

European Union Agency for Fundamental Rights, selection of relevant and recent passages from published reports related to Germany

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References to Germany marked with **bold**

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Data Explorers, tools and themes

EU Member States and International Obligations - United Nations

<http://fra.europa.eu/en/publications-and-resources/data-and-maps/intobsun?mdq1=country&mdq2=416>

EU Member States and International Obligations - Council of Europe

<http://fra.europa.eu/en/publications-and-resources/data-and-maps/intobscoe?mdq1=country&mdq2=416>

Mapping child protection systems in the EU

<http://fra.europa.eu/en/publications-and-resources/data-and-maps/cps?mdq1=country&mdq2=416>

Indicators on the right to political participation of people with disabilities

<http://fra.europa.eu/en/publications-and-resources/data-and-maps/polpar?mdq1=country&mdq2=416>

Mapping victims' rights and support in the EU

<http://fra.europa.eu/en/publications-and-resources/data-and-maps/vss?mdq1=country&mdq2=416>

Violence against women survey

<http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey?mdq1=country&mdq2=416>

From January 2016 FRA is publishing monthly updates related to migration that cover a variety of different issues, including:

- initial registration and asylum applications, with particular attention to the situation of vulnerable people
- criminal proceedings initiated for offences related to irregular border crossing
- child protection
- reception conditions for new arrivals, focusing on the situation of children and other vulnerable people
- access to healthcare
- public response such as rallies of support, humanitarian assistance or voluntary work
- racist incidents such as demonstrations, online hate speech or hate crime.

The countries covered are Austria, Bulgaria, Denmark, Finland, France, **Germany**, Greece, Hungary, Italy, the Netherlands, Poland, Slovakia, Spain and Sweden.

Annual Reports

Fundamental Rights Report 2017

<http://fra.europa.eu/en/publication/2017/fundamental-rights-report-2017>

1. Equality and non-discrimination

“In its 2016 work programme, the European Commission prioritised the adoption of the proposed Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (Equal Treatment Directive). [...] The persistence of diverging views became apparent in June, when several Member States again questioned the need for the directive [...]. **Germany** maintained its general reservation towards the proposal, which it introduced in 2010. In July 2016, a number of parliamentarians asked the federal government to stop blocking the directive. They contended that, since existing national legislation goes beyond the provisions of the proposed directive, there is no reason for the federal government to refuse to adopt it. The federal government had not dealt with this request by the end of 2016.” (pp. 63-64)

“In October, the **German** Federal Constitutional Court issued a decision on blanket bans on certain religious expression by educators. Overturning the decision of three lower courts, the Constitutional Court found that a Muslim childcare worker’s right to freedom of religion was violated when the city administration of Sindelfingen sent her a disciplinary warning letter because she wore a headscarf at work. The court concluded that the children’s right to freedom of religion and belief could not be considered to be at risk simply because the childcare worker wore a headscarf, as prescribed by her religious beliefs. The **German** Basic Law protects the right to exercise religion as long it does not “threaten the peace”. Since the childcare worker did not actively try to influence the children’s religious beliefs, she could not be considered to have threatened the peace of the nursery.” (p. 65)

2. Racism, xenophobia and related intolerance

“**Germany** remains the EU Member State that collects the most comprehensive data on hate crime targeting asylum seekers, their accommodation centres or organisations that work for their benefit. The authorities recorded 2,545 hate crimes targeting asylum seekers and refugees between 1 January and 31 December 2016, with another 988 targeting asylum seekers’ accommodation and 217 targeting help organisations or volunteers. Nearly all of the identified perpetrators were right-wing extremists.” (p. 79)

“In **Germany** and Portugal, attention was directed at empowering young people to recognise and act against online hate speech.” (p. 82)

“In July 2016, the **German** federal government adopted a strategy to prevent extremism and promote democracy, covering the period 2016–2019. One of the strategy’s aims is to counter racist and discriminatory agendas promoted by right-wing extremist groups. This will be done by supporting civil society organisations active in the field, as well as by educating children, adolescents and adults to advocate social tolerance.” (p. 90)

3. Asylum, visas, migration, borders, and integration

“**Germany** introduced cuts in social benefits where asylum seekers refuse, without good cause, to take part in integration measures assigned to them, such as attending German language classes or work opportunities.” (p. 127)

“**Germany’s** Federal Minister of the Interior proposed that asylum seekers and migrants rescued at sea be disembarked in North African countries. Their asylum applications would be examined in facilities supported by the EU and run in collaboration with the host country and the UNHCR. No further details were made available on how such an approach could be made compatible with

the EU Charter of Fundamental Rights and the European Convention on Human Rights (ECHR).” (p. 128)

4. Information society, privacy and data protection

“Member States also endeavoured to increase the transparency and legality of the functioning of their intelligence services by regulating previously unregulated areas. For example, in **Germany**, a law regulating the German intelligence service’s (BND) gathering of intelligence on foreigners abroad came into force – a substantial step towards transparency.” (p. 157)

“Of the Member States without national PNR systems, only four have already taken steps to initiate legislative procedures to implement the PNR Directive or are in the process of doing so. These are Cyprus, **Germany**, Luxembourg and Slovakia.” (p.160)

“In **Germany**, the Federal Constitutional Court rejected several expedited actions brought by lawyers, doctors, journalists, members of parliament and media associations – i.e. professionals bound by professional secrecy – as users of telecommunication services for private or business purposes. The applicants were seeking to annul the new provisions on the retention of telecommunication metadata introduced by a 2015 law. The court held that suspending the disputed provisions was not justified because the mere storage of data does not automatically cause serious disadvantages, even to persons bound by professional secrecy. The court further stressed that the conditions set out in the legislation for the use of data for criminal investigations meet the standards laid down in previous case law.” (p. 163)

5. Rights of the child

“In 2015, the five EU Member States that received the highest numbers of asylum applications from unaccompanied children were Sweden (35,250 applications), **Germany** (22,255), Hungary (8,805), Austria (8,275) and Italy (4,070).” (p. 181)

“In January 2016, 4,749 unaccompanied child and adolescent refugees in **Germany** were considered to be missing, of whom 431 were younger than 13.” (p.183)

Promising practice: Promoting alternative care solutions for unaccompanied children

“Under the Rights, Equality and Citizenship Programme, the EU co-funded a follow-up action project whereby Nidos (the Netherlands), in cooperation with Minor N’dako (Belgium), Jugendhilfe Süd Niedersachsen (**Germany**), OPU (Czech Republic), the Danish Red Cross and KIJA (Austria), has developed a training programme with supportive and online materials for professionals working with host families who take care of unaccompanied children. The training consists of different modules on recruitment, screening, matching and guidance of the host families. The project runs from 2015 to 2017.” (p. 185)

“In **Germany**, in July 2016, the Federal Association for Unaccompanied Minor Refugees published a first evaluation of the implications of a law adopted in October 2015, based on an online survey of 1,400 professionals working with unaccompanied children. The findings show that the appointments of guardians in many cases exceeded the legal time limits provided for by law.” (p. 186)

6. Access to justice including rights of crime victims

“Promising practice: Providing online support for crime victims

Germany’s largest victim support organisation, Weisser Ring, launched an online helpdesk in August 2016. A total of 17 trained support workers advise and assist crime victims who email them seeking help. They provide online advice in writing – currently in German only. Victims can remain anonymous if they wish. *For more information, see Weisser Ring, ‘Onlineberatung des Weissen Rings’; Weisser Ring, ‘Weisser Ring: Online helpdesk starts’*“(p. 207)

