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Act on Equality between Women and Men in the Federal Administration and in Federal Enterprises and Courts (Federal Act on Gender Equality)

Federal Act on Gender Equality of 24 April 2015 (Federal Law Gazette I, p. 642, 643)

Part 1 General provisions

Section 1 Aims of the Act

(1) The aim of the Act is

1. to achieve gender equality,
2. to eliminate existing discrimination on the basis of gender, in particular discrimination against women, and to prevent discrimination in the future and
3. to improve the family-friendliness and reconciliation of family life, care work and employment for women and men.

(2) The actual realisation of gender equality shall be promoted in accordance with the provisions of this Act. Structural discrimination against women shall be eliminated by means of their specific promotion.

(3) When achieving the aims account shall be taken of the particular concerns of disabled women and women at risk of disability within the meaning of section 2 (1) of the Ninth Book of the Social Code. In all other respects, section 2, second sentence, of the Act on Equal Opportunities for Persons with Disabilities shall apply.

Section 2 Scope of application

This Act shall apply to agencies under section 3 no. 5. Enterprises under section 3 no. 9 are to work towards the application, mutatis mutandis, of this Act.

Section 3 Definitions

For the purposes of this Act,

1. “jobs” means training positions, positions, established posts as well as posts which can be filled by public employees within the meaning of this Act and for which financial resources alone are required, regardless of whether the employment is financed by budget resources earmarked for posts and established posts or by other budget resources;
2. “groups” means salary and pay groups or service classes, career brackets and specialist areas, vocational training courses, including the preparatory service, as well as levels with supervisory or management responsibilities, including the posts and established posts of presiding judges;
3. “professional advancement” means promotion, upgrading, advancement in line for promotion and the transfer of higher-rated posts and jobs;
4. “public employees” means civil servants, employees, including trainees, judges and the holders of office under public law;
5. “agencies” means
 - a) federal courts,
 - b) authorities and administration offices of the direct federal administration, including those within the remit of the armed forces and
 - c) federal corporations, institutions and foundations under public law;section 6 (1), (2) and (4) of the Federal Staff Representation Act shall prevail;
6. “family responsibilities” means the actual care, by public employees, of at least one child under the age of 18; this also includes the taking of parental leave in accordance with the Federal Act on Parental Allowance and Parental Leave;
7. “care responsibilities” means the actual, non-commercial care at home, by public employees, of a person in need of long-term care within the meaning of section 61 (1) of the Twelfth Book of the Social Code; this also includes the taking of home care leave in accordance with the Home Care Leave Act and the taking of family care leave in accordance with the Family Care Leave Act;
8. “qualification” means aptitude, ability and professional performance;
9. “enterprises” means
 - a) establishments and organisations of the indirect federal administration, with the exception of corporations, institutions and foundations and
 - b) enterprises of the direct federal administration which will in the future be transformed into enterprises under private law, with the exception of subsidiaries;
10. “under-represented” means the status of women or men if their respective proportion of the public employees in an individual group under no. 2 is less than 50 per cent; in the case of an uneven number of public employees, women or men are under-represented if the disparity between both genders concerns at least two persons of the same gender; the current situation in that group to which the intended measure or decision chiefly refers shall be decisive when it comes to determining under-representation.

Section 4

General obligations

- (1) Public employees, in particular those with supervisory or management responsibilities, the head of the agency and the personnel management shall promote the achievement of

the aims of this Act. This obligation shall be observed as a consistent guiding principle in all the agencies' areas of activity and decision-making as well as in the context of co-operation between the agencies.

(2) Where agencies grant benefits in the form of institutional funding in accordance with section 23 of the Federal Budget Code, they are to ensure by means of a provision which is incidental to the allocation decision or by contractual agreement that the institutional recipients of the benefits apply the principles of this Act. The provision incidental to the allocation decision or the contractual agreement must make it clear which provisions are to be applied. The first and second sentences shall also apply in the event that posts outside of the control of the federal administration are institutionally funded from federal resources by way of the allocation.

(3) Federal legal and administrative provisions are also to express gender equality by linguistic means. The same shall apply to official correspondence.

Part 2

Gender mainstreaming

Section 5

Basic principle; application

(1) The provisions of this Part shall only not apply where membership of a specific gender is the indispensable precondition for the activity in question.

(2) The rights of participation of the staff representation and those of the severely disabled persons' representation shall remain unaffected.

