

Coronavirus pandemic in the EU – Fundamental Rights Implications

Country: Germany

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1 Measures taken by government/public authorities

1.1 Emergency laws/states of emergency, including enforcement actions

In **Germany**, the German Constitution (*Grundgesetz*) does not as such provide for the proclamation of a 'state of emergency'. All measures taken by the government and public authorities to contain the spread of the Coronavirus are based on the Protection against Infectious Diseases Act (*Infektionsschutzgesetz*), which is a federal act, however, the power to adopt these measures lies with the authorities of the German federal states (the *Länder*). The Act allows public authorities to restrict certain fundamental rights such as the right to physical integrity, personal freedom, freedom of movement, freedom of assembly, privacy of correspondence, posts and telecommunications, inviolability of the home, or and the prohibition to carry out economic activities. It also lays out a catalogue of penalties for violations.¹

In **Germany**, the Bundestag passed a Population Protection Act in cases of epidemic situation of national relevance (*Gesetz zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite*), which substantially modifies the Protection against Infectious Diseases Act, on 25 March 2020.² It grants the federal government more powers to intervene in the event of an 'epidemic situation of national relevance', notwithstanding the competencies of the federal states, and to prescribe measures to ensure the basic provision of medicines, protective gear and lab diagnostics, measures for cross-border transport, reporting and investigation obligations and granting exceptions from rules in medical and care institutions. However, these powers are granted for a limited period only.

In **Germany**, the federal government adopted the draft of a second Population Protection Act in cases of epidemic situation of national relevance (*Entwurf eines Zweiten Gesetzes zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite*) on 29 April 2020, which covers, inter alia, the provision of more Coronavirus tests.³

The federal states have different measures in place, however, the overall objective of all measures is to limit physical contact between people to break the chain of infection.⁴

During the reporting period, courts in Germany, including the Federal Constitutional Court (*Bundesverfassungsgericht*) started to rule on applications for preliminary injunctions concerning COVID-19 related measures. On 15 April, the Federal Constitutional granted interim relief against the prohibition of a demonstration,⁵ and on 29 April, against the general prohibition of religious services

¹ Germany (2020), Bundeszentrale für politische Bildung, [Corona-Krise: Wie weit dürfen Grundrechtseinschränkungen gehen?](#), 3 April 2020.

² Germany (2020), Bundesministerium für Gesundheit (Federal Ministry of Health), '[Bundesrat stimmt Gesetzespaketen zur Unterstützung des Gesundheitswesens bei der Bewältigung der Corona-Epidemie zu](#)', press, 27 March 2020

³ Germany (2020), Bundesministerium für Gesundheit (Federal Ministry of Health), '[Kabinett beschließt Entwurf eines Zweiten Gesetzes zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite](#)', press, 29 April 2020.

⁴ Focus, '[Verschiedene Corona-Regeln: Welche Verbote nun vor ihrer Haustür gelten](#)', 25 March 2020

⁵ Bundesverfassungsgericht (2020), '[Antrag auf Erlass einer Einstweiligen Anordnung gegen Versamlungsverbot teilweise erfolgreich](#)', Beschluss vom 15. April 2020, 1 BvR 828/20.

(responding to an application from a Muslim community to allow for an exception during the Islamic month of Ramadan).⁶

1.2 Measures affecting the general population

1.2.1 Social distancing

Stay at home orders and physical distancing when outside the house

In Germany, the federal government and the *Länder* agreed on 22 March 2020 on an extension of the guidelines for restricting social contacts adopted on 12 March until at least 3 May 2020. According to this order, groups of more than two people in public (with the exception of members of the same household) are prohibited, a minimum distance of 1.5 metres from other persons in public should be kept and restaurants, shops (with exceptions such as supermarkets, pharmacies, etc.), services (such as hairdressers) as well as cultural and sports venues are closed.⁷

In Germany, the federal government and the *Länder* have agreed on the further steps to be taken to start exiting the lockdown and to contain the coronavirus on 15 April 2020. Shops with a sales area of up to 800 square metres, car dealers, bicycle dealers, bookstores, and hairdressers should first prepare themselves to resume operations from 4 May onwards, subject to conditions relating to hygiene, access control and queuing prevention, and by using personal protective equipment.⁸

In Germany, the federal government and the *Länder* agreed on further easing measures on 30 April. Church services will be possible and playgrounds will be reopened. Cultural institutions, museums, exhibitions, galleries, memorials or zoological and botanical gardens should open slowly while being subject to certain conditions.⁹ The *Länder* are responsible for the implementation of the relaxing measures.

In Germany, all *Länder* introduced an obligation to wear masks in certain situations: Almost all citizens are obliged to wear masks in certain public spaces (with exceptions, inter alia, for children below certain age limits and persons with medical issues or disabilities¹⁰), mainly in public transport and for shopping purposes, however slight differences exist between the *Länder*.¹¹

⁶ Bundesverfassungsgericht (2020), [Vorläufige Eröffnung der Möglichkeit, auf Antrag im Einzelfall Ausnahmen vom generellen Verbot von Gottesdiensten in Kirchen, Moscheen und Synagogen zuzulassen](#), Beschluss vom 29. April 2020, 1 BvQ 44/20.

⁷ Germany, Federal government (2020) <https://www.bundesregierung.de/breg-de/themen/coronavirus/besprechung-der-bundeskanzlerin-mit-den-regierungschefinnen-und-regierungschefs-der-laender-1733248> 22 April 2020.

⁸ Germany, Ministry of the interior (2020) <https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/bevoelkerungsschutz/coronavirus/coronavirus-faqs.html> (15 April 2020); Germany (2020), the Federal Government (*die Bundesregierung*), [Telefonschaltkonferenz der Bundeskanzlerin mit den Regierungschefinnen und Regierungschefs der Länder am 15. April 2020](#), 15 April 2020

⁹ Germany, Federal government (2020) <https://www.bundesregierung.de/breg-de/themen/coronavirus/bund-laender-beschluesse-1749816>, 30 April 2020.

¹⁰ Germany, zdf (2020), Maskenpflicht ignoriert? Diese Strafen drohen, <https://www.zdf.de/nachrichten/panorama/coronavirus-maskenpflicht-straen-bussgeld-100.html>, 25 April 2020.

¹¹ Germany, NDR (2020), <https://www.ndr.de/nachrichten/info/Was-Sie-zur-Maskenpflicht-wissen-muessen,maskenpflicht110.html>, 29 April 2020

Enforcement and penalties

The decision on how violations of the new measures are punished in individual cases is the responsibility of the competent *Land* authority.¹² Below are the examples of Baden-Württemberg, Rhineland-Palatinate and Bavaria.