“Article 36 of the Istanbul Convention requires that any non-consensual act of a sexual nature be criminalised. [...] In **Germany**, as of November 2016, any significant sexual act undertaken

against the apparent will of an affected person is treated as a crime. In addition, an offence of ‘sexual harassment’ was introduced, criminalising bodily contacts for sexual purposes that are unwanted by the affected person. The new provision aims to criminalise, for instance, groping women in public transport.” (p. 210)

7. Developments in the implementation of the Convention of the Rights of Persons with disabilities

“The **German** government built on the findings of the 2014 evaluation of its previous strategy, as well as the CRPD Committee’s concluding observations, in developing its second National action plan to implement the CRPD. The plan is built around 175 measures in 13 areas, including work, education, mobility, rehabilitation and health, social and political participation, and – as a new area – awareness raising. The **German** Institute for Human Rights welcomed it as marking a “quantum leap” forward in conceptual terms. The institute, which is the monitoring body under Article 33 (2) of the convention, did however express concern that the plan lacks sufficient proposals to address issues such as coercion in the psychiatric system, reforms of electoral law – which excludes certain groups of persons with disabilities from the right to vote – and the scaling down of sheltered workshops.” (p. 227)

“Responding to recommendations from the CRPD Committee, states in Austria and **Germany** established their own monitoring bodies in 2016 to complement those already in place at the national level. [...]Some **German** federal states concluded contracts with the **German** Institute of Human Rights – the national Article 33 (2) body – to establish monitoring mechanisms at the state level. The creation of a body in North Rhine-Westphalia was highlighted as a model for other **German** federal states.” (p. 233)

Fundamental Rights Report 2016

<http://fra.europa.eu/en/publication/2016/fundamental-rights-report-2016>

1. Equality and non-discrimination

“EU Member States took a number of initiatives to address the gender pay gap. The **German** Federal Anti- Discrimination Agency, for example, published a report by an independent commission with recommendations for measures against gender discrimination. The commission supports the federal government’s plans for an equal pay act, but calls for businesses of all sizes to fall under the act. The government’s coalition agreement currently plans to require only companies with more than 500 employees to issue reports on pay gaps.

The **German** Act for the Equal Participation of Women and Men in Management Positions in the Private Sector and in Public Service came into force. The law aims to increase the ratio of women in higher management positions in the private and public sectors. For the private sector, all shareholder companies that fall under the Workers’ Participation Act are obliged to reach a 30 % ratio of women in their supervisory boards as of 1 January 2016. For the public sector, all layers of the federal administration have to define targets and implementation measures for equal gender representation in management positions.” (p. 67)

2. Racism, xenophobia and related intolerance

“One concrete example is the case of **Germany**, where the parliament published data on the number of incidents targeting accommodation centres for asylum seekers. These data show a dramatic increase in such incidents – from 203 recorded in 2014 to 1,031 in 2015, as Table 3.1 shows. Between 2012 and 2014, most violent incidents “in connection with the accommodation of asylum seekers” (see Table 3.2) were attributed to perpetrators with a left-wing background (politically motivated criminality – left; politisch motivierte Kriminalität – Links). The tendency reversed in 2015, with perpetrators of violent incidents mainly identified as having a right-wing background (politically motivated criminality – right; politisch motivierte Kriminalität – Rechts).

[...] Most of these crimes in 2015 consisted of “damage to property” (383), followed by “propaganda crimes” (206), “incitement to hatred” (109) and “arson” (95). Data from the Federal Criminal Police Office show that, in 2014, in 33 % of the cases, the suspects were known to the police for politically motivated crimes, with 31 % not known to the police. Up to the third quarter of 2015, 22 % of the suspects were known for politically motivated crimes, with 47 % not known to the police.” (p. 78)

Table 3.1: Number of incidents ‘targeting asylum accommodations’ (cases with proven right-wing motivation or where right-wing motivation cannot be excluded) in Germany, 2014–2015

	Violent incidents	Total number of incidents
2014	29	199
2015	177	1,031

Source: Germany, Federal Ministry of the Interior

Table 3.2: Number of incidents ‘in connection with the accommodation of asylum seekers’ in Germany, 2012–2015

Year	Violent incidents	Total number of incidents
2012	21	62
2013	121	399
2014	188*	895*
2015 (up to 10 November)	140	1,610

Note: * Not comparable with previous years because of a change in the recording procedure

Source: German Bundestag (2015), German government’s response to inquiry from several members of German parliament (Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Monika Lazar, Luise Amtsberg, Volker Beck (Köln), weiterer Abgeordneter und der Fraktion BÜNDNIS 90/DIE GRÜNEN – Drucksache 18/6513)

(p. 78)

Promising practices: Educating children about racism

“**Germany** has implemented a programme that funds projects and initiatives that deal with racism and xenophobia and provide support for victims of racism and individuals who wish to exit racist and radical groups. The programme seeks to promote democracy in society by supporting initiatives that aim to prevent Islamist, left-wing, right-wing, and nationalist radicalization. *For more information, see: Demokratieförderung und Extremismusprävention*” (p.79)

“In **Germany**, an agreement was reached with social media companies. The agreement entails measures and practices for swiftly reviewing and removing illegal racist and xenophobic hate speech on social media platforms.” (p. 81)

“In **Germany**, the Federal Anti-Discrimination Agency published a legal opinion on the effective prosecution of hate crime, interpreting the terminology and existing legal provisions on hate crime in **Germany** and proposing relevant legislative amendments for prosecuting hate crime.” (p. 82)

“CERD also called on the **German** authorities to amend or repeal section 22 (1) of the Federal Police Act, which, for the purpose of controlling immigration, enables police to stop and question persons in railway stations, trains and airports; demand their identity documents; and inspect objects in their possession. Similarly, the Council of Europe Commissioner for Human Rights expressed concern regarding reports about “racial profiling practices among the **German** police”. (p.84)

“The **German** Federal Anti-Discrimination Agency published a guide to assist work councils and labour unions in dealing with ethnic discrimination and racism at work, providing legal and practical advice on how to combat and prevent ethnic and religious discrimination. It also published a manual on legal discrimination protection that sets out the possible legal steps to be taken in discrimination cases. The manual provides legal guidance to lawyers, counsellors, advisers, and people who are victims of discrimination on various grounds, including race and ethnicity.” (p. 86)

3. Roma integration

“In other Member States, such as **Germany**, criticism targeted the placement of children whose mother tongue is not German into separate preparatory classes. CERD expressed concern that early selection for separate educational levels “leads to an overrepresentation of minority students in [the] lower school stratum” and, particularly for Sinti and Roma, “further creates segregation [...] with no real chances of enhancing their education and work.” (p. 101)

“Funding for implementing and monitoring local-level strategies and action plans varies greatly across Member States. In many cases, actions are funded through combinations of the national budget, municipal budgets and European Structural and Investment Funds (ESIF). [...] The **German** federal programme ‘Live Democracy! Active against Right-wing Extremism, Violence and Hate’, for instance, funds specific pilot projects dealing with anti-Gypsyism and supports the structural development of a nation-wide NGO, the Documentation and Cultural Centre of German Sinti and Roma (Dokumentations- und Kulturzentrum Deutscher Sinti und Roma).” (p. 106)