Section 6

Job announcements

(1) Job announcements must be written in gender-neutral language. In particular, it shall not be permissible for jobs to be announced only for men or only for women. The text of the announcement must be phrased in such a manner that it addresses members of both genders in the same way and encourages more members of that gender which is under-represented in the respective group to submit applications. Each announcement must make reference to the fact that the position may be exercised on a part-time basis, unless compelling official interests preclude this. The fourth sentence shall also apply when it comes to filling vacancies with supervisory or management responsibilities, regardless of the hierarchical level.

(2) If women or men are under-represented in a group, a vacancy is to be announced so as to increase the number of female or male applicants. The vacancy is to be announced publicly if this goal cannot be achieved either by means of an in-house or an inter-agency announcement. Exceptions under section 8 (1), third sentence, of the Federal Civil Service Act shall remain unaffected.

(3) Job announcements must specify the requirements of the vacancy to be filled and, with a view to applicants' possible future functions, must also indicate the required profile and qualifications for the career bracket or functional area.

Section 7

Interviews

(1) Where a sufficient number of applications has been received from women who have the required profile and qualifications as set out in the announcement, when filling vacancies in a group in which women are under-represented at least as many women as men must be invited for interview or to take part in special selection procedures. Section 82, second and third sentences, of the Ninth Book of the Social Code shall remain unaffected. The first and second sentences shall apply mutatis mutandis when it comes to filling vacancies in a group in which men are under-represented on account of structural discrimination.

(2) Questions concerning, in particular, marital status, an existing or planned pregnancy, and existing or planned family or care responsibilities shall be inadmissible in interviews and special selection procedures.

(3) Selection panels are to comprise the same numbers of men and women. Where the equal representation of women and men is not possible for good reasons, the relevant reasons shall be placed on record.

Section 8

Selection decisions in regard to recruitment, professional advancement and the allocation of training positions

(1) Where women are under-represented in a specific group under section 3 no. 2, the agency shall give them preferential treatment when allocating training positions, recruiting new employees and when it comes to professional advancement. This shall also apply to secondment, transfer and relocation for more than three months in each case if such measures are preceded by a job announcement. The precondition for the preferential treatment is that the female applicants are equally as qualified as their fellow male applicants. The preferential treatment shall be ruled out if grounds warranting legal protection which are related to the person of a fellow male applicant prevail. Where men are at a structural disadvantage and are under-represented in the respective group, the first to fourth sentences shall apply mutatis mutandis.

(2) Subsection (1) shall in particular apply to

1. the filling of the posts of civil servants, employees, trainees and judges, unless an election or the involvement of an election panel is prescribed for the appointment of judges;
2. professional advancement, unless the decision regarding this advancement is taken by vote or with the involvement of an election panel.

The first sentence shall also encompass jobs with supervisory or management responsibilities, regardless of the hierarchical level.

(3) The exemption in subsection (2), first sentence, no. 1 shall apply mutatis mutandis to the posts of the members of the Bundesrechnungshof (German Supreme Audit Institution) for whose appointment the Standing Committee of the Grand Senate of the German Supreme Audit Institution is to be heard in accordance with section 5 (2), second sentence, of the Act on the German Supreme Audit Institution of 11 July 1985 (Federal Law Gazette I p. 1445), as last amended by Article 15 para. 82 of the Act of 5 February 2009 (Federal Law Gazette I p. 160).

Section 9

Qualification of applicants

(1) The qualification of an applicant shall be determined on the basis of the requirements of the vacancy to be filled, in particular the requisite education and training, the skills profile of the career bracket or functional area in question and professional experience. Consideration may only be given to an applicant's length of service and the date of their last promotion in so far as this is of relevance in respect of qualification for the job in question. Account shall be taken of specific experience and skills which have been acquired on account of family or care responsibilities in so far as these are of relevance to the performance of the activity in question.

(2) The following circumstances shall not be included in the comparative assessment:

1. family or care responsibilities giving rise to
 - a) career breaks,
 - b) a reduction in the number of active years of service or employment,

- c) reductions in working hours or delays in completing individual training courses,
 - d) time requirements;
2. the income situation of the applicant's spouse, civil partner or partner;
 3. the intent to make use of the possibility of reducing working hours or of taking a period of leave to take on family or care responsibilities;
 4. organisational or personnel management considerations.

Section 10 Training, business trips

(1) The agency shall support the participation of public employees in training courses. When it comes to introductory, advancement and refresher training, consideration shall be given to women at least in line with their proportion of the training course's respective target group. The second sentence shall also apply to men if they are under-represented.