- **Baden-Württemberg:** Anyone who violates the social distancing rules is liable to a fine between 100 and 1,000 euros. Those who continue to operate a hairdressing salon, a bar or a club that has been closed because of Corona will be fined between 2,500 and 5,000 euros. Anyone who visits a hospital or nursing home despite being banned risks a fine of between 250 and 1,500 euros. Repeated violations can cost up to 25,000 euros.¹³ For the obligation to wear masks, the government only starts enforcing the new measures from 4 May onwards with initial fines of 15 euros up to 30 euros, giving citizens a first period of habituation.¹⁴
- **Rhineland-Palatinate:** On 27 March, the Rhineland-Palatinate state government issued the third Corona Control Ordinance. The possible penalties in Rhineland-Palatinate's Corona Fines Catalogue start at 55 euros for a "minor administrative offence" up to 25,000 euros depending on how serious the violation is. A criminal offence already exists, for example, if the Coronavirus is spread by the respective violation or if the prohibition of assembly is violated.¹⁵
- **Bavaria:** Apart from a catalogue of administrative offences and respective fines, criminal offences are stipulated for violating the prohibition of entry of returnees from risk areas, violating the prohibition of public gatherings and gatherings of more than 2 persons, as well as meetings and events.¹⁶

Even drones have been employed to monitor and enforce the measures. In Düsseldorf and Dortmund (North Rhine Westphalia), drones called on pedestrians and leave public squares.¹⁷

¹² Germany, Ministry of the interior (2020) <https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/bevoelkerungsschutz/coronavirus/coronavirus-faqs.html> (23 April 2020)

¹³ Germany, Ministry for social affairs (2020) Catalogue of fines for administrative offences under the Infection Protection Act in relation to the Corona Regulation (https://sozialministerium.baden-wuerttemberg.de/fileadmin/redaktion/m-sm/intern/downloads/Downloads_Gesundheitsschutz/CoronaVO_Bussgeldkatalog.pdf)

¹⁴ Germany, focus (2020) Obligation to wear a mask: This is the fine you face if you do not wear a mask https://www.focus.de/finanzen/recht/bussgeld-in-bundeslaendern-so-viel-muessen-sie-jetzt-zahlen-wenn-sie-keine-maske-tragen_id_11911502.html 3 May 2020.

¹⁵ Germany, Rhineland-Palatinate (2020) Punishment of administrative offences according to the Infection Protection Act (IfSG) in relation to the Third Corona Control Regulation Rhineland-Palatinate (3. CoBeLVO) / information on interpretation (https://corona.rlp.de/fileadmin/rlp-stk/pdf-Dateien/Corona/Bussgelder_final.pdf) 23 April 2020.

¹⁶ Germany, Bavaria (2020) Crimes and administrative offences according to the Infection Protection Act in connection with the Corona Protection Ordinance https://lexcorona.de/lib/exe/fetch.php?media=rechtsakteland:nrw:stk_24.03.2002_anlage_bussgeldkatalog_zur_rechtsverordnung_22.03.2020.pdf 22 March 2020.

¹⁷ Germany, Tagesspiegel (2020) Drones also monitor corona measures in Germany, <https://www.tagesspiegel.de/wirtschaft/ueberwachung-wegen-covid-19-auch-in-deutschland-ueberwachen-drohnen-die-corona-massnahmen/25714280.html> 4 April 2020.

1.2.2 Education

In Germany, education is a competence of the *Länder*. The decision of the Federal Government and the *Länder* of 15. April on measures regarding the Coronavirus¹⁸ stipulates a gradual reopening of schools and childcare facilities starting on 4 May. Classes in the final year of the education cycle will be the first to resume. Exams can take place even before this date. The Conference of Education Ministers was to prepare according guidelines on hygienic and distance measures by the 29 April.

- Homeschooling and digital learning

The German education system is facing significant challenges in the attempt to implement digital learning in response to the COVID-19 pandemic and the closure of schools. The German School Barometer, a representative survey among school teachers carried out by the Robert Bosch Stiftung reveals this¹⁹. **Findings show that 66% of teachers consider the digital equipment of their schools not sufficiently prepared to cope with the current situation, raising to 82% of teachers in elementary schools. Some 86% of teachers surveyed thought that the closing of schools would increase the impact of social inequalities.** Teacher expertise in using digital media for educational purposes and adequate technical equipment of schools were the two main areas calling for improvements, according to respondents.

A study of the think tank Institute of German Economy has analysed the risks that home schooling may increase existing socioeconomic inequalities. The study draws on data of the socioeconomic panel (SOEP), a large-scale longitudinal household survey.²⁰ **It concludes that the measures to contain the pandemic have a particularly severe impact on the education of children from socially disadvantaged families and/or with migrant background.** It therefore recommends authorities to prioritise the reopening of schools and childcare facilities when devising their exit strategy; to prioritise children from disadvantaged families when implementing exit strategies; and to provide special learning support to these children after the reopening.

Against this background, the coalition commission of CDU and SPD agreed on 23 April to set up an immediate 500 Million Euro programme to support digital schooling. This includes a one-time payment of 150 Euro per child of low-income families to support buying a laptop or other digital terminals²¹. The trade union 'Training and Education' (*Bildung und Erziehung*) welcomed the measure but criticized the clearly insufficient amount of the subsidy.²²

In addition, some regional and local governments lend tables and notebooks to pupils. For example, the city of Berlin announced on 20 April that, as a first step, authorities would distribute 9.500 iPads to pupils from socioeconomically disadvantaged families in the following weeks. Similarly, the ministry of education of Rhineland-Palatinate, in cooperation with local communities, has provided for 25.000

¹⁸ Germany, Federal Government, <https://www.bundesregierung.de/breg-de/themen/coronavirus/bund-laender-beschluss-1744224>

¹⁹ Germany, Robert Bosch Stiftung, [Das deutsche Schulbarometer. Spezial: Lehrerbefragung zur Coronakrise](#). April 2020

²⁰ Germany, *Institut für Wirtschaft*, Wido Geis-Thöne (2020), IW-Report 15/2020, [Häusliches Umfeld in der Krise: ein Teil der Kinder braucht mehr Unterstützung. Ergebnisse einer Auswertung des Sozio-oekonomischen Panels \(SOEP\)](#), 20 April 2020.

²¹ Germany, Federal Government, <https://www.bmbf.de/de/karliczek-in-zeiten-von-corona-foerdern-wir-digitales-lernen-wie-noch-nie-zuvor-11453.html>

²² Germany, *Verband Bildung und Erziehung*, '150 euro subsidies are not the solution. Vbe calls to equip schools with digital terminals', Press, 23 April 2020

terminals to be lent and Bavaria has a stock of around 50.000 tablets and notebooks which may be lent for a limited period.²³

- Measures to support children from socioeconomically disadvantaged and other families

Measures to support families until a normal school and day care service can be re-established include the following²⁴:

- *Access to childcare at school and day care centres (Notbetreuung)*

Since the 16 March, the *Länder* have set up emergency childcare services at schools and day care centres for children of parents who work in essential community services and cannot provide for private childcare. This includes children at early childhood and pre-school age and in grades 1-6, in some *Länder* until grade 8. The childcare does not include formal education. The decision of the Federation and the *Länder* of 15 April foresees to expand this service to parents in further professional occupations. In the meantime the *Länder* are planning to provide for a step plan to further expand this service leading to regular childcare in the more distant future as well as further groups of children particularly requiring care.

- *Compensation for loss of income due to child care at home*

Parents of children of up to 11 years, children with disabilities or children who need special support can ask for compensation for their loss of income if they have to stay at home to take care of them due to the closures of schools and day care centres. The compensation is limited to a maximum of six weeks and 67% of the income losses.