4. Information society, privacy and data protection

“In **Germany**, the Second Act amending the Federal Data Protection Act (Zweites Gesetz zur Änderung des Bundesdatenschutzgesetzes) was adopted on 25 February 2015. With this amendment, the Federal Commissioner for Data Protection and Freedom of Information becomes a supreme federal authority that enjoys the same status as, for example, federal ministries, the Deutsche Bundesbank or the Federal Constitutional Court once the act comes into force on 1 January 2016. The reform aims to guarantee the full independence of the Federal Data Protection Commissioner, who was previously attached to the Federal Ministry of Interior and under its administrative supervision.” (p123)

“Some Member States struck down data retention early on. In **Germany**, the parliament adopted legislation to reintroduce it in 2015. However, the proposal includes several safeguards, including the obligation to encrypt and log file access. In addition, it requires applying the “four-eyes principle”, which means two persons must always authorise technical access to the data. Moreover, the content of communications, websites accessed and metadata of email traffic are explicitly excluded from the scope of the retained data.” (p.126)

5. Rights of the child

“The Austrian annual tax-free child allowance doubled to €440 per child, and in **Germany**, the monthly child benefit increased by €4 – from €184 to €188 – in 2015. Some ministries and civil society criticised the increases as insufficient, such as in Austria and **Germany**.” (p. 141)

“Austria introduced the offence of cyberbullying, while **Germany** also criminalised the unauthorised distribution of photos likely to significantly damage the reputation of the person shown, with the aim of combating cyberbullying.” (p. 144)

6. Access to justice, including rights of crime victims

“The **German** law on strengthening victims’ rights in criminal proceedings came into force on 31 December 2015. Besides amending the Criminal Code, the act also established a new law: the Act on Psychosocial Assistance in Criminal Procedure (which FRA’s 2014 Annual report

addressed in Section 7.3.1). The court must assign psychosocial assistance to all victims of sexual abuse and victims of serious crime under the age of 18. Older victims of serious crimes such as rape, human trafficking and attempted murder can also request free support.” (p.167)

“The **German** Federal Ministry of Justice and Consumer Protection in July presented a draft law to adapt the criminal law on sexual abuse and rape (an issue addressed in Section 7.4.1 of FRA’s 2014 Annual report). This introduced legal changes to define as rape several acts that are not defined as such under current law. According to some human rights and women’s rights organisations, the changes still fall short of the requirements of the Istanbul Convention.” (p. 172)

Promising practice: Financing efforts to support refugee women who are victims of violence

“The Ministry for Health, Emancipation, Care and Old Age of the State of North Rhine-Westphalia, in **Germany**, in 2015 allocated €900,000 to counselling and support of refugee women who have been victims of violence and are traumatised. Organisations working in the field may apply for additional funding to increase their work or initiate particular projects. The money can also be used to finance urgent psychotherapeutic treatment of refugee women who have no possibility of receiving funding for the treatment under the Victims Compensation Act, or whose right to financing of treatment is uncertain under the Asylum Seeker’s Benefits Act. The organisations can also use the money to pay for refugee women to stay in women’s shelters. *For more information, see: Ministerium für Gesundheit, Emanzipation, Pflege und Alter des Landes Nordrhein-Westfalen, ‘Advice and assistance to traumatized refugee women who have been victims of violence’ (Beratung und Unterstützung von Gewalt betroffenen traumatisierten Flüchtlingsfrauen)*” (p. 173)

“**Germany’s** Federal Anti-Discrimination Agency published a report by an independent expert commission in December 2015, outlining recommendations for measures against gender discrimination. One of the three key issues identified in the report is better protection against sexual harassment at work. Findings show that at least 50 % of women in **Germany** encounter sexual harassment at work in all kinds of sectors. The report recommends strengthening employers’ efforts to combat sexual harassment by increasing training for higher management and workers’ councils, and establishing complaint mechanisms. The commission also suggests legal reforms – such as increasing the maximum period for taking legal action from two to six months, and allowing representative legal action by anti-discrimination organisations.” (p. 174)

7. Developments in the implementation of the Convention on the Rights of Persons with Disabilities

“FRA evidence shows that EU Member States have implemented a wide range of measures to bring persons with disabilities into the policy-making process. [...] the **German** Federal Ministry of Labour and Social Affairs followed up the 2014 evaluation of the Federal Act on Disability Equality by inviting experts from political parties, federal ministries, commissioners for matters concerning persons with disabilities, and civil society to a forum to discuss possible revisions of the act. Drawing on this input, the revised draft bill to amend the act includes a proposal to promote participation by organisations representing the interests of people with disabilities.” (pp. 190-191)

“The Czech Republic and **Germany**, two of the nine EU Member States so far reviewed by the CRPD Committee, used the release of their concluding observations as an opportunity to discuss follow-up actions. The **German** Federal Government Commissioner for Matters of Persons with Disabilities, along with the **German** Institute for Human Rights, organised a major conference a month after the publication of the concluding observations. Participants from government, public administration, and civil society discussed implications for policy-making at federal, regional, and local levels, highlighting the situation of persons with psychosocial disabilities, supported

decision-making, and healthcare for refugees with disabilities as particularly urgent issues. On a smaller scale, the Czech Government Board for People with Disabilities met to debate the CRPD Committee's recommendations." (p. 192)

Thematic Reports

European legal and policy framework on immigration detention of children (June 2017)

<http://fra.europa.eu/en/publication/2017/child-migrant-detention>

"In **Germany**, the possibility of detaining unaccompanied children pending removal depends on the different regional provisions. For example, Lower Saxony, North Rhine-Westphalia, RhinelandPalatinate and Saxony-Anhalt do not in principle detain unaccompanied children pending deportation; neither does Hamburg, unless they have committed a criminal offence." (p. 39)

"Another approach that certain Member States use to reduce the risk of arbitrary detention of children is setting, by law or policy, a minimum age under which a child cannot be detained. This is usually done for unaccompanied children, although **Germany** also has examples of policies concerning children accompanied by a parent. For example, in Schleswig-Holstein, mothers raising a child who is less than 10 years of age are not detained pending deportation; in Thuringia, single parents raising a child who is less than 7 years of age are not detained pending deportation." (p. 39)

"Whether alone or with their families, children may be held briefly at the border to determine their right to entry, or within the country if they are suspected of violating immigration law. [...]Time frames are usually rather short, although a proposal has been tabled in **Germany** to extend deprivation of liberty in transit zones from four to ten days. Where non-admitted persons are not kept in the transit zone of an airport, police cells or border guards' facilities are typically used for short-term holding." (p. 77)

Together in the EU - Promoting the participation of migrants and their descendants (March 2017)

<http://fra.europa.eu/en/publication/2017/migrant-participation>

Promising practices: Promoting social cohesion and migrant participation

"Intercultural Week

This annual nationwide public event celebrates diversity and encourages intercultural dialogue in more than 500 cities in **Germany**, with events on issues such as solidarity, fundamental rights and diversity. *For more information, see the [initiative's website](#).*

Islamic communities as local actors

This project seeks to better integrate Islamic communities into German society. Through a combination of various types of support, the project intends to improve and facilitate collaboration between communities and voluntary organisations in Germany. With this goal in mind, the project works to strengthen networks of these actors. The project offers a wide array of language courses and seminars about local topics. The participants have the right to participate in the selection of topics for these seminars, thereby strengthening long-lasting ties with other participants. Participants from Islamic communities thus function as 'multipliers' by spreading the knowledge they gain and implementing the project in their communities. *For more details, see the press release on the [Robert Bosch Stiftung's website](#).*

Young, Muslim, Active (YUMA)

The YUMA project aims to strengthen the commitment of young Muslims and to improve the way they are perceived by the **German** public. Working closely with mosques and Islamic organisations, the project trained some 100 young people as multipliers and ‘bridge builders’ within their communities between April 2014 and April 2016. The project aims to strengthen both young Muslims and partnerships with mosque congregations, to help develop a more nuanced view of Islam. Alongside the content and methods imparted to the trainees in seminars, workshops and larger-scale conferences, the transfer of the YUMA concept to other states in **Germany** is a key component, starting by transferring YUMA to North Rhine-Westphalia, Hamburg and Baden-Württemberg. *For more information, see the [project’s website](#).*” (p. 28)

Promising practices: Diversity in school

“In **Germany**, the Federal Government Commissioner for Migration, Integration and Refugees funded and, in cooperation with the Georg Eckert Institute – Leibniz Institute for International Textbook Research, carried out research on migration and integration in school textbooks in 2015. The results show that the educational material does not always reflect diversity in society and that migration issues are mostly addressed in a ‘conflictual’ and crisis-framed approach. The commissioner outlined recommendations for educational practice and policy in response to these findings.” (p. 42)

“FRA’s research found that eight Member States take actions to encourage the recruitment of third-country nationals or citizens with migrant backgrounds [...].In **Germany**, federal states inform young people with immigrant backgrounds about job opportunities in the civil service, while some promote employment in the public sector, offering internships in cooperation with schools, job centres and migrant organisations.” (p. 48)

Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States <http://fra.europa.eu/en/publication/2017/child-friendly-justice-childrens-view>

“Legislation recognising the right of children to be heard in criminal proceedings as victims and witnesses exists in seven of the EU Member States included in the research (in Poland, this applies to child victims only). In three states – Bulgaria, **Germany** and the United Kingdom (England and Wales) – the right to be heard is not expressly enshrined in law. It remains at the police and prosecuting authorities’ discretion to call on a child to testify.” (p. 19)

“Children indicated that it is better for them to have fewer people present during hearings, explaining that interacting directly with many professionals makes the emotional aspect of providing evidence significantly harder. [...] Even though **German** law provides for the possibility of excluding the public and the defendant, children report numerous people being present at hearings, including the defendant. They also stated that many hearings are conducted by several professionals, and that they are not allowed to choose someone to accompany them, which makes them feel outnumbered.” (p. 28)

“Children in **Germany** who were involved in serious criminal cases also described being interviewed in child-friendly settings at police stations. They indicated that the rooms have child-friendly decorations, furnishings and toys, as well as video recording devices to record hearings for potential use in court, and supportive tools for interviews, including anatomical dolls for collecting evidence. Children who were heard in child-friendly rooms appreciated the child-specific equipment but generally found that the video cameras made them feel uncomfortable. Some children also stated that the recording equipment in the police hearing rooms malfunctioned, meaning they had to repeat their testimony to police officers. Children also felt uncomfortable if several people were present in the monitoring room and would appreciate more proactive advice or support from the police.” (p. 30)

“In general, children involved in criminal proceedings perceived their participation as significant to the process and stated that it is very important to be heard. [...] In **Germany**, nearly all interviewees perceived their hearings as influential on the proceedings – some because the sentence imposed was severe, others because a sentence was handed down at all.” (p. 37)

“In **Germany**, children involved in custody cases are usually heard by judges after an individual assessment by one or more professionals (often psychologists). The majority of those interviewed found professionals’ and judges’ attitude and communication skills poor. Children described judges’ attitudes as rather formal and unfriendly. They complained about the lack of interaction with, and feedback from, judges; their poor interpersonal skills; and the impression that judges lacked interest in the hearings and were not listening to them.” (p. 40)

“In **Germany**, children reported being accompanied by legal counsel during hearings with judges. Legal counsels are active in Kindschaftsachen pursuant to § 151 of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction; these include all procedures assigned to family courts – for example, parental custody, visiting rights and guardianship matters. The legal counsel is appointed as a party to the proceedings, enjoys all procedural rights, and is the representative of the child’s interests next to the parents. The legal counsel is supposed to determine the child’s will and best interest, and has to inform the child about the proceedings in an age-appropriate manner. The legal counsel may request the formal or informal hearing of certain persons associated with the child and may propose or reject certain entities or persons as legal representative (guardian ad litem; Vormund) or supplementary curator (Ergänzungspfleger). The legal counsel may appeal in the interest of the child; if the child is older than 14, the legal counsel and child may be entitled to appeal independently of each other. Legal knowledge is required of both the legal counsel and the guardian ad litem. Psychological and pedagogical skills are desirable. Although children appreciated the information provided by legal counsels before hearings, they did not always consider their support effective during hearings.” (pp. 43-44)

“In **Germany**, child-friendly waiting areas or ‘play-rooms’ (Spielzimmer) are available in only a few courts, such as the Higher Regional Court Berlin and the Higher Regional Court Bavaria. Interviewees described a playroom in which they could wait, which was furnished with books, toys, games and a hot drinks vending machine, although no food. Like hearing rooms, these waiting rooms were perceived as too childish by older children; two interviewees who used the place (11 and 15 years old) stated that they are for very young children. One of these interviewees was even critical of the shared children’s waiting room, as she found the other children’s crying stressful and confusing. One 12-year-old interviewee described a children’s corner at the District Court Baden-Württemberg, marked out with rugs and containing seating for children. However, they also found this area to be only for very young children.” (p. 48)

“In **Germany**, children involved in criminal proceedings generally considered themselves properly informed and prepared for criminal proceedings. These children reported receiving information and being prepared for trial hearings by psychosocial assistants, psychologists and the police. Children who received information from counselling services before filing complaints with the police, and from psychosocial assistants before trial hearings, assessed the information positively.” (p. 62)

“In **Germany**, children reported receiving the following information on pre-trial issues: • pre-trial/police hearings: the consequences of filing a complaint to the police, that police officers have to open an in-depth criminal investigation procedure when informed of a suspected case of sexual abuse; • the venue, date and time of the hearing; • that the video of the hearing will be accessible to the judge and the prosecutor; • a visit to court or a look at an empty courtroom; • seating arrangements in court; • the right to be heard: an explanation of what it means to be heard and

the fact that it is voluntary; • support: an explanation of children’s right to support, the possibility of having a joint plaintiff attorney and legal representation at juvenile court, the availability of psychosocial assistance and the possibility of choosing who accompanies them; • behavioural guidelines: that children should stay calm during the hearing, not be nervous, not lie and tell the truth in full; • rights during the hearing: that children may answer a question by saying that they do not remember any more, if that is the case, and that they may take breaks and stop the hearing.” (p. 63)

“Children heard in **Germany** mentioned that the judges usually greeted them before and after hearings and sometimes complimented them on their behaviour, which they highly appreciated. However, children also spoke about a lack of prior information and of being shocked by the defendant’s presence in the courtroom.” (p.67)

“In **Germany**, children described receiving support before, during and after proceedings from psychosocial assistants, witness and victim support services, psychologists, counselling services, social workers and lawyers. Children particularly appreciated being prepared before hearings by counselling services before filing a complaint with the police and by psychosocial assistants before trial hearings. However, counselling services were less frequently reported than psychosocial assistants because, at this early stage of the proceedings, they are often still not involved.” (p. 93)

“In family law proceedings, the right of children as victims and witnesses to interpretation and translation services is guaranteed by law in all countries studied except for France and the United Kingdom. [...] For instance, **Germany** ensures the right to translation and interpretation only for those bringing a case (plaintiffs), not for witnesses and parties.” (p. 103)

Incitement in media content and political discourse in Member States of the European Union (November 2016)

<http://fra.europa.eu/en/publication/2016/incitement-media-content-and-political-discourse-member-states-european-union>

“Between 1 January 2014 and 1 September 2016, courts, independent press councils and independent regulatory or supervisory bodies for broadcasting organisations ruled on cases or complaints relating to incitement to hatred against (members of) Muslim, Jewish and Christian communities in a number of Member States, including Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, **Germany**, Hungary, Italy, Lithuania, the Netherlands or Slovakia. [...] The **German** Press Council found that a comment included in a daily newspaper describing Islam as an obstacle to integration could disturb public peace, as well as it was in violation of provisions of the press code relating to respect for human dignity, religion and non-discrimination.” (pp. 12-13)

Violence, threats and pressures against journalists and other media actors in the European Union (November 2016)

<http://fra.europa.eu/en/publication/2016/violence-threats-and-pressures-against-journalists-and-other-media-actors-european>

“In **Germany**, during a demonstration by an Islamophobic and xenophobic organisation in 2015, journalists were attacked by several demonstrators, including a photographer who was kicked to the ground and his equipment destroyed. Several attacks on journalists were recorded during antirefugee demonstrations held in the **German** federal state of Saxony in 2015 and 2016. An enquiry into these attacks was started by the Die Linke party in the Saxon parliament, concerning 26 of these attacks. The inquiry found that investigations were opened in 13 cases, with one resulting in criminal charges.” (p. 12)

“Concerns were raised in **Germany** regarding a proposed reform to the Federal Criminal Police Office Act (BKAG), particularly as regards surveillance measures that would affect the practice of journalism. The **German** Constitutional Court found in April 2016 that some proposed provisions in the act were at least partly unconstitutional. In June 2016, the **German** government proposed a draft law reforming the Federal Intelligence Service. This bill was criticised, among others, by three Special Rapporteurs of the United Nations: the special rapporteur on the promotion and protection of the right to freedom of opinion and expression; the special rapporteur on the situation of human rights defenders; and the special rapporteur on the independence of judges and lawyers. They claimed that the draft would create “overbroad conditions for the collection and processing of data” and “insufficient safeguards for the rights of foreign journalists and lawyers.” Journalist associations and other interest groups in **Germany** were also critical of legislation relating to the retention of telecommunications data. The law of 2010 had been declared unconstitutional by the **German** Constitutional Court in 2010. A new bill was adopted by parliament in October 2015 and enacted in December 2015. Two urgent applications against the law were rejected by the Constitutional Court in July 2015. However, the new law was criticised by a number of **German** press and broadcasting organisations in September 2015, who states that its provisions on storage, collection and other use of telecommunications data for security purposes interfered with the professional secrecy of journalists and could therefore arguably undermine press freedom.” (p. 16)

Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers (November 2016)

<http://fra.europa.eu/en/publication/2016/criminal-detention-and-alternatives-fundamental-rights-aspects-eu-cross-border>

“EU Member States consider fundamental rights implications in their legislation on transfers of prisoners in various ways. [...] In **Germany**, the public prosecutor’s report on which a decision to transfer is based must include information on the social ties of the person concerned along with information on the marital status, number of children and place of residence of family members. The report must also include the request of the person concerned, or if the request was initiated by the public prosecutor, a statement of the person, which may also elaborate on social reintegration. According to the regulatory provisions of the **German** state of Brandenburg, the prison authority’s statement shall determine whether a transfer is advisable considering general preventative aspects and specific deterrence of the individual offender. However, the implementing law does not explicitly require taking the additional considerations into account.” (p. 42)

“A majority of states do not have procedures to ensure that the legal counsel speaks the same language as the suspect/sentenced person; however, eight states (Belgium, **Germany**, Finland, France, Lithuania, the Netherlands, Poland and Portugal) provide for the assistance of interpreters to facilitate communication between lawyers and foreign clients.” (p.90)

“The victim’s right to information about release becomes more complex where a prisoner has been transferred; for example, in **Germany**, once a prisoner has been transferred, the victim would have to request the information from the authorities in the executing state, and foreign law applies.” (p. 102)

Rights of suspected and accused persons across the EU: translation, interpretation and information (November 2016)

<http://fra.europa.eu/en/publication/2016/rights-suspected-and-accused-persons-across-eu-translation-interpretation-and>

“One clear trend in four Member States (Austria, Bulgaria, **Germany** and Malta) is that the main criterion for allowing oral translations of essential documents is whether or not a person has legal counsel. [...] In **Germany**, a recognisable trend of not providing written translations of judgments when the accused has a defence counsel has emerged in recent case law. There are doubts as to the lawfulness of such a scheme, which has been criticised in the legal literature and by legal practitioners. When it is not possible for an accused to read the judgment to comprehend the reasons for their conviction, this arguably does not meet the requirements of the right to a fair trial. According to the law, “As a rule, written translations of custodial orders, bills of indictment, penal orders and non-binding judgments are necessary for accused persons who do not have a command of the German language to exercise their rights under the law of criminal procedure. A written translation of excerpts is sufficient if the accused’s rights under the law of criminal procedure are safeguarded. An oral translation of the documents or an oral summary of their content may be substituted for a written translation if the rights of the accused under the law of criminal procedure are thereby safeguarded. As a rule, this can be assumed if the accused has a defence counsel.” Thus, according to this provision, it is possible to refrain from providing written translations in the majority of cases if the accused has legal counsel.” (pp. 39-40)

“In **Germany**, where using the register is not mandatory, several professional associations of judges and prosecutors have noted that for cost reasons, it is not uncommon for courts and police to use interpreters and translators who are not sufficiently qualified.” (p. 50)

“According to Directive 2012/13/EU, Member States have a continuous obligation to provide information on the accusation, and should promptly inform persons about any changes in the information given. In practice, aside from the initial information provided before questioning, or as the case may be together with the official notification of the accusation, as well as when taking a person into custody, authorities usually only provide updates on details of the accusations at the end of investigations, when cases are brought to court, and during court proceedings. For example, practitioners in **Germany** reported that, during preliminary proceedings, informing accused persons about changes in the details of accusations is not legally prescribed. After an accused’s examination, police and the public prosecution office undertake all investigations. They only inform the accused whether public charges are preferred or proceedings are terminated at the conclusion of investigations.” (p. 69)