(2) The agency must enable public employees with family or care responsibilities to take part in professional training courses and to go on business trips, within the bounds of what is operationally possible. Where necessary, additional events or alternative periods for business trips shall be offered, within the bounds of what is operationally possible, such as correspond to the spatial and temporal needs of public employees with family or care responsibilities. In addition, the agency may offer public employees with family or care responsibilities the possibility of taking part in official training courses, within the bounds of what is operationally possible. For the duration of their participation in

1. measures referred to in the first sentence, childcare or the care of persons in need of long-term care may be offered where this is necessary,
2. measures referred to in the first and third sentences, additional costs for childcare or the care of persons in need of long-term care may, upon request, be reimbursed where these arise and are unavoidable.

(3) The agency is to offer sufficient numbers of training courses to facilitate professional advancement and return to work after a career break to take on family or care responsibilities. Subsection (2) shall apply mutatis mutandis.

(4) Public employees of the personnel management and those with supervisory or management responsibilities shall be obliged to familiarise themselves with gender mainstreaming and the reconciliation of family life, care work and employment. They are to attend the relevant training courses.

(5) The equal opportunities officer and her deputies shall, at the beginning of and throughout their term of office, be given the opportunity to take part in training courses, in particular in regard to gender equality and public service law as well as staff representation, organisational and budget law.

Part 3 Equality Plan

Section 11 Purpose

The Equality Plan serves the achievement of the aims of this Act and is a key instrument of personnel planning, in particular of personnel development. Its implementation is a specific obligation of the personnel management, of public employees with supervisory or management responsibilities and of the head of the agency.

Section 12 Preparation

(1) Each agency shall prepare an Equality Plan for four years in each case, which may be adapted after two years to actual circumstances. The rights of the staff representation and of the severely disabled persons' representation shall remain unaffected.

(2) The Equality Plan shall be prepared by 31 December and enters into force on 1 January of the following year. In the case of agencies with a large area of activity and in the case of wide-ranging organisational changes in the agency, other reference dates may be determined in derogation of the first sentence in consultation with the equal opportunities officer.

Section 13 Content

(1) The Equality Plan must take stock by describing the current situation in respect of women and men in the agency as of 30 June of the year of preparation and by analysing, for the past four years, the previous promotion of public employees in the individual groups under section 3 no. 2. The stock-taking also includes a presentation of how women and men have taken up the measures to improve the reconciliation of family life, care work and employment and how their professional advancement compares to that of women and men who have not taken up such measures. Where the targets of the previous Equality Plan have not been achieved, the current Equality Plan must set out the reasons for the failure to achieve the targets.

(2) The Equality Plan shall determine how, by the end of its period of validity,

1. the under-representation of women or men in the individual groups under section 3 no. 2 is to be reduced where possible,
2. the reconciliation of family life, care work and employment is to be improved and how men in particular are to be motivated to take up relevant offers in greater numbers.

To that end concrete targets, in particular regarding the proportion of women and men for each supervisory or management level, are to be specified, in so far as they refer to jobs under section 3 no. 1. Where targets regarding the filling of vacancies are to be developed in which decision-making the agency is not involved, the requirements shall be developed in consultation with the agency responsible for filling the vacancy.

(3) For each target the Equality Plan shall specify concrete measures of a personnel, social or organisational nature for achieving the relevant target. The Equality Plan shall, in particular, also contain measures to promote the reconciliation of family life, care work and employment.

(4) In so far as personnel management measures are provided for on account of which the posts or established posts are to be frozen or cut, the Equality Plan shall provide that the proportion of that gender which is under-represented is at the very least not reduced in the relevant groups under section 3 no. 2.

(5) The Equality Plan shall not contain any personal data.

Section 14 Publication

The Equality Plan shall be published on the agencies' intranet within one month following the start of its period of validity and shall be made available without delay to the public employees. Public employees with supervisory or management responsibilities shall receive it in text form.

Part 4 Reconciliation of family life, care work and employment for women and men

Section 15 Working times and other general conditions

The agencies shall offer working times and other general conditions which make it easier for women and men to reconcile family life, care work and employment, unless official interests preclude this. Other general conditions within the meaning of the first sentence may include childcare facilities or the care of persons in need of long-term care, including the relevant advisory and referral services.