- *Family benefits for low earning employees*

Low earning employees who qualify for family support benefits have been granted a renewal for six months, until 30 September, even if they have already reached the maximum of financial support originally foreseen. In addition, red tape is cut to facilitate access to these benefits.²⁵

- *School lunch to be delivered at home*

On 20 April the Federal Ministry of Social Affairs informed all social ministries of the *Länder* that, for as long as schools are closed, the warm meals that were being served at schools to children from socioeconomically disadvantaged families can be delivered to their homes. However, the Federal Ministry also informed that it would not provide additional funding to cover the delivery costs.²⁶

²³ Germany, TAZ, [Homeschooling in times of Corona](#), 23 April 2020

²⁴ Germany, Federal Government, <https://www.bundesregierung.de/breg-de/themen/coronavirus/familien-in-corona-zeit-1738334>

²⁵ Germany, Ministry of Family, Older people, Women and Youth, Press, 26 March 2020, <https://www.bmfsfj.de/bmfsfj/aktuelles/alle-meldungen/unterstuetzung-fuer-familien--die-sie-wegen-der-corona-pandemie-brauchen/154052>

²⁶ Germany, [Homeschooling in times of Corona](#), TAZ, 23 April 2020

1.2.3 Work

In **Germany**, the federal government and federal states, agreed on 22 March 2020 on a first package of measures to protect jobs and support companies to equip them with sufficient liquidity to manage the crisis and to bring the economy back onto a growth path as quickly as possible.²⁷

The package of measures consists of:

- Making short-time work compensation benefit (*Kurzarbeitergeld*) more generous (granted for up to twelve months and is paid at the same level as unemployment benefit and compensates for 60% (67% for parents) of the net pay lost as a result of the reduced working hours). Access to short-time work benefits has been made easier. Companies are financially relieved by the reimbursement of social security contributions during short-time work. The more generous regulations expire at the end of the year 2020.
- Tax-related liquidity assistance for businesses: the options for deferring tax payments and reducing prepayments will be enhanced and enforcement rules will be adapted.
- Existing liquidity assistance programmes will be expanded to facilitate companies' access to cheap loans.
- Small enterprises, self-employed persons and liberal professions can apply for a one-off allowance to cover for fixed costs such as rent.

In **Germany**, the federal parliament agreed on 27 March 2020 on a bill on social protection measures (*Sozialschutz-Paket (I)*) to mitigate social ramifications of the crisis. The measures facilitate access to the basic social security systems particularly for families on a low income and the self-employed.²⁸

In **Germany**, families on low incomes are entitled to monthly child supplement (*Kinderzuschlag*) of up to 185 euros. Whether and in what amount child supplement is paid depends on various factors – in particular one's own income, housing costs, the number of family members and the children's age. In order to help these families experiencing a sudden loss of income due to the coronavirus pandemic since 1st April 2020 they have no longer been required to submit proof of income of the previous six months but only of the month prior to application. Furthermore, parents no longer have to provide information on their net worth if they do not have significant net worth. This regulation ("emergency child supplement" / "*Notfall-Kinderzuschlag*") will apply temporarily until 30th September 2020.

In addition, the following adjustment was made: families that have received the highest-possible child supplement of 185 euros per child so far will now automatically be paid that amount for a further six months without any reassessment. Families that do not receive the highest-possible child supplement of 185 euros but are on a lower income due to the coronavirus pandemic may submit a one-time application for reassessment in the months of April or May and may, if applicable, also receive emergency child supplement. However, it is not possible to claim emergency child supplement in addition to child supplement.²⁹

²⁷ Germany (2020), Federal Ministry for Economic Affairs and Energy (*Bundesministerium für Wirtschaft und Energie*), [Information und Unterstützung für Unternehmen](#), 23 March 2020

²⁸ Germany (2020), Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*), [Sozialschutz-Paket 1](#), 27 March 2020

²⁹ Germany (2020), Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales*), [Sozialschutz-Paket 1](#), 27 March 2020

In **Germany**, the parental allowance (*Elterngeld*) shall be adjusted to ensure that soon-to-be and young parents who have suffered a loss of earnings or can no longer meet the requirements for claiming parental allowance due to the pandemic are not put at a disadvantage. The following regulations are planned: (a) Parents working in essential professions or are urgently needed at their place of work may postpone the months of parental allowance payments. (b) Parents are not to lose the partnership bonus if they are currently working more or fewer hours than usual due to the pandemic. Partnership bonus is an additional benefit payable to mothers and fathers who are both working part-time and sharing childcare duties. (c) Parents and soon-to-be parents experiencing a current loss of income, for example due to short-time work, are not to be disadvantaged in their entitlement to parental allowance payments. This means: short-time allowance (*Kurzarbeitergeld*) and unemployment benefit I (*Arbeitslosengeld I*) do not reduce parental allowance and are not taken into account in future calculations of parental allowance for additional children. These legal adjustments are to apply retroactively from 1st March 2020.³⁰

In **Germany**, the Federal Ministry of Labour and Social Affairs has extended the period for receiving short-time work benefits by legal ordinance on 16 April 2020 (*Verordnung über die Bezugsdauer für das Kurzarbeitergeld*). For employees whose entitlement to short-time allowance arose up to 31 December 2019, the subscription period was extended up to 21 months, and at most until 31 December 2020.³¹

In **Germany**, the federal parliament agreed on 14 May 2020 on a second bill on social protection measures (*Sozialschutz-Paket II*) to raise the short-time work compensation benefit (*Kurzarbeitergeld*). If an employee is on short-time work (of minimum 50% reduced working hours) for longer than four months, the benefit rate will be increased to 70% (77% for parents) and to 80% (87% for parents) for short-time work of more than seven months.³²

In addition, the entitlement to unemployment benefit (*Arbeitslosengeld nach dem SGB III*) was extended. For persons receiving unemployment benefit whose entitlement to unemployment benefit would be exhausted in the period from 1 May 2020 to 31 December 2020, the entitlement period is extended once by three months.

In **Germany**, 50% of companies employ their staff on short-time work (*Kurzarbeit*) and 18% of companies plan to cut jobs, according to the latest survey of the IFO Institute–Leibnitz Institute for Economic Research at the University of Munich, published on 23 April 2020.³³

In **Germany**, the Federal Employment Agency stressed that the pandemic is likely to lead to the deepest recession in the post-war period. The number of unemployed persons rose by 308.000 to 2.644.000 from March to April 2020 as a result of the crisis.³⁴

³⁰ Germany (2020), [Gesetz für Maßnahmen im Elterngeld aus Anlass der COVID-10-Pandemie](#), 20 May 2020

³¹ Germany (2020), Bundesagentur für Arbeit (*Federal Employment Agency*), [‘Verlängerung der Bezugsdauer Kurzarbeitergeld’](#), press, 30 April 2020

³² Germany (2020), Federal Ministry of Finance (*Bundesministerium der Finanzen*), [‘Kurzarbeitergeld in der Coronakrise’](#), 23 April 2020

³³ Germany, IFO Institute – Leibnitz Institute for Economic Research at the University of Munich (*IFO Institute – Leibnitz-Institut für Wirtschaftsforschung an der Universität München*), [‘50 Prozent der deutschen Firmen fahren Kurzarbeit’](#), press, 23 April 2020

³⁴ Germany, The Federal Employment Agency (*Bundesagentur für Arbeit*), [Der Arbeitsmarkt im April 2020: Wegen der Corona-Krise stark unter Druck](#), press, 30 April 2020

Precarious work

In **Germany**, the Federal Minister of the Interior, Building and Community and the Federal Minister of Food and Agriculture have issued on 2 April 2020 a joint draft paper on health and safety protection for harvesters, which outlines the minimum standards for companies to follow and which allows harvesters to exceptionally enter Germany for work purposes.³⁵

According to the media, there are instances of employers' violation of these health and safety procedures, as harvesters are transported in large groups in one vehicle to the fields and there have to work next to each other without wearing protective masks and also have to sleep in crowded rooms.^{36 37}

Essential workers

The recent months have demonstrated that particular professions such as in healthcare, internal security, food and energy supply, transport, IT and emergency childcare are essential for the proper function of society during this crisis. There is no nationwide list of essential professions, as it is the federal states who define which professions are regarded as essential during the pandemic.³⁸

In **Germany**, the study of the German Institute for Economic Research, illustrates that a large majority of essential work is carried out by women and is paid below average.³⁹

In **Germany**, the federal government has made it easier for people who work in essential sectors to make up for their financial losses by supplementing their short-time work compensation benefit (*Kurzarbeitergeld*). A special regulation will apply from 1 April to 31 October 2020: Anyone who takes up secondary employment in an essential sector after having had their working hours reduced will not have to deduct the additional income from their short-time work compensation benefit (*Kurzarbeitergeld*). However, the combined amount of their regularly paid wages, short-time work compensation benefit and additional earnings must not exceed their normal net income.⁴⁰ The scheme has been supplemented by the second bill on social protection measures (*Sozialschutz-Paket II*). The regulation now applies secondary employment in all professions and was extended until 31 December 2020.

In an interview, the Federal Minister of Labour and Social Affairs, Hubertus Heil, called for a wage increase for caregivers and people working in retail.⁴¹

Returning to work

As more and more employees return to work after the lifting of physical contact restrictions, protective standards at the workplace have become necessary.

³⁵ Germany (2020), Federal Ministry of the Interior, Building and Community (*Bundesministerium des Innern, für Bau und Heimat*) and the Federal Ministry of Food and Agriculture (*Bundesministerium für Ernährung und Landwirtschaft*), 'Konzeptpapier Saisonarbeiter im Hinblick auf den Gesundheitsschutz (Coronavirus SARS-CoV-2)', press, 2 April 2020

³⁶ Tagesschau, 'Lücken beim Corona-Schutz', 23 April 2020

³⁷ Zeit, 'Das ist der Spargel nicht wert', 16 April 2020

³⁸ SWR3, *Corona-Übersicht: Systemrelevante Berufe in den einzelnen Bundesländern*, 21 April 2020

³⁹ Deutsches Institut für Wirtschaftsforschung DIW Berlin (*German Institute for Economic Research*), *Systemrelevant und dennoch kaum anerkannt: Das Lohn- und Prestigeniveau unverzichtbarer Berufe in Zeiten von Corona*, 24 April 2020

⁴⁰ Germany, The Federal Employment Agency (*Bundesagentur für Arbeit*), *Short-time working allowance: additional income from sideline activities in important occupations*, press, 2 April 2020

⁴¹ ARD, interview with Hubertus Heil, Federal Minister of Labour and Social Affairs (*Bundesminister für Arbeit und Soziales*), *Morgenmagazin: Heil fordert bessere Bezahlung in Pflege und Einzelhandel*, 1 April 2020

In **Germany**, the federal government has issued uniform standards for the protection against an infection with the Coronavirus in the workplace on 16 April 2020.⁴² Employers need to adhere to hygiene and physical distancing measures to protect their employees and should provide hand-washing and disinfection facilities and shifts should be organised in such a way that employees can keep the physical distance of 1.5 metres at work (in case this is not possible, then staff need to be provided with protective masks). Staff should never come to work if they feel ill and staff who belong to a group at higher risk of serious illness when infected with the virus need special protection by the employer.

In **Germany**, a representative of the German Bar Association, speaking to the media, clarified that employees have the right to file a complaint about their employers' non-adherence to these protective standards either with their employers or with labour law authorities.⁴³

1.2.4 Access to justice

In **Germany**, the organization of the justice system is a competence of the *Länder*. Their Ministries issue recommendations on COVID-19 prevention measures and prioritisation of certain judicial proceedings. Ultimately, courts themselves, exercising their independence, adopt decisions on postponement of proceedings and on protection measures within the court⁴⁴. As a general rule, courts and public prosecutor offices continue to be accessible and proceedings, in particular criminal proceedings, continue. However, COVID-19 prevention measures are considerably slowing down the usual pace and forcing to postpone many proceedings.

For example, in Baden-Württemberg the Ministry of Justice and for Europe recommended on 13 March to reduce any proceedings requiring social interactions to the indispensable minimum.⁴⁵ Similar recommendations were issued in other *Länder* such as Bavaria, Hessen, Niedersachsen, Schleswig-Holstein, Mecklenburg-Vorpommern, Thüringen, and Sachsen-Anhalt.⁴⁶ In Hamburg, as of 11 April several courts were postponing between 50% - 75% of their proceedings⁴⁷. In Berlin, as of 3 April only 10% of the usual criminal proceedings were taking place.⁴⁸ As a result, criminal and urgent proceedings and investigations⁴⁹ and proceedings involving pre-trial detention are being prioritised.⁵⁰ Proceedings regarding the protection from domestic violence and child protection are prioritised in the domain of civil procedure.⁵¹ With general restrictions being eased in Germany from end on April, judicial operations were expected to increase again. For example, on 27 April the Minister of Justice of Baden-

⁴² Germany (2020), Federal Government (*Die Bundesregierung*), [Gesundheit am Arbeitsplatz: Bundeseinheitliche Arbeitsschutzstandards](#), 16 April 2020

⁴³ Germany, Tagesschau, [Niemals krank zur Arbeit- video report 'Bundeskabinett beschließt Arbeitsschutz-Regeln als Schutz vor Ansteckung'](#), 16 April 2020

⁴⁴ See for example Germany, Bavarian Ministry of Justice, [Measures of the Bavarian Justice System](#)

⁴⁵ Germany, Ministry of Justice and Europe of Baden Württemberg, [Justiz nimmt öffentlichen Dienstbetrieb schrittweise unter strenger Beachtung von Abstands- und Hygieneregeln wieder auf](#), 23 April 2020

⁴⁶ Germany, 'Corona und die Justiz', Der Spiegel, 19 March 2020

⁴⁷ Germany, Corona: [Hamburgs Justiz arbeitet eingeschränkt](#), NDR, 11 April 2020

⁴⁸ Germany, ['Das Coronavirus behindert die Justiz. Wie Berlins Kriminalgericht gegen den Notstand kämpft'](#), Der Tagesspiegel, 3 April 2020

⁴⁹ Germany, Bavarian Ministry of Justice, Measures of the Bavarian Justice System, available at: https://www.justiz.bayern.de/service/corona/Umgang_Justiz.php, last accessed on 4 May.

⁵⁰ Germany, [Das Coronavirus behindert die Justiz. Wie Berlins Kriminalgericht gegen den Notstand kämpft'](#), Der Tagesspiegel, 3 April 2020

⁵¹ Germany, Bavarian Ministry of Justice, Measures of the Bavarian Justice System, available at: https://www.justiz.bayern.de/service/corona/Umgang_Justiz.php

Württemberg declared that judicial operations would drive up again⁵² and the Ministry of Justice of Niedersachsen announced that on 4 May at latest main hearings also in non-urgent matters will resume.⁵³

On 28 March, a new federal act entered into force extending the possibility to interrupt ongoing criminal procedures⁵⁴. The act empowers courts to suspend main hearing procedures up to a maximum of three months and 10 days if measures linked to the prevention of COVID-19 do not allow their continuation⁵⁵. Previously to this enactment an interruption could only last up to three weeks, unless there was another reason for the longer interruption period, e.g. sickness of a judge or defendant. Beyond that point the main hearing would have to be restarted again from the beginning.