“Seventeen Member States ensured that the Letter of Rights includes a clear statement on the maximum number of hours or days suspects or accused persons may be deprived of their liberty.[...] In **Germany**, the different letters used contain no clear information about the permissible length of an arrest, though the relevant authority informs detainees that they must be brought before a judge without delay – at the latest on the day after their arrest, though the relevant authority informs detainees that they must be brought before a judge without delay – at the latest on the day after their arrest.” (p. 74)

Asylum and migration into the European Union in 2015 (May 2016)

<http://fra.europa.eu/en/publication/2016/asylum-and-migration-european-union-2015>

“Authorities’ efforts to fight the smuggling of people sometimes involved excessive reactions. After an increase in arrivals, many people decided to help refugees reach a shelter or get closer to their destinations – for example, by buying them train tickets or transporting them in their cars. In **Germany**, a number of Syrians who picked up relatives and friends in Austria and brought them to **Germany** had to pay fines for assisting unauthorised entry (on the basis of Sections 14 and 95 of the **German** Residence Act (Aufenthaltsgesetz)).” (p. 12)

“In 2014, one in six asylum applications in the EU were lodged by applicants from the western Balkans, who had little chance of success. [...] For example, more than 470,000 asylum applications were pending in **Germany** at the end of December 2015, around 144,000 of which were from western Balkan countries, including over 23,000 repeat applications.” (p. 25)

“In **Germany**, in principle, migrants in an irregular situation are entitled to healthcare beyond emergency services, but social welfare staff have a duty to report such migrants to the police if they receive non-emergency care. Given the risk of being reported, the right to primary and secondary healthcare remains only on paper.” (p. 29)

Ensuring justice for hate crime victims: professional perspectives (April 2016)

<http://fra.europa.eu/en/publication/2016/ensuring-justice-hate-crime-victims-professional-perspectives>

“The situation in **Germany** is particularly complex. It appears that all hate crime is categorised as “politically motivated crime”. This approach is in line with the fact that the police organisation protecting the constitution (Verfassungsschutz) is the main authority tasked with investigating hate crimes. The question arises whether this type of framework can adequately capture, for example, homophobic, sexist or hate crimes against persons with disabilities. According to data provided by the **German** Ministry of the Interior, in 2012, 4,514 hate crime offences were registered as “politically motivated crimes”. Of these, 2,922 were registered as having been committed with a xenophobic motivation; only 186 as relating to the perceived sexual orientation; and only 29 in relation to a perceived disability. The political framework within which these crimes are approached may explain the relatively low numbers of these latter forms of bias-motivated crimes.” (p. 23)

“However, partly because specialised support services often provide support to victims of hate crime, the resulting support is highly fragmented and somewhat piecemeal. Given the many forms of discriminatory offences, this is not surprising. There are NGOs that support asylum seekers as victims of racist violence, NGOs that help women with disabilities in case of harassment, groups specifically working with victims of racist violence by right extremist groups, organisations assisting victims of LGBTI-related violence, and so on. Most of these NGOs are small and cover only a very limited topical and geographical area. [...] A possible countermeasure to the fragmentation of victim support services was introduced in **Germany**. In October 2014, a number of regional counselling services and initiatives – working with victims of right wing, racist and anti-Semitic violence – formed a coalition aiming to coordinate their work, establish common standards, and represent the interests of such services on the national level.” (pp. 37-38)

“When it comes to police services reaching out to victims of hate crime, one of the most common measures is to appoint officers – liaison or contact officers – who are specifically tasked with establishing links and communication flows to individuals or groups at risk. The majority of experts identify the establishment of specialised units or officers as a means of improving a police service’s response to hate crime. In fact, the police of about one third of all Member States have

introduced some form of specialisation. Specific measures were enacted in Belgium, Denmark, France, **Germany**, Ireland, the Netherlands, Sweden, Slovakia and the United Kingdom. For instance, establishing contact points for LGBTI persons is widespread in a number of **German** federal states. According to an interviewee from a law enforcement agency, the police in Berlin cooperates with LGBTI, migrant and religious groups to establish stronger links and build trust. The police in Berlin also ran a project called 'Transfer of Intercultural Competence' from 2003 to 2011. Intercultural aspects are now integrated in all parts of police service. Furthermore, a central contact point for intercultural affairs was installed." (p. 42)

Protection against discrimination on grounds of sexual orientation, gender identity and sex characteristics in the EU – Comparative legal analysis – Update 2015 (December 2015)

<http://fra.europa.eu/en/publication/2015/lgbti-comparative-legal-update-2015>

"In eight other Member States (Bulgaria, the Czech Republic, **Germany**, Italy, Latvia, Poland, Romania and Slovakia) incitement to hatred, violence or discrimination against LGBTI people is not explicitly defined as a criminal offence." (p. 59)

"In 2012, the **German** Ethics Council (Ethikrat) published a comprehensive opinion on intersex issues, providing a range of recommendations to safeguard the rights of intersex people. The opinion argues that legal systems presume the existence of a strict sex binary that does not always occur in nature. Thus, legal professionals and policy makers, and not just health and healthcare professionals, should concern themselves with intersex issues." (p. 69)

"The **German** Ethics Council has recommended allowing the use of an 'other' sex category in certifications. In **Germany**, it is possible to issue birth certificates without a sex identifier or marker; since 1 November 2013, there is no deadline to include such a marker." (p. 73)

"In an important **German** case, the Cologne District Court recognised the pain and suffering of an intersex person who was subjected to medical surgery 30 years earlier without receiving adequate information. The claimant brought a suit for damages - on the grounds of erroneous assignment of a sex and physical mutilation - against the surgeon who removed the claimant's uterus and fallopian tubes when she was 18 years old. The court ruled that the operation was conducted without the necessary consent and that the claimant had not been comprehensively informed by the defendant surgeon. It awarded damages of €100,000 plus interest." (p. 75)

"In **Germany**, the Federal Office for Migration and Refugees (Bundesamt für Migration und Flüchtlinge, BAMF) denied refugee status or subsidiary protection to a homosexual man from Nigeria. The Administrative Court of Regensburg (Verwaltungsgericht) found that Nigerian legislation regarding homosexuals "must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution", and therefore gives rise to a right to asylum. In this particular case, however, no asylum was granted because the applicant was unable to prove – as required under **German** legislation – that he entered the country without travelling through a safe third country in which he could have found safety from persecution. In light of the real risk of persecution, however, the applicant was awarded a suspension of deportation." (p. 105).