Section 16

Part-time work, telework, mobile working and periods of leave to take on family or care responsibilities

(1) The agencies shall grant applications from public employees with family or care responsibilities to take on family- or care-related part-time employment or a period of leave, unless urgent official interests preclude this; this shall also apply in the case of jobs with supervisory or management responsibilities, regardless of the hierarchical level. Within the bounds of what is operationally possible, the agencies shall also offer telework, mobile working or family- or care-friendly employment and attendance time models to public employees with family or care responsibilities. Detailed grounds must be provided in writing where applications are rejected.

(2) The agencies must inform public employees who submit an application for part-time employment, family- or care-friendly working time models or a period of leave to take on family or care responsibilities of the following, in good time and in text form:

1. the consequences of the application being granted, in particular those under civil service and labour law as well as civil service pension and pension provisions and
2. the possibility of setting a time limit with the option of extending it and the consequences thereof.

(3) The agencies shall ensure that

1. public employees whose application for part-time employment, family- or care-friendly working time models or a period of leave to take on family or care responsibilities was positively decided are relieved of their official duties in line with their reduced working time and
2. the reduction in working time does not result in additional work for other public employees in the agency.

(4) The provisions of the Act on Part-Time and Fixed-Term Employment regarding part-time employment and other legal provisions regarding part-time work or periods of leave shall remain unaffected by subsections (1) to (3).

Section 17

Changing to full-time employment, returning to work

(1) Where two people are equally qualified, priority must be given to the following when taking decisions to fill vacancies:

1. public employees with family or care responsibilities who are working part time and applying for full-time employment or an increase in their weekly working time and
2. public employees on a period of leave who have taken on family or care responsibilities during their leave and are applying to return from leave early.

(2) The agencies shall make it easier for public employees on a period of leave on account of taking on family or care responsibilities to keep in contact with their profession and to return to work. The following measures can, in particular, be considered:

1. the possibility of working part time under the Federal Act on Parental Allowance and Parental Leave,

2. the possibility of working part time under the Act on Part-Time and Fixed-Term Employment, in so far as the nature of the activity does not rule out part-time employment,
3. timely information regarding training courses on offer,
4. the offer of taking part in training courses during or after a period of leave and
5. the offer of standing in for colleagues on vacation and sick leave.

(3) Taking part in training course during a period of leave to take on family or care responsibilities establishes an entitlement to paid release from service or work after the end of the period of leave. The duration of the paid release from service or work is based on the duration of the training course.

(4) The agency shall hold individual staff meetings with the relevant public employees in good time before the end of a period of leave to take on family or care responsibilities in which their further professional development is to be discussed.

Section 18 Prohibition of discrimination

(1) The following circumstances shall not prejudice recruitment or professional development, including professional advancement, and in particular shall not be prejudicial to a staff report:

1. part-time employment,
2. telework, mobile working, and flexible working or attendance time models,
3. an existing pregnancy,
4. pregnancy- or motherhood-related absences on the ground of employment prohibitions under maternity protection law,
5. periods of leave on account of taking on family or care responsibilities.

This does not rule out the periods referred to in no. 1 of the first sentence being treated differently than the periods referred to in nos 4 and 5 of the first sentence.

(2) The different treatment of part-time employment in relation to full-time employment shall be permissible only where this is justified for compelling factual reasons. This applies mutatis mutandis to telework, mobile working and periods of leave on account of family or care responsibilities, with the exception of parental leave.

(3) Account shall be taken of pregnancy- and motherhood-related absences due to employment prohibitions under maternity protection law and periods of leave on account of family or care responsibilities when calculating waiting periods in respect of a promotion in accordance with section 22 (4) of the Federal Act on Civil Servants.

Part 5 Equal opportunities officer, deputy and equal opportunities liaison officer

Section 19 Election, authorisation to issue statutory instruments

(1) An equal opportunities officer and one deputy shall be elected in each agency which normally has at least 100 public employees. The first sentence shall also apply to the top-level federal authorities which normally have fewer than 100 public employees. The election of the equal opportunities officer and her deputy shall take place in separate rounds of elections in accordance with general election principles. Re-election shall be permissible. The agency's female public employees shall be entitled to vote and to be elected.

(2) The female public employees in an agency which does not have its own equal opportunities officer shall be entitled to vote in the next highest agency.

(3) Administrations with a large remit may, in derogation of subsection (1), first sentence, have fewer equal opportunities officers elected in so far as it is guaranteed that the public

employees within the overall remit are appropriately represented by an equal opportunities officer.

(4) Up to three deputies shