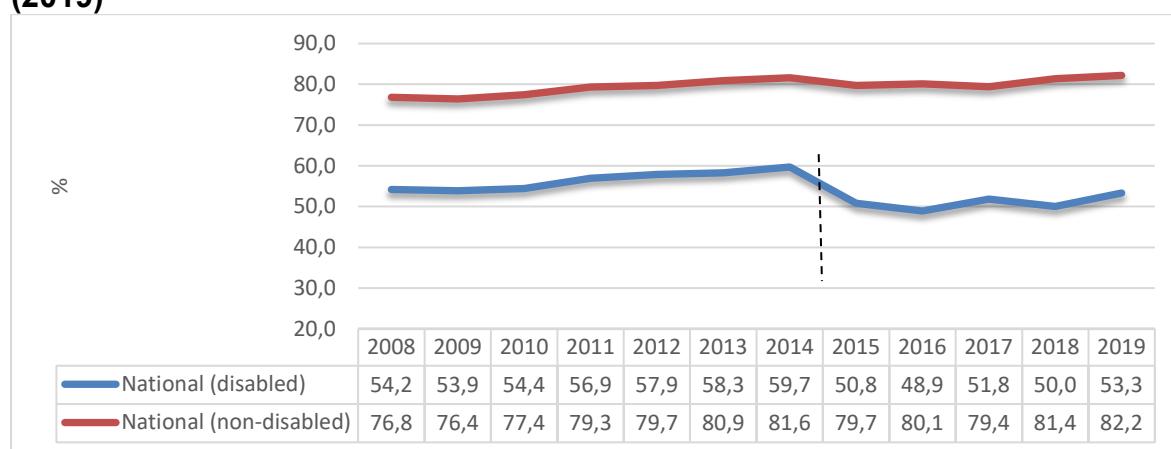
**Table 2: EU employment rates, by disability and gender (aged 20-64) (2020)**



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



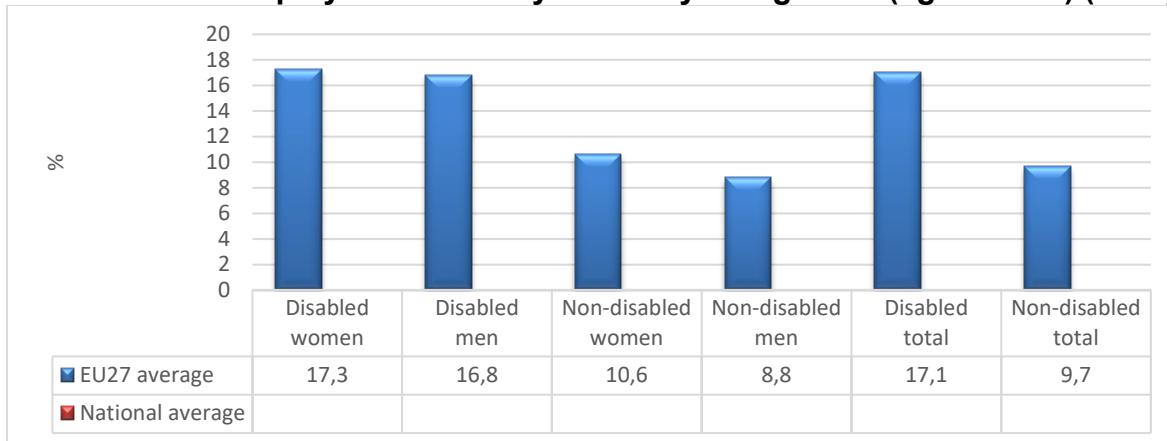
**Table 4: National trends in employment rates, by disability status (aged 20-64) (2019)**



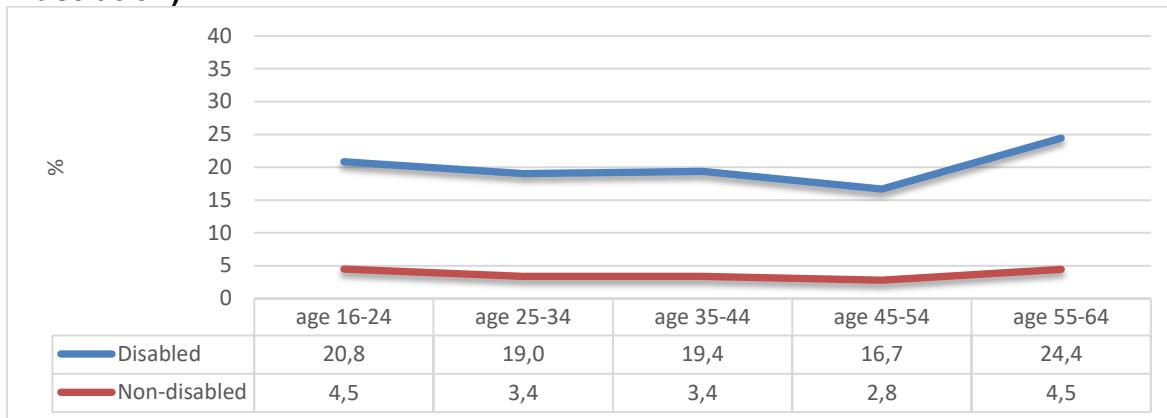
Source: EU-SILC 2019 Release 2021 version 1 (and preceding UDBs).

### 7.1.1 Unemployment

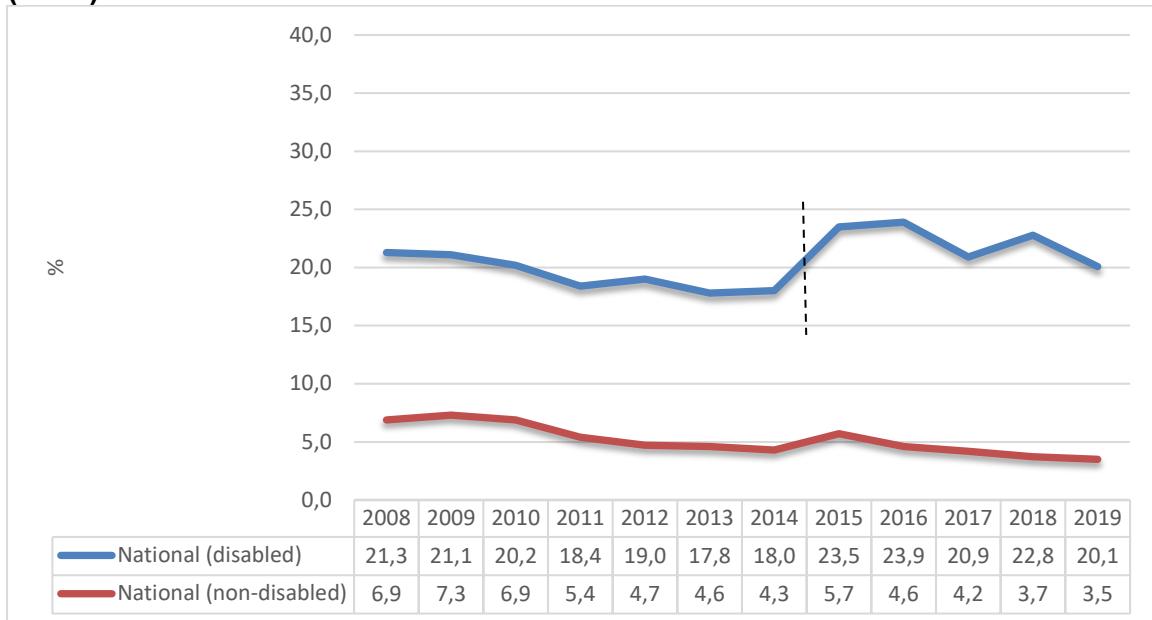
**Table 5: EU unemployment rates by disability and gender (aged 20-64) (2020)**



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



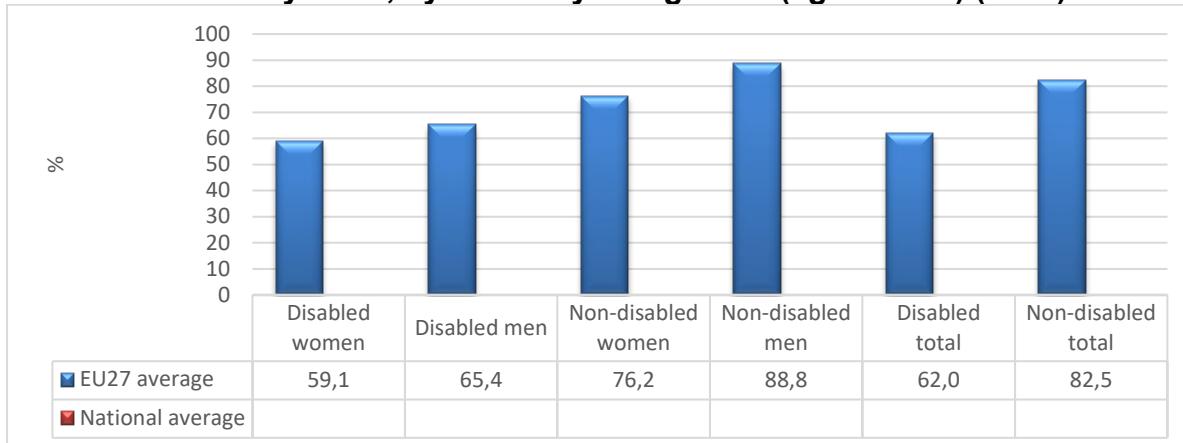
**Table 7: National trends in unemployment rate, by disability status (aged 20-64) (2019)**



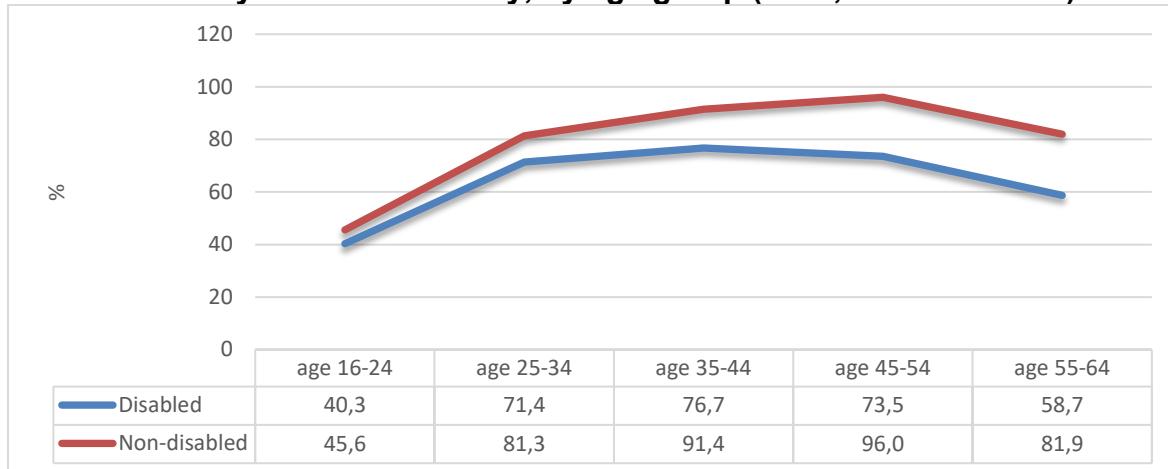
Source: EU-SILC 2019 Release 2021 version 1 (and preceding UDBs)

### 7.1.2 Economic activity

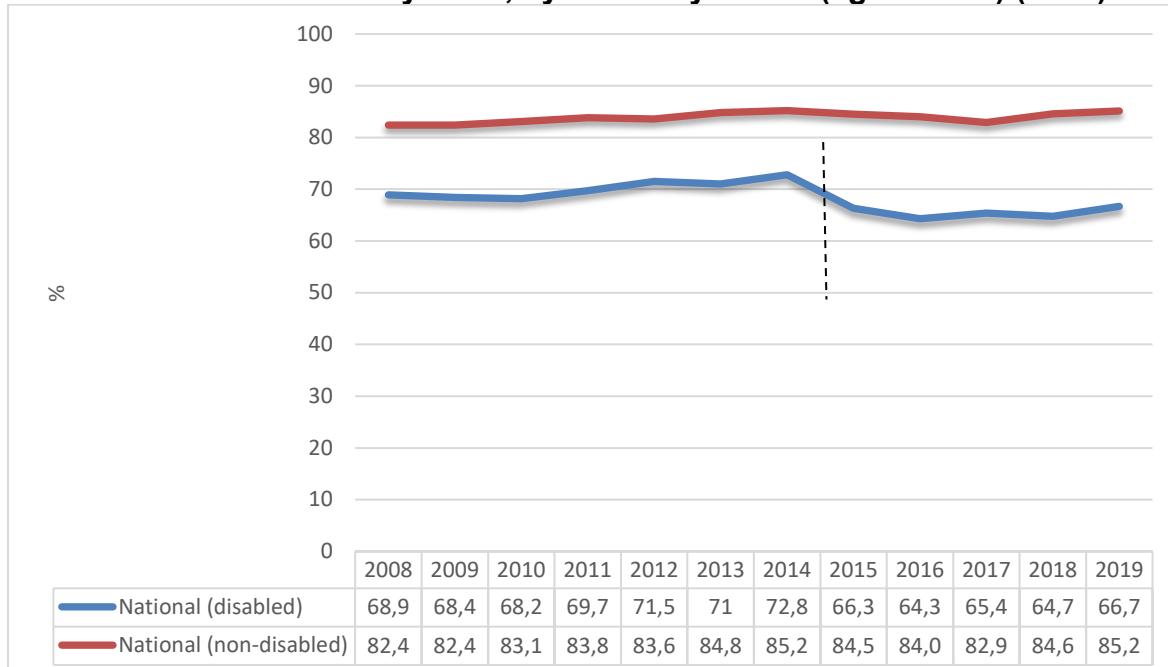
**Table 8: EU activity rates, by disability and gender (aged 20-64) (2020)**



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



**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

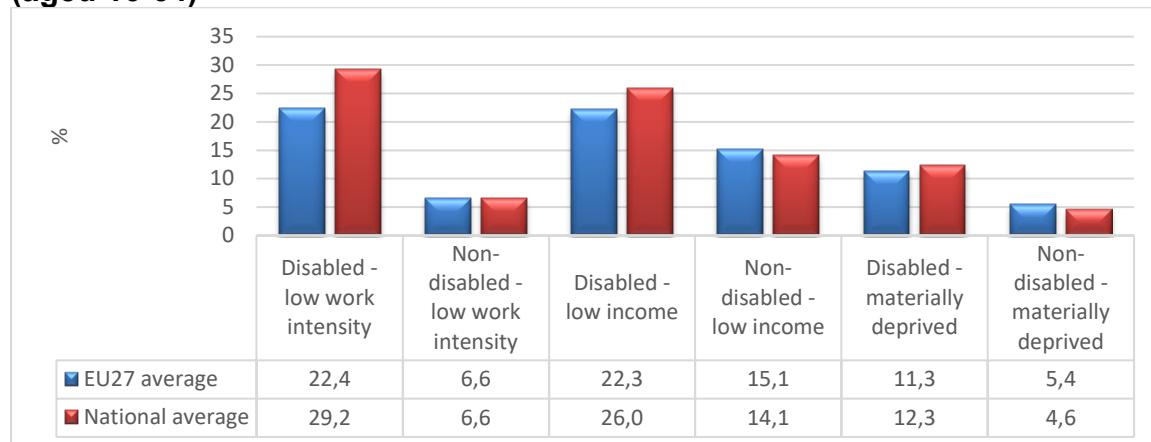
Disability data is not yet available from the core European Labour Force Survey but labour market indicators for Germany were disaggregated from ad hoc modules conducted in 2001 and 2011. These can be found in the Eurostat disability database.<sup>99</sup>

Alternative indicators from the administrative data of the Federal Employment Agency are included in the text of Section 3.1.

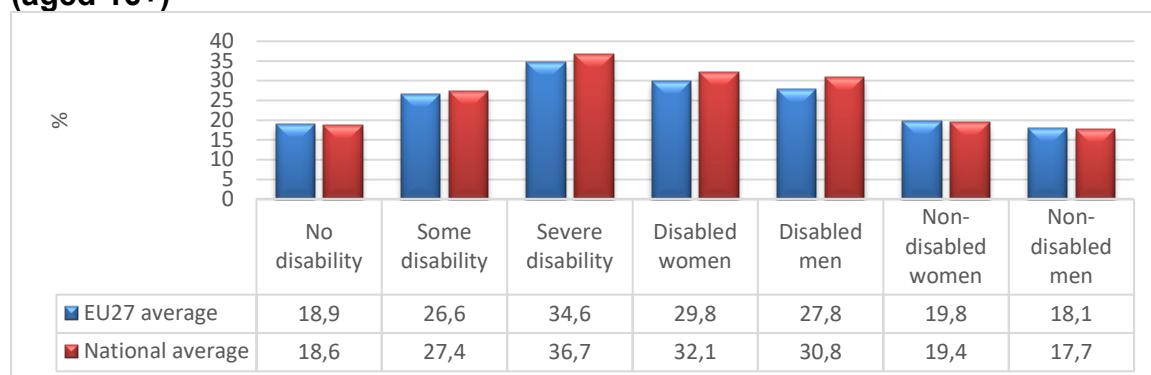
<sup>99</sup> Eurostat Health Database: <https://ec.europa.eu/eurostat/web/health/data/database>.

## 7.2 EU data relevant to disability, social policies and healthcare (2020)

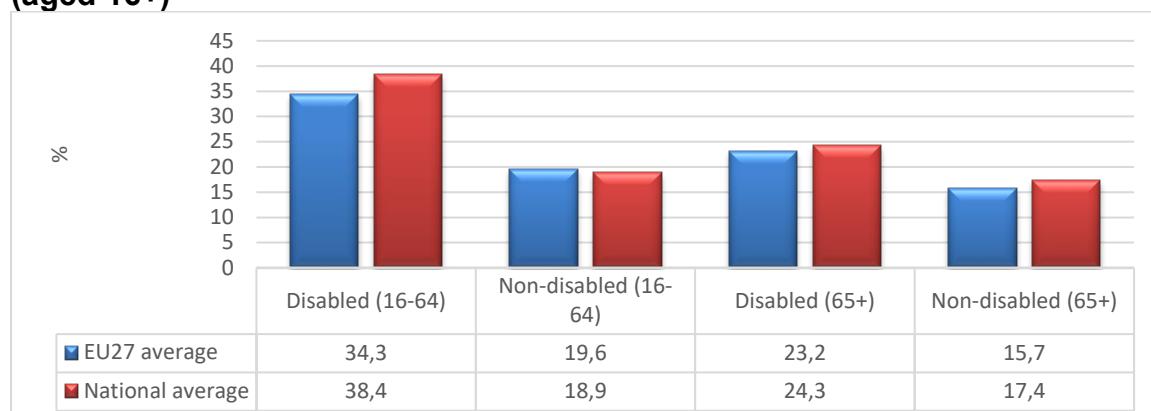
**Table 11: People at risk of poverty or social exclusion, by disability and risk (aged 16-64)<sup>100</sup>**



**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+)**



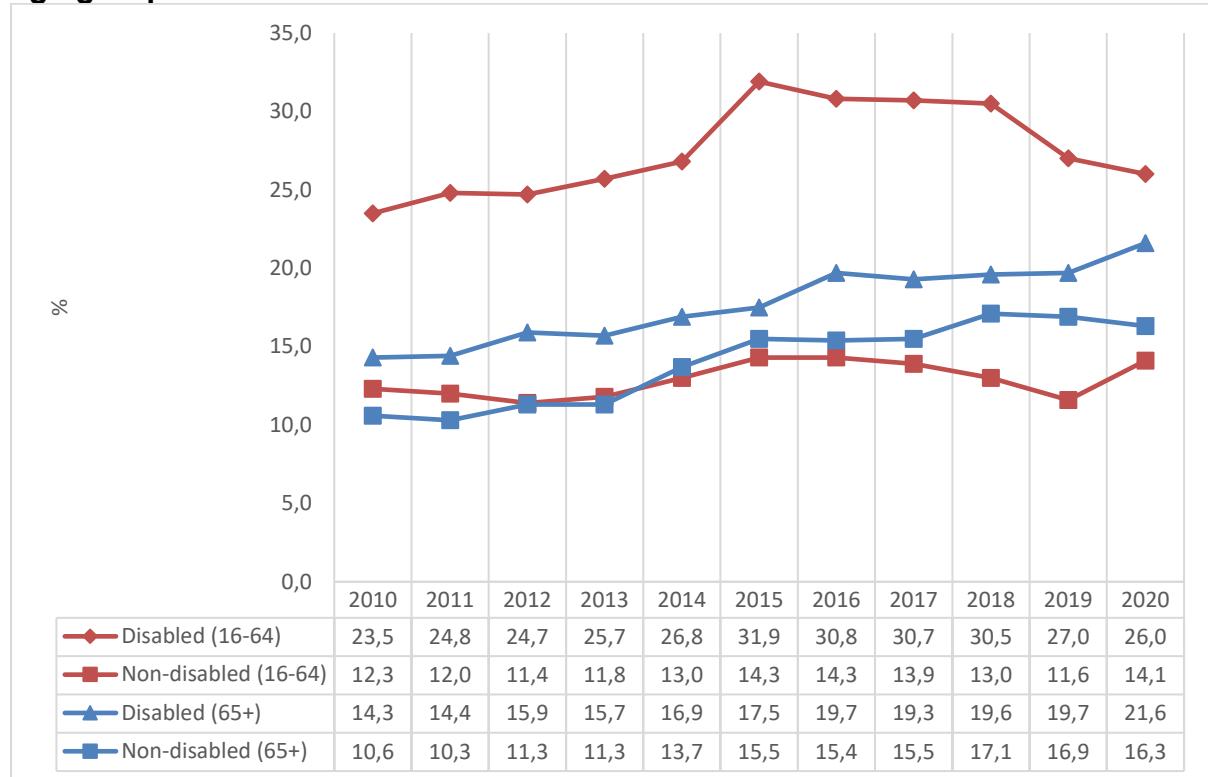
Source: EU-SILC 2020 Release April 2022 (and previous UDB)

Note: Indicative statistics based this provisional data release for Germany will be updated in the Eurostat database.<sup>101</sup>

<sup>100</sup> Aged 16-59 for Low work intensity.

<sup>101</sup> Eurostat Health Database: <https://ec.europa.eu/eurostat/web/health/data/database>.

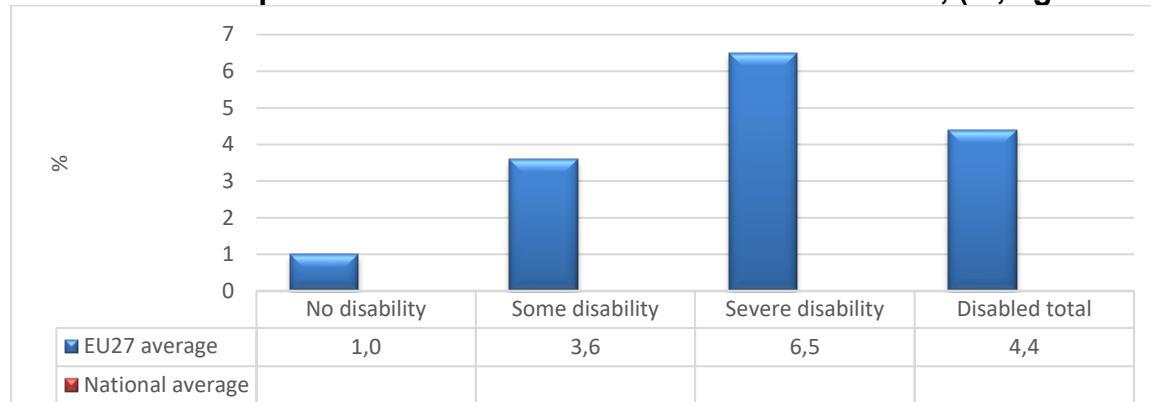
**Table 14: Trends in the risk of poverty after social transfers, by disability and age group**



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, (%, aged 16+)**



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

Note: EU mean averages are skewed by high values in a minority of countries within disability groups but median averages for the total disability and no disability groups in 2020 are consistent with the three-year mean values.

Note: No indication for Germany was available for 2020.

### 7.2.1 Alternative sources of poverty or healthcare data in Germany

The EU-SILC data provide a comprehensive and reliable source concerning poverty and 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>102</sup>

**Table A: Assessment of the financial situation according to ICF grouping, all respondents (private households and institutions)**

In %	Less than needed	Just as much as needed	More than needed
<b>Private households</b>			
People without disabilities	17	34	49
People with disabilities	23	38	40
People with self-assessed disability	40	35	25
<b>Woman</b>			
People without disabilities	18	35	47
People with disabilities	25	39	36
People with self-assessed disability	41	36	23
<b>Men</b>			
People without disabilities	17	33	49
People with disabilities	21	37	42
People with self-assessed disability	38	35	26
<b>Institutions</b>			
People with disabilities	23	59	18
People with self-assessed disability	31	54	15

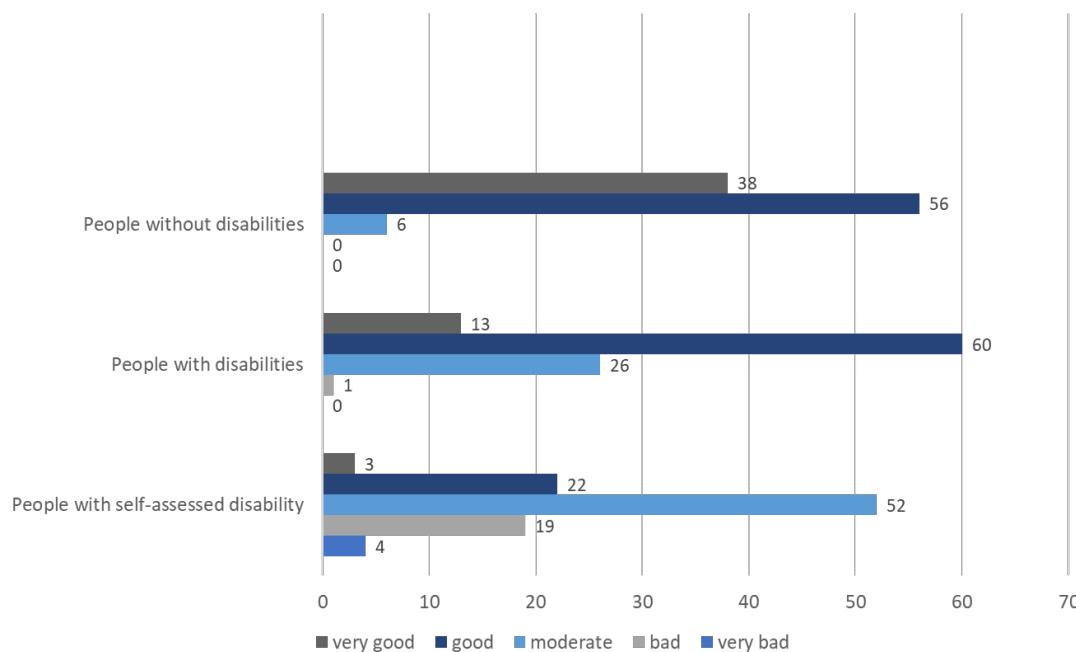
*n (private household) = 19 606; n (women) = 9 839, n (men) = 9 840, n (institutions) = 2 362*

*Source: Federal Ministry of Labour and Social Affairs, 2022, p. 172 (own presentation)*

<sup>102</sup> Eurostat Health Database: <https://ec.europa.eu/eurostat/web/health/data/database>.

**Table B: Subjective assessment of health status in general (private households)**

**How is their health in general?**

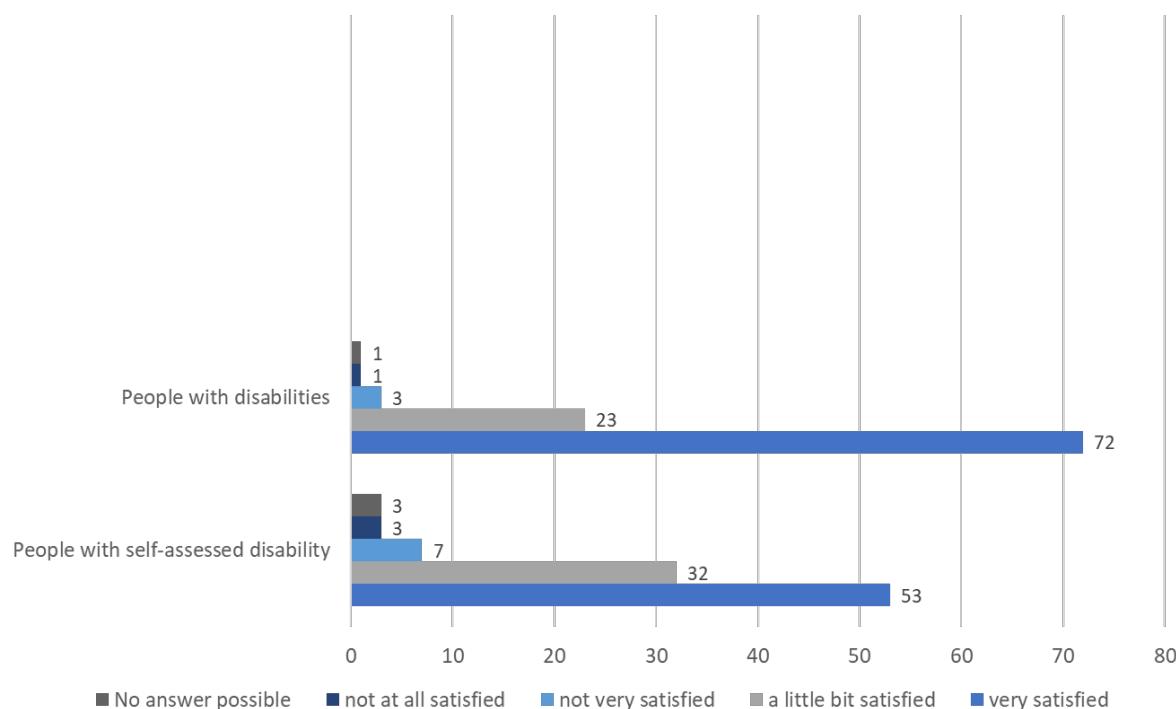


n = 22,065

Source: Federal Ministry of Labour and Social Affairs, 2022, p. 53 (own presentation)