Violence against children with disabilities: legislation, policies and programmes in the EU


<http://fra.europa.eu/en/publication/2015/children-disabilities-violence>

"FRA research reveals that all Member States except for **Germany**, Malta and the Netherlands have legislation obliging professionals who work with children to report child abuse, neglect and

violence. In **Germany**, however, certain professionals are required to work with the child and his/her parents towards an acceptance of support services; they can confidentially obtain advice from an experienced specialist and, if the situation does not improve, are authorised to report it to the youth protection authorities.” (p. 40)

“In **Germany**, the ‘National plan of action’ adopted to implement the CRPD aims to improve the protection of the best interests of the child in care institutions, and calls for research on sexual violence. A concrete result of this national plan was the holding of a roundtable on sexual child abuse in dependency and power situations in private and public facilities and in the family sphere. The roundtable’s final report included guidelines for preventing, intervening in, evaluating and initiating change after sexual violence by a staff member in an institution, including – but not specifically referring to – institutions for children with disabilities.” (p. 43)

Table 4: Select examples of awareness-raising programmes targeted at children with disabilities

Name	Description	Reference and link
Emma Untouchable!	In the context of the government-funded programme ‘Abuse, neglect and violence in childhood and adolescence’ (<i>Forschungsförderung: Missbrauch, Vernachlässigung und Gewalt in Kindheit und Jugend</i>), the University of Rostock, in cooperation with the NGO Wildwasser München e.V., developed a training programme aimed at enabling girls with intellectual disabilities to recognise sexual abuse, avoid or leave potentially dangerous situations, and get help.	Germany , Clinic for Psychiatry, Neurology, Psychosomatics and Psychotherapy in Children and Adolescents, University of Rostock (Klinik für Psychiatrie, Neurologie, Psychosomatik und Psychotherapie im Kindes- und Jugendalter der Universitätsmedizin Rostock), see: http://emma-unantastbar.med.uni-rostock.de .
Prevent and Act - sexual abuse against children and adolescents with disabilities	The project is funded by the government programme “Sexual violence against children and adolescents in educational contexts” (<i>Forschungsförderung: Sexuelle Gewalt gegen Kinder und Jugendliche in pädagogischen Kontexten</i>) and is carried out by the University of Cologne in cooperation with the Bodelschwing foundation. It is targeted at children and youth with various disabilities, as well as professionals working with children with disabilities, i.e. carers, teachers, psychologists. The project aims to undertake fact finding on how much children know about sexual abuse, the prevalence of sexual abuse in institutional settings and the psychological consequences of sexual abuse. Additionally, the project aims to examine existing curricula and develop better prevention concepts and targeted trainings for carers.	Germany , Department of Remedial Education and Rehabilitation, Human Sciences Faculty, University of Cologne (Humanwissenschaftliche Fakultät, Universität zu Köln), see: http://semb.eu/ 

(p. 88)

Surveillance by intelligence services: fundamental rights safeguards and remedies in the EU (November 2015)

<http://fra.europa.eu/en/publication/2015/surveillance-intelligence-services>

“Three examples illustrate where the accessible law of a Member State provides insufficient details to allow for a legal analysis of the exact procedure in place on how signals intelligence is collected. [...] Similarly, in **Germany**, some of the SIGINT activities that the Federal Intelligence Service (BND) may undertake is not regulated in detail by law, unlike other SIGINT activities in **Germany**. The Federal Intelligence Act states that the BND “shall collect and analyse information required for obtaining foreign intelligence, which is of importance for the foreign and security policy of the Federal Republic of **Germany**” and that it “may collect, process and use the required information, including personal data [...]”. This definition of the BND’s competences provides the legal basis for the **German** intelligence service to perform SIGINT activities abroad between two foreign countries or within one single foreign country, provided that the intercepted signals have no connection - besides the actual data processing - with **Germany**. This SIGINT activity is referred to as “open sky” (offener Himmel), and, according to various commentators, takes place outside of any legal framework. So far however, no judicial decision, either in **Germany** or by the ECtHR, has confirmed this assessment. This surveillance method does not fall within the scope of the Act on Restricting the Privacy of Correspondence, Posts and Telecommunications (G 10

Act), which was adopted in application of Article 10 (2) of the Basic Law to lay down the specific conditions to restricting privacy of communications. Consequently, this surveillance method is outside the G 10 Commission's remit (the expert body in charge of overseeing the intelligence services). The Parliamentary Control Panel is the sole body that oversees this surveillance method. The absence of tight control has triggered calls for reform, and the matter is being discussed before the NSA Committee of Inquiry (NSA - Untersuchungsausschuss)." (p. 21)

"In **Germany**, Article 10 (2) of the Basic Law (Grundgesetz) permits restrictions of the inviolability of the privacy of correspondence, post and telecommunications. It states, "Restrictions may be ordered only pursuant to a law. If the restriction serves to protect the free democratic basic order or the existence or security of the Federation or of a Land, the law may provide that the person affected shall not be informed of the restriction and that recourse to the courts shall be replaced by a review of the case by agencies and auxiliary agencies appointed by the legislature." The 'strategic restrictions' prescribed by the G 10 Act enable the Federal Intelligence Service (Bundesnachrichtendienst, BND) to wiretap international communications to and from **Germany**. They are called 'strategic' because of their original military purpose. In 1994, the BND's mandate was expanded to include the fight against crime. The 1994 Combating Crime Act (Verbrechensbekämpfungsgesetz) amended the G 10 Act, in particular the grounds on which strategic surveillance could be carried out. The BND is authorised to proceed only with the aid of selectors (Suchbegriffe), which serve and are suitable for the investigation of one of the threats listed in the law. The BND sets a list of either format-related selectors (e.g. telephone number or email) or content-related selectors (e.g. holy war). The BND needs to specify the region and the percentage of the communication channel it wants to monitor. This percentage cannot exceed 20 % of the full telecommunication channel capacity. In 2013, for example, the BND established a list of 1,643 selectors in the context of internal terrorism to be applied on 906 telecommunication channels, of which only 73 turned out to be useful from an intelligence point of view. The selectors should not contain any distinguishing features leading to a targeted telecommunication connection nor affect the core area of the private sphere. These restrictions do not apply to communications outside **Germany**, unless they involve **German** citizens. The list of selectors and the overall request for surveillance is controlled a priori by the G 10 Commission, the **German** oversight body, which decides whether the measures are permissible and necessary. The surveillance order is valid for a renewable three-month period." (pp. 21-22)

"**Germany** lists situations in which its intelligence service may gather signals intelligence: armed attack, international terrorism, arms proliferation, smuggling of narcotics of substantial importance in the EU, counterfeiting of money undermining the stability of the Euro, money laundering, and human trafficking of substantial importance." (p. 26)

"Among the five Member States that have detailed legislation on signals intelligence (France, **Germany**, the Netherlands, Sweden and the United Kingdom), the **German** Parliamentary Control Panel, which is prescribed by Article 45 (d) of the **German** Basic Law (Grundgesetz), i.e. constitution, was granted the broadest powers of oversight over its intelligence services. It is tasked with supervising the three intelligence services and is responsible for approving important aspects of the strategic surveillance the services may carry out. It receives biannual reports from the Federal Ministry of the Interior regarding the implementation of the G 10 Act, which provides the legal basis for the strategic surveillance. The control panel has the right to request information from the federal intelligence authorities, to inspect their premises and to commission reports by external experts. It reports twice during the legislature to the parliament. A whistleblower mechanism provides for the possibility of being approached directly by intelligence service staff. However, the fact that its access to files and information may be limited by the "direct executive responsibility" of the Federal government means that it has restricted powers." (pp. 37-38)

“In **Germany**, the Parliamentary Control Panel has the right to request information, documents and other data files from the federal government and the three intelligence services. However, the obligation of the government and the intelligence services to provide information covers only documents the government has produced, and not, for example, those of foreign services or documents that would affect the personal rights of third parties. Though the Control Panel’s members are sworn to secrecy, they can comment publicly on certain issues, as long as the decision to do so is reached by two-thirds of its members. It may also request expert witnesses to submit evaluations, which are forwarded to parliament as reports.” (p. 40)

“In **Germany**, short activity reports presented before parliament are made public. Every other document is kept confidential.” (p. 41)