Since 2013, civil proceedings may be held via videoconference under Article 128a of the German Civil Procedure Act. A draft law foresees to extend this possibility to labour and social proceedings⁵⁶. However, courts often do not have the necessary digital infrastructure to apply this provision, according to media reports.⁵⁷

For information on how COVID-19 prevention measures are impacting on detainees' rights and the functioning of the prison facility system (*Justizvollzugsanstalten, JVA*), see section 1.3 below on impact of measures on particular groups.

1.2.5 Freedom of movement

In Germany, there are no entry restrictions for German citizens. Still, travels that are not absolutely necessary should be avoided. All persons who do not have German nationality are in principle not allowed to enter the country unless there is an urgent reason such as occupational reasons, family reasons, medical reasons and care duties, as well as educational, school and study purposes, including day-care centres.⁵⁸ Those who enter the country by other means are now formally acting illegally; the federal police force could impose a fine of up to 1,000 euros on such offences (§ 98 Para. 3 No. 3 AufenthG).⁵⁹ The Federal Minister of the Interior decided, in coordination with the neighbouring states and the affected *Länder*, to keep the initial temporary border controls with certain states until 14 May 2020.⁶⁰

⁵² Germany, Ministry of Justice and Europe of Baden Württemberg, *Justiz nimmt öffentlichen Dienstbetrieb schrittweise unter strenger Beachtung von Abstands- und Hygieneregeln wieder auf*, 23 April 2020

⁵³ Germany, Ministry of Justice of Niedersachsen, *Information zum Umgang mit dem Coronavirus in der Justiz*, last accessed on 4 May 2020

⁵⁴ Germany, Act on the mitigation of consequences of the COVID-19 pandemic in the area of civil, bankruptcy and criminal procedure, *Gesetz zur Abmilderung der Folgen der COVID-19 Pandemie im Zivil-, Insolvenz und Strafverfahrensrecht*, 27 March 2020

⁵⁵ Germany, Federal Ministry of Justice, *Längere Unterbrechung von Strafprozessen in der Corona-Krise*, 30 March 2020

⁵⁶ Germany, *Gerichtsverhandlung aus dem Homeoffice*, Süddeutsche Zeitung, 30. April 2020

⁵⁷ Germany, *Gerichtsverhandlung aus dem Homeoffice*, Süddeutsche Zeitung, 30. April 2020

⁵⁸ Germany, Federal Police Force (2020) Corona-virus: Answers to frequently asked questions https://www.bundespolizei.de/Web/DE/04Aktuelles/01Meldungen/2020/03/200317_faq.html 30 April 2020

⁵⁹ Germany, Residence Act (2004) *Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*, § 98 Para. 3 No. 3.

⁶⁰ Germany, Ministry of the Interior (2020) Coronavirus: Questions and answers, <https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/bevoelkerungsschutz/coronavirus/coronavirus-faqs.html#doc13738352bodyText3> 15 April 2020.

In addition, citizens of the European Union and citizens of the United Kingdom, Liechtenstein, Switzerland, Norway and Iceland may return to their home country or to their usual place of residence in Germany or another state with their family members. Transit through Germany is in principle only permitted if there are no alternative transport connections and the continuation of the journey is ensured through transit states. This applies accordingly to the return journey of third-country nationals to their country of origin or to the country in which they are entitled to stay on the basis of a long-term residence permit, including a long-term visa.⁶¹

For the time being, the discussion on the upcoming holiday season slowed down given that the German Foreign Minister limited expectations of an imminent opening of European destinations: "A European race to see who will allow tourist travel first will lead to unacceptable risks".⁶² Earlier, Austria officially announced to consider an opening of the border with Germany for German tourists in the summer. Further, the federal government extended the travel warning until June. The situation is to be re-examined before the summer holidays.⁶³

In Germany, the Minister of Health initiated a discussion on a so called "corona pass" to ease travels for cured persons. This would apply to persons who have already been infected and are officially recovered. Persons concerned could possibly travel earlier given that they are considered immune. The proposal was severely criticised fearing stigmatisation and discrimination.⁶⁴

- *Special provisions for cross-border commuters (especially health and care workers) or other workers from neighbouring non-EU countries*

As in the past, the existence of urgent reasons for entry into border regions will be examined favourably for residents of border regions. The cross-border movement of goods and merchandise and the cross-border movement of commuters should continue to flow as smoothly as possible.⁶⁵

In Germany, the competent Federal Ministers announced exceptions to the current entry restrictions for seasonal workers, irrespective of their nationality, on 2 April 2020. In April and May 2020 up to 40,000 seasonal workers will be allowed to enter the country under certain conditions, including strict hygiene regulations and compliance with infection control. The foreign seasonal workers are to enter the country exclusively by air, no hour-long bus journeys through Europe for reasons of protection against infection.⁶⁶

⁶¹ Germany, Federal Police Force (2020) Corona-virus: Answers to frequently asked questions https://www.bundespolizei.de/Web/DE/04Aktuelles/01Meldungen/2020/03/200317_faq.html 30 April 2020

⁶² Germany, Foreign Ministry (2020) No European race for tourist travel <https://volksblatt.at/coronavirus-reisefreiheit-deutscher-aussenminister-daempft-erwartungen/> 27 April 2020.

⁶³ Germany, taz (2020) Travel warning extended until June <https://taz.de/Entscheidung-der-Bundesregierung/!5682068/> 29 April 2020.

⁶⁴ Germany, Frankfurter Rundschau (2020) Corona-pass for freedom of movement? <https://www.fr.de/panorama/coronavirus-corona-pass-reisefreiheit-urlaub-konzert-deutschland-zr-13745986.html> 30 April 2020.

⁶⁵ Germany, Federal Police Force (2020) Corona-virus: Answers to frequently asked questions https://www.bundespolizei.de/Web/DE/04Aktuelles/01Meldungen/2020/03/200317_faq.html 30 April 2020

⁶⁶ Germany, Ministry of the Interior (2020) Coronavirus: Questions and answers, <https://www.bmi.bund.de/SharedDocs/faqs/DE/themen/bevoelkerungsschutz/coronavirus/coronavirus-faqs.html#doc13738352bodyText3> 15 April 2020.

Several French workers commute to Saarland in Germany every day. Since the border was closed in mid-March, according to media reports there have been incidents where some of them have been insulted by Germans or even had eggs thrown at their cars.⁶⁷

1.3 Impact of measures on particular groups

Older people

Several public debates as well as social support projects concern older people:

- Quarantine for the elderly in order to relax contact and exit restrictions for the younger ones is currently discussed. Consequently, younger persons could work normally again and life can return to normality, however, at the expense of the elderly.⁶⁸
- On 15 April, in order to avoid the complete isolation of particular groups, the government introduced the following: for vulnerable groups and in particular for nursing homes, homes for the elderly and institutions for the disabled, special protective measures are to be taken and specific concepts developed in accordance with the respective local conditions and in the respective institutions.⁶⁹
- In **Germany**, nursing staff are mainly 24-hour workers from Eastern Europe, for example from Poland, Romania or Croatia, who work in Germany. Now, however, there are strict curfews in many places, buses are no longer in operation and checks are carried out at the borders. Many nursing assistants are stuck. The Association for Home Care and Nursing (VHBP), in which placement agencies are organised, is therefore alarming that up to 300,000 households in Germany are affected. Additionally, 90 percent of the 24-hour home care staff are undeclared workers, as estimated by care experts. According to the federal police, foreign care workers are not allowed to enter the country without working papers. If the home care workers stay away, some fear that the 24-hour care will collapse.⁷⁰
- Appreciation for the current exceptional work of nursing personnel is not without exemption. In Niederaula (Hesse), they were treated like "lepers", they were expelled from shops, not allowed to refuel their cars, nor able to bring their children to emergency care. In the district nursing home Niederaula, 16 residents have died of Covid-19. Therefore, some people blame the nursing staff. If there are so many deaths in an institution, then something must have been done wrong, was insinuated in an e-mail sent to the mayor.⁷¹
- In **Germany**, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth founded the "Digital Compass". The "Digital Compass" project introduces persons to digital communication tools, such as step-by-step instructions on many Internet-related topics. The project has 70 locations throughout Germany to offer online consultation hours and digital coffee breaks on a variety of topics, and organises digital games for young and old.⁷²

⁶⁷ Germany, br (2020) Stress and trouble at the border: "Go back to Corona-land!" <https://www.br.de/nachrichten/deutschland-welt/deutsch-franzoesische-grenze-geh-zurueck-ins-corona-land,Rwzmsab> 23 April 2020; Germany, tagesschau (2020) "Was ist daran noch Europa?" <https://www.tagesschau.de/inland/corona-saarland-frankreich-101.html> 24 April 2020.

⁶⁸ Germany, tagesschau (2020) *Would quarantine for the elderly be possible?* <https://www.tagesschau.de/inland/quarantaene-alte-menschen-corona-101.html> 14 April 2020.

⁶⁹ Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2020) *Services for older people* <https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/angebote-fuer-aeltere-menschen> 29 April 2020.

⁷⁰ Germany, tagesschau (2020) *Exodus of aid workers* <https://www.tagesschau.de/wirtschaft/pfleger-coronavirus-101.html>, 8 April 2020.

⁷¹ Germany, tagesschau (2020) *Corona zone nursing home* <https://www.tagesschau.de/investigativ/ndr-wdr/coronavirus-pflegekraefte-101.html> 22 April 2020.

⁷² Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2020) *Services for older people* <https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/angebote-fuer-aeltere-menschen> 29 April 2020.

- **In Germany**, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth supports older people in using digital services safely with the "Digital Angel" project. The Digital Angel team teaches older people in a practical, personal and on-site manner how daily routines and habits can be enriched and facilitated by digital applications.⁷³

Detainees

Impact on detainees' rights

In Germany, prevention of COVID-19 measures in prisons have heavily impacted detainees' rights. External visits are banned, prison furloughs are no more allowed, external therapy sessions can no longer be attended, sports, leisure and any group activities are suspended, many paid work programmes cancelled. Detainees' conferences with their lawyers still take place, but separated through screens. Although the organisation of prison facilities are a competence of the *Länder* and details may vary these restrictions apply throughout Germany⁷⁴.

On 21 April, eight members of the German *Bundestag* and the parliamentary group *Die Linke* (the left) submitted a proposal for a resolution of the Parliament titled "To cope with corona-crisis, relieve prison facilities and protect health of detainees."⁷⁵ The proposal calls on the Federal Government to propose several measures to the *Länder*, including:

- to interrupt or postpone enforcement of subsidiary prison sentences;
- to postpone the enforcement of all prison sentences under three years, save in cases of sexual offences, danger to other people or other compelling reasons;
- to release prisoners to which relevant provisions on suspension of remaining sentence may apply;
- to release youth detainees and suspend youth detentions;
- to continue to pay salaries in cases where work programmes for detainees are shut down or reduced;
- to distribute masks and disinfectant and ensure hygienic measures in particular in the distribution of food or medicines.
- to compensate visit limitations by enabling detainees to keep in contact with the outside world, e.g. through phone calls and video calls.

Imprisonment interrupted or postponed

A number of detainees are getting their prison term interrupted to make room for isolation and quarantine arrangements in prison facilities. For example, in North Rhine-Westphalia the Minister of Justice instructed the prisons facilities to release prisoners serving a sentence below 18 months if the

⁷³Germany, Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (2020) *Services for older people* <https://www.bmfsfj.de/bmfsfj/themen/corona-pandemie/angebote-fuer-aeltere-menschen> 29 April 2020; Germany, digital angel (2020) <https://www.digitaler-engel.org/>

⁷⁴ See for example Germany, Government of Hesse, *Hessen: Informationen für Besucher von Inhaftierte*, available at <https://www.hessen.de/fuer-buerger/corona-hessen/hinweise-zu-gerichten>, last accessed 4 May; Ministry of Justice of Niedersachsen, *Informationen zum Umgang mit dem Coronavirus in der Justiz*, available on: https://www.mj.niedersachsen.de/startseite/aktuelles/corona_virus/fragen_und_antworten/informationen-zum-umgang-mit-dem-corona-virus-in-der-justiz-186310.html, last accessed 4 May; Germany, Ministry of Justice of Nordrhein-Westfalen, *Justizvollzug Corona*, available at: <https://www.justiz.nrw.de/JM/ministerium/corona/justizvollzug/index.php>, last accessed 4 May. Germany, *Wie Berlins Kriminalgericht gegen den Notstand kämpft*, *Der Tagesspiegel*, 4 April 2020 available at: <https://www.tagesspiegel.de/themen/reportage/das-coronavirus-behindert-die-justiz-wie-berlins-kriminalgericht-gegen-den-notstand-kaempft/25713602.html>

⁷⁵ Germany, Antrag der Abgeordneten Niema Movassat, Ulla Jelpke, Dr. André Hahn, Gökyak Akbulut, Petra Pau, Martina Renner, Kersten Steinke, Friedrich Straetmanns und der Fraktion DIE LINKE. *Zur Bewältigung der Corona-Krise Justizvollzugsanstalten entlasten, Gesundheit der Inhaftierten schützen*, 21 April 2020, Drucksache 19/18682, 19. Wahlperiode, available at: <https://dip21.bundestag.de/dip21/btd/19/186/1918682.pdf>

expected end of their prison term was before the 31 of July.⁷⁶ The Justice Senator of Hamburg announced that up to 60 prisoners serving sentences up to 18 months for certain non-violent offences could benefit from this measure⁷⁷. Some 50 convicts sentenced to up to three years for property or fraud related offences got their imprisonment postponed until June⁷⁸. Berlin postponed imprisonment of sentences under three years until 15 July.⁷⁹ In Schleswig-Holstein enforcement of subsidiary penalties was postponed.⁸⁰

In Rhineland-Palatinate, Sachsen-Anhalt and Berlin youth detention institutions have shut down and released all detainees. In Hamburg, no imprisonments against youth offenders or as subsidiary penalties are taking place as of 1 April⁸¹.

However, these measures have been met with criticism from civil society as being insufficient to effectively prevent a COVID-19 outbreak in prison facilities. In Thuringia, the Jena group of the detainees trade union *Gefangenen Gewerkschaft-Bundesweite Organisation* (GG-BO) published an open letter to the Minister of Justice criticizing the restrictions to visits and furloughs as the wrong approach to the eminent danger of a COVID-19 outbreak. The letter highlights the impossibility to respect distance measures within prison facilities and the strong psychological impact of the restrictions on detainees. The organisation calls upon to massively extend the releases in order to avoid the COVID-19 outspread within prisons.⁸² In support of this request the GG-BO cites the call of the European Prison Litigation Network on international organisations such as the World Health Organisation and the Council of Europe, signed by more than 50 European NGOs, to take immediate action to significantly reduce the prison population, among other measures.⁸³

As reported by the public broadcast programme *Das Erste - Monitor*, as of 30 April 130 members of prison facility staff and 33 detainees have been tested positive on COVID-19.⁸⁴ However, the dark figure of infected detainees might be higher, since very few tests were implemented. For example, in Sachsen-Anhalt only 0,84% of detainees have been tested, in Niedersachsen the figure is below 0,1%. The report found a vague response of *Länder* authorities when asked if there was enough personal protection equipment and disinfectant in prison facilities. It quoted a spokesperson of the *Gewerkschaft der Strafvollzugsbediensteten*, a trade union of prison facility staff, denying that the existing stock was sufficient. In the case of North Rhine – Westphalia the Minister of Justice acknowledged in a press conference the lack of sufficient protection equipment.⁸⁵

Domestic Violence

Stay-at-home measures have a strong impact on women and children, as many are not safe at home.

In **Germany**, the website of the federal government recognises the difficulty the current measures hold for women and children and points to several hotlines that help in situations of domestic

⁷⁶ Germany, Ministry of Justice, *Corona Justizvollzug*, last accessed 4 May.

⁷⁷ Germany, *Corona Haftunterbrechung für bis zu 60 Straftäter*, NDR, 1 April 2020

⁷⁸ Germany, *Corona Faelle im Hamburger Justizvollzug*, NDR, 24 March 2020

⁷⁹ Germany, *Wie Berlins Kriminalgericht gegen den Notstand kämpft*, Der Tagesspiegel, 4 April 2020

⁸⁰ Germany, *Wie sich Gefängnisse für corona wappnen*, Der Spiegel, 18 March 2020

⁸¹ Germany, *Corona Haftunterbrechung für bis zu 60 Straftäter*, NDR, 1 April 2020

⁸² Germany, Gefangenen Gewerkschaft – Bundesweite Organisation, *Offener Brief an Thüringer Justizminister Adams in Sache der Gefangenen*, 20 March 2020, available at: <https://ggbo.de/offener-brief-adams/>

⁸³ European Network of Prison Litigation, Covid-19 in prison: more than 50 European NGOs ask International Organisations to take immediate action, updated 24 March 2020, available at: <http://www.prisonlitigation.org/covid19-prison/>

⁸⁴ Germany, Corona in Gefängnissen: hoch ansteckend. Das Erste – Monitor vom 30.4.2020, available at: <https://www1.wdr.de/daserste/monitor/sendungen/corona-jva-100.html>, last accessed 4 May.

⁸⁵ Germany, *Corona-Ansteckungsgefahr soll verringert werden: NRW entlässt Gefangene*, Focus, 25 March 2020

violence.^{86 87} The special website 'Stronger than Violence (*Stärker als Gewalt*)' of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, also provides information about support and initiatives concerning domestic abuse.⁸⁸

In **Germany**, the Federal Minister for Family Affairs, Senior Citizens, Women and Youth, stated that the police in Berlin have already registered a rise of ten percent in reports of domestic violence during the lockdown and that there was a strong demand for the domestic violence hotlines.⁸⁹ According to the media, police of Berlin have registered an increase in emergency calls concerning domestic violence since the announcement of the stay-at-home measures in March and in particular since mid-March when they received 300 emergency calls per week. From 16 March to 19 April 2020 there were 1580 police operations on incidents of suspected domestic violence.⁹⁰ The *Länder*, however, do not report an increase of domestic violence cases.⁹¹

In **Germany**, the Federal Minister for Family Affairs, Senior Citizens, Women and Youth, underlined that women's shelters and information centres are essential organisations and their infrastructure and services should be maintained and expanded during the crisis to protect women and children.⁹²

In **Germany**, the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, in cooperation with large supermarket chains, launched the initiative 'Not safe at home? (*Zuhause nicht sicher?*)' where posters are put up in over 26 000 supermarkets across the country with information about support organisations and hotlines to contact when experiencing domestic violence.⁹³

In **Germany**, the Independent Commissioner for Child Sexual Abuse Issues, warned that the stay-at-home measures could lead to increased domestic and sexual violence and has launched the special website www.kein-kind-alleine-lassen.de which also provides information about support and initiatives concerning sexual and domestic abuse.⁹⁴

In **Germany**, the nationwide victim support organisation 'White Ring' (*Weisser Ring*) raised concerns that social isolation and financial worries contribute to increased stress in relationships and families resulting in escalating situations and the organisation fears that domestic violence will rise during the pandemic.⁹⁵

⁸⁶ Germany (2020), Federal Government (*Bundesregierung*), 'Hilfe bei häuslicher Gewalt', 24 March 2020

⁸⁷ Germany (2020), [Federal Ministry for Family Affairs, Senior Citizens, Women and Youth](#) (*Bundesministerium für Familie, Senioren, Frauen und Jugend*)

⁸⁸ Germany (2020), Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*), 'Stärker als Gewalt' (Stronger than Violence)

⁸⁹ Germany (2020), Federal Government (*die Bundesregierung*), [Hilfetelefon ist stark nachgefragt](#), 6 April 2020.

⁹⁰ RBB Rundfunk Berlin-Brandenburg, [Berliner Polizei erhält mehr Notrufe wegen häuslicher Gewalt](#), 26 April 2020

⁹¹ Germany (2020), Federal Government (*die Bundesregierung*), [Hilfetelefon ist stark nachgefragt](#), 6 April 2020.

⁹² Germany (2020), Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*), 'Frauenhäuser und Beratungsstellen sind systemrelevant', press, 9 April 2020.

⁹³ Germany (2020), Federal Ministry for Family Affairs, Senior Citizens, Women and Youth (*Bundesministerium für Familie, Senioren, Frauen und Jugend*), [Supermarkt-Aktion gegen häusliche Gewalt](#), 29 April 2020

⁹⁴ Germany (2020), The Independent Commissioner for Child Sexual Abuse Issues (*Missbrauchsbeauftragte der Bundesregierung*), 'Kinder und ihre Gefährdungen nicht aus dem Blickfeld verlieren', press, 25 March 2020

⁹⁵ White Ring (*Weisser Ring*), [Weisser Ring befürchtet deutliche Zunahme an Gewalttaten + Wir rechnen mit dem Schlimmsten](#)

2 Users' data - privacy and data protection

2.1 Arrangements between public authorities and other actors to allow collection, sharing and processing of user data

Data Donation app by the Robert Koch Institute⁹⁶

In **Germany**, the national health monitoring institute the *Robert Koch Institute*, is assigned with the task of prevention and control of the pandemic. On 7 April 2020, the Robert Koch Institute has presented the app '*Corona Datenspende*' ('Corona Data Donation') it has developed together with the company Thryve (mHealth Pioneers GmbH) – this company will be implementing the technical aspects of the app. The app is free-of-charge and users can use it voluntarily.

Users need to have a smartphone and a fitness wristband or smartwatch to use the app and with the combined use of these items, the Institute claims to be able to detect early symptoms of an infection with the Coronavirus and map the geographical spread of the virus. The *Robert Koch Institute* underlines the fact that this app is not a device telling users if they are infected with the virus. The app detects symptoms connected with the COVID-19 disease – such as a high resting pulse rate (which could indicate fever).

Data collected and processed are activity data registered from the fitness wristband (such as sports activities, sleep, rest), vital data registered from the fitness wristband (such as pulse, heart rate, temperature) and socio-demographic data provided by the user (age, height, weight, postcode).

The app attributes an individual user-identity, the pseudonym, to the user which is saved on a central server. The app does not trace location data and users can delete their data any time.

Contact tracing app by the Federal Ministry of Health

In **Germany**, the Federal Minister of Health and the Chancellery Minister have announced the development of a different contact-tracing app on 26 April 2020.

The main objective is to detect and break any chains of infection with the virus as early as possible. To achieve this, temporary pseudonymised encrypted identities are exchanged via bluetooth between two or more app users who are in close physical contact for a longer time – this makes personal identification of the users impossible. Should a user become infected with the virus, its contacts will receive a warning message about it.⁹⁷ The data will be pseudonymised in a decentralised way, i.e. on the users' smartphones, and not in a centralised way on a server. The use of the app is voluntary and the development of the app shall be finalised in the next weeks.

⁹⁶ Robert-Koch-Institut, [Corona-Datenspende](#), 7 April 2020

⁹⁷ Germany (2020), Federal Ministry of Health (*Bundesministerium für Gesundheit*), [Erklärung von Kanzleramtsminister Helge Braun und Bundesgesundheitsminister Jens Spahn zur Tracing-App](#), press, 26 April 2020

2.2 Legal framework enabling collection, processing, sharing and storage of user data

In **Germany**, the Federal Commissioner for Data Protection and Freedom of Information, expressed his understanding that data protection is regarded as a secondary problem during the crisis, however, he underlines that fundamental rights are also, and in particular in times of crisis an essential element of our liberal and democratic society. Data protection does not contradict the fight against the Coronavirus.⁹⁸

In **Germany**, the General Data Protection Regulation provides for the legal framework of the data collection and sharing in the light of the Coronavirus pandemic.

In **Germany**, the Federal Ministry of Health, in its draft in March to the first Population Protection Act in cases of epidemic situation of national relevance (*Gesetzesentwurf zum Schutz der Bevölkerung bei einer epidemischen Lage von nationaler Tragweite*) amending the Protection against Infectious Diseases Act (*Infektionsschutzgesetz*), had included increased surveillance measures with the possibility of identifying infected persons via mobile phone tracing. Some parts of the draft would have permitted health authorities to receive from telecommunication providers mobile phone data of infected persons.

The Federal Commissioner for Data Protection and Freedom of Information warned that several restrictions on the fundamental right of data protection were included in the draft, e.g. fixed rules for the deletion of data collected of travellers were not included.⁹⁹

The Ministry of Health deleted these problematic elements from the draft after the criticism received.
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2.3 Privacy and data protection concerns and possible solutions

Concerns about the Data Donation app used by the Robert-Koch-Institute (RKI)

In **Germany**, the Federal Commissioner for Data Protection and Freedom of Information, Ulrich Kelber, clarified in a press statement of 7 April 2020 that his office was consulted by the *Robert-Koch-Institute* during the development of the app.¹⁰³ However, given that his office has not yet received the final version of the app, they will continue the consultation process. He stressed that the *Robert-Koch-Institute* still needs to outline which data is collected for which purpose by the app and how long it is

⁹⁸ Germany (2020), Federal Commissioner for Data Protection and Freedom of Information (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*), [Datenschutzrechtliche Information zur Corona-Krise](#)

⁹⁹ Germany, Federal Commissioner for Data Protection and Freedom of Information (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*), [‘Stellungnahme an den Deutschen Bundestag zur Novelle des Infektionsschutzgesetzes’](#), press, 23 March 2020

¹⁰⁰ Spiegel, [‘So ringt die GroKo um Verwendung von Handydaten’](#), 23 March 2020

¹⁰¹ Finanznachrichten, [‘Lambrecht hat weitere Vorbehalte gegen Handydaten-Ortung’](#), 23 March 2020

¹⁰² ZDF Morgenmagazin, [Interview with Christine Lambrecht](#), Federal Minister of Justice and Consumer Protection (*Bundesministerin der Justiz und für Verbraucherschutz*), 23 March 2020

¹⁰³ Germany (2020), Federal Commissioner for Data Protection and Freedom of Information (*Der Bundesbeauftragte für den Datenschutz und die Informationsfreiheit*), [Statement des BFDI zur Corona-Datenspende-App](#), press, 7 April 2020.

stored. In addition, it needs to be regularly assessed if the app meets its purpose – if it does not, it should be disused. He also pointed to the different data protection standards of the producers of fitness wristbands and smartwatches and identified this as probably the biggest data protection problem of this app.

In **Germany**, the *Chaos Computer Club*, Europe's largest association of hackers, has published on 20 April 2020 their analysis of the Data Donation app features and criticised the following¹⁰⁴:

- The *Robert-Koch-Institute* should have provided the source code and data architecture of the app
- The users' data is not collected from the users' smartphone but directly from the fitness tracking providers and the *Robert-Koch-Institute* can potentially access the users' name and historical fitness data. This access potential remains after the app is de-installed.
- The users' data is not pseudonymised already on the smartphone but only on the server (and sometimes with the name of the data donator) and the pseudonymisation cannot be controlled or verified by the user.
- Users need to enter access codes when connecting the app with the fitness tracker and man-in-the-middle attackers could hack these. In addition, access codes to e.g. the user's google account can be hacked when the user loses his smartphone or it is stolen.
- The *Robert-Koch-Institute* cannot verify who donates the data or if the donator really exists and in that way the data can be manipulated.

The association underlined that app users should be fully informed about any potential technological risks the app entails.

Concerns about the contact-tracing app announced by the Federal Ministry of Health

In **Germany**, the *Chaos Computer Club*, Europe's largest association of hackers, has published on 24 April 2020 an open letter to the Federal Minister of Health and the Chancellery Minister in which the association criticises the centralised pseudonymisation of user data.¹⁰⁵ They outline that international experts agree that the decentralised pseudonymisation of user data on the users' smartphones is the better methodology for a contact-tracing app. A centralised approach bears the risk of de-anonymisation and this needs to be avoided at all costs.

At first, the Federal Ministry of Health conceptualised a centralised data pseudonymisation, however, after criticism from experts and civil society, the ministry decided against this approach and opted for decentralised data pseudonymisation on the users' smartphones.^{106 107 108}

2.4 Any other privacy and data protection concerns

No other privacy and data protection concerns can be reported for the period of 21 March – 30 April 2020.

¹⁰⁴ Chaos Computer Club, [CCC analysiert Corona-Datenspende des RKI](#), 20 April 2020

¹⁰⁵ Chaos Computer Club, [Corona-Tracing-App: Offener Brief an Bundeskanzleramt und Gesundheitsminister](#), 24 April 2020

¹⁰⁶ Spiegel, [Die Wahl zwischen Pest und Corona](#), 23 April 2020

¹⁰⁷ Spiegel, [Regierung lenkt im Streit über Corona-App ein](#), 26 April 2020

¹⁰⁸ Tagesschau, [Bundesregierung denkt bei App um](#), 26 April 2020