**Table C: Satisfaction with the housing situation in institutions**

**How satisfied are you with your housing situation?**



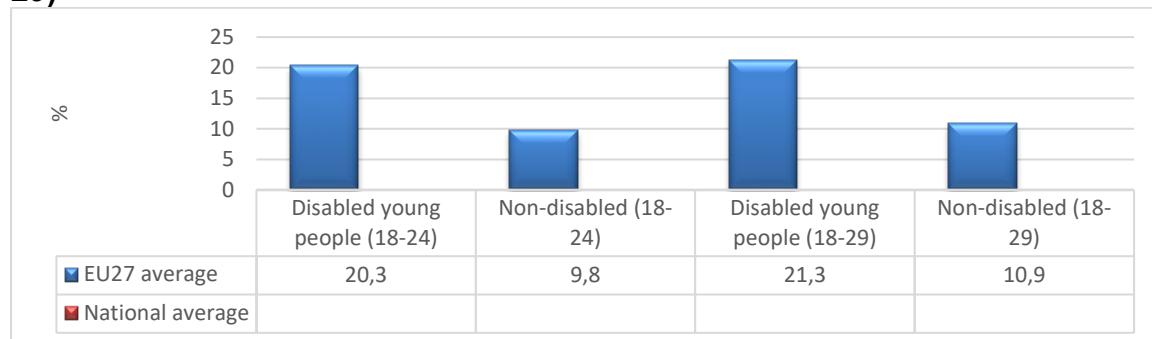
n = 3,354

Source: Federal Ministry of Labour and Social Affairs, 2022, p. 77 (own presentation)

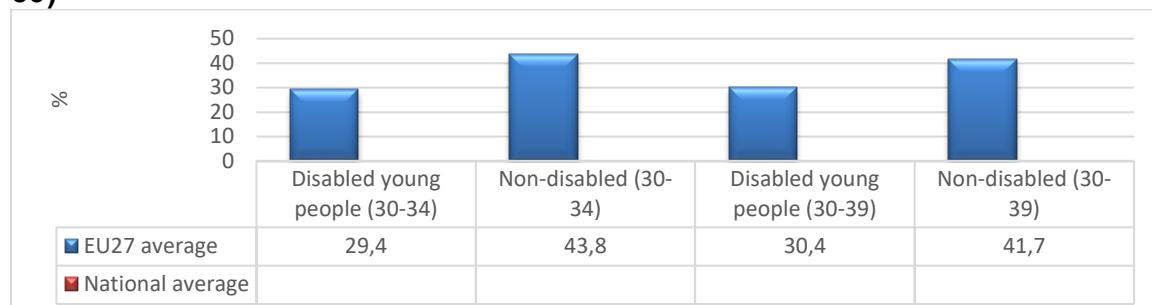
### 7.3 EU data relevant to disability and education

Microdata from EU-SILC were not available for analysis of education indicators in Germany in 2020, so it was not possible to populate these parts of the statistical annex.

**Table 24: EU Early school leaving rates, by disability status (aged 18-24 and 18-29)<sup>103</sup>**



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



Source: EU-SILC 2020 Release April 2022 (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 D: Highest level of school qualifications (private households)**

In %	No qualification (incl. special school leaving certificate)	Elementary leaving certificate, POS 8th grade	Secondary school leaving certificate <i>(Mittlere Reife)</i> , POS 10th grade	(Technical) university entrance qualification	Still in school
<b>ICF-Gruppierung</b>					
People without disabilities	1	19	29	43	6
People with disabilities	3	32	29	32	4
People with self- assessed disability	8	46	27	17	2

n (total) = 21.613, n (ICF) = 19.716

Source: Federal Ministry of Labour and Social Affairs, 2022, p. 136 (own presentation)

<sup>103</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 E: Highest level of training qualifications (private households)**

In %	Without a training qualification	Vocational training (in-company)	Training (extra-company)	Technical college degree	(Technical) university degree	Still in training/studying
ICF-Gruppierung						
People without disabilities	5	34	4	12	31	13
People with disabilities	8	44	6	12	22	8
People with self-assessed disability	15	50	6	11	13	5

*n (total) = 21.535, n (ICF) = 19.656*

*Source: Federal Ministry of Labour and Social Affairs, 2022, p. 144 (own presentation)*

**Table F: Courses in Adult Education Centres for special target groups by programme sector 2020**

In %	People with disabilities	Seniors
Politics – Society – Ecology	12.2 % (175)	7.0 % (1.231)
Culture – Design	22.9 % (328)	9.4 % (1.657)
Health	21.6 % (309)	37.3 % (6.588)
Languages	8.7 % (124)	32.2 % (5.687)
Working life	5.9 % (85)	14.0 % (2.477)
School qualifications	1.2 % (17)	0.1 % (13)
Basic education	27.6 % (395)	0.2 % (32)
<b>Total</b>	<b>100 % (1.433)</b>	<b>100 % (17.685)</b>

*N = 852 Adult Education Centres*

*Source: Volkshochschul-Statistik, 59. Folge, Berichtsjahr 2020, 2022, p. 89 (own presentation)*

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