“In **Germany**, the G 10 Commission can request the federal DPA to provide an opinion on issues related to data-protection safeguards when performing its tasks. In principle, however, the G 10 Commission is exclusively competent to monitor the data processing of the services under its supervision. For the so-called ‘open-sky’ data, which are not controlled by the G 10 Commission, the federal DPA should in principle be competent to supervise whether data protection safeguards are respected by the intelligence service (BND), which should facilitate its work. That said, this matter is subject of on-going discussions, including before the NSA Committee of Inquiry of the **German** Federal Parliament.” (p. 48)

“In **Germany**, the federal and state (Länder) Data Protection Commissioners adopted two resolutions proposing measures for better protection of personal data and privacy. One asked parliament to remove the current oversight system’s deficiencies. Initiating an investigation, for instance, is a necessary power of any DPA and should be provided for by law. The resolution also asked to embed DPAs in the oversight system of intelligence services, thus taking advantage of their expertise. These calls build on a Federal Constitutional Court (Bundesverfassungsgericht) judgment on the anti-terrorism data file, which held that in a surveillance system that is not open to scrutiny by individuals, an effective oversight system must be in place. When various intelligence services exchange data, there must also be enhanced cooperation among the supervisory data protection authorities. Moreover, the Federal Data Protection Commissioner highlighted gaps resulting from the fragmentation of the oversight system, and asked the legislator to amend the legal framework. The Federal DPA also emphasised that effective control requires adequate human resources and technical know-how.” (p. 50)

“In **Germany**, the restriction of the right to information is stipulated in Article 10 of the Basic Law, i.e. the constitution (Grundgesetz), and in the G 10 Act. As stated by the Federal Constitutional Court, the right may be restricted because of secret surveillance, but the individual shall be informed after the threat has disappeared. Regarding targeted surveillance, individuals must be informed about the surveillance measures within 12 months after their discontinuation, unless the information would jeopardise the purpose of the surveillance measures or harm the interests of the country. The same rule applies to strategic surveillance; however, the obligation to information is limited to processed data, not to the data immediately deleted after being deemed irrelevant for the purposes for which they were captured.” (p. 63)

“In **Germany**, the G 10 Commission decides for how long the information is withheld, unless it unanimously decides that, even after five years, the information would endanger national interests. In cases of targeted surveillance in 2013, of 1,944 persons or institutions regarding which the surveillance measures were discontinued, 650 were informed. The G 10 Commission decided to not yet inform 1,079 persons/institutions, and unanimously agreed 260 would never be informed. In cases of strategic surveillance, the G 10 Commission dealt with seven cases for information related to terrorism. In three cases, the commission decided to postpone providing

the information, in one case to reject the information indefinitely, and in three cases it took note that the intelligence service (BND) provided the information. In three cases linked to arms proliferation, the G 10 Commission noted the BND had provided the information, and in two cases linked to human trafficking, the G 10 Commission decided to postpone the provision of information. In three cases related to hostage taking, the G 10 Commission decided to postpone the provision of information and took note that, in the third case, the BND had already provided it.” (p. 65)

“The applicants in what became known as the Weber and Savaria case complained about the expansion of the Federal Intelligence Service’s (BND) powers of strategic telecommunications surveillance. The German Constitutional Court ruled that the legal provisions on the competences of the BND regarding surveillance for the purposes of pre-empting money laundering, the use of obtained data, the transfer of data to other authorities and on the limited obligation to notify affected persons, were not compatible with the **German** Basic Law. The court also demanded stronger oversight by the G 10 Commission. Because of this judgment, the law was substantially revised in June 2001. The court applied similar rules to the burden of proof as the ECtHR.” (p. 67)

Guardianship systems for children deprived of parental care in the European Union (October 2015)

<http://fra.europa.eu/en/publication/2015/guardianship-children-deprived-parental-care>

“Some regions in **Germany** – mainly family courts in Hesse – used to appoint lawyers as complementary guardians (Ergänzungspfleger), according to Section 1909 of the **German** Civil Code (BGB)) for specific tasks, e.g. in respect of the asylum and migration procedures. The Ergänzungspfleger, as foreseen in **German** law, is tasked with assisting the parents and/or legal guardians of the child to perform certain tasks because, for example, she/he lacks specific legal knowledge needed in the child’s situation. In this instance, a guardian represents the child in matters of housing or education and, at the same time, an Ergänzungspfleger represents the child in asylum procedures. This was common practice for cases of unaccompanied children in a few federal states (Länder), such as Hessen. However, on 29 May 2013 the Supreme Court decided (Decision XII ZB 530/1138) that a guardian (Erziehungsberechtigten) is not eligible for being supported by a complementary guardian (Ergänzungspfleger). Following the Supreme Court decision, family courts in some Länder now appoint a co-guardian (Mitvormund, according to Section 1775 BGB).” (p. 23)

“In the remaining Member States, the different categories of guardians coexist. In **Germany**, for example, guardians can be either employees of the guardianship institution, an association of guardians, the youth welfare office, professional guardians, or private persons who, as volunteers (§§ 1791a Section 1 S.2; 1791b Abs.1 Section 1 BGB,) offer their availability and willingness to perform guardianship duties. However, although the law stipulates that volunteers must be preferred, in practice – due to the lack of volunteers – professional guardians (mainly civil servants of the Youth Welfare Office) are mostly nominated.” (pp. 30-31)

“Another important element that may prevent the appointment of a guardian or legal representative for unaccompanied children is the legal capacity of the child under national law. When unaccompanied children have the legal capacity to act under national law in administrative proceedings and in particular in migration and asylum procedures, the appointment of a guardian and/or legal representative might be delayed or not take place at all.” (pp. 34-35)

“There is a high degree of ambiguity in both law and practice concerning the treatment of EU and EEA unaccompanied children found in the territory of another EU Member State. [...] In **Germany**, to appoint a guardian for a child whose parents are still alive and within reach, as is

often the case for EEA nationals, it is necessary to judicially declare suspension of the parents' custody (Sections 1666 and 1674 BGB). While this normally does not seem to create problems for children originating from third countries, it can be problematic for children whose parents reside in an EEA state and can be easily reached via telephone but cannot (or are unwilling to) exercise their parental responsibilities.

In **Germany**, the law provides that private associations may exercise guardianship for children. To obtain a permission by the Youth Welfare Office according to Section 54 (1) of the Sozialgesetzbuch (SGB VIII), private associations need to have the capacity and the resources to provide training and support to recruited guardians. General training for voluntary guardians is offered by some professional associations and consists of general information about guardianship. Youth Welfare Offices also organise training courses for volunteer guardians. However, given that Youth Welfare Offices are regional institutions, there can be great disparities between the regions: training courses, when available, may vary significantly in length, content and frequency." (p. 42)

"In many Member States, a child who has reached a certain age or has married is capable of concluding certain legal acts. For example, in some Member States children above a certain age are allowed to submit an asylum application by themselves. In **Germany** for instance, migrants from the age of 16 onwards are legally capable of performing acts under the Asylum Procedure and the Residence Acts, including submitting an asylum claim. While in practice guardians are also appointed for these children, this only occurs after the child lodges an asylum application. This limits the advice and guidance that the child may get during the process leading up to lodging the application. To clarify the situation, legal amendments are being drafted to raise the age of legal capacity to 18, which makes the appointment of a guardian mandatory." (p. 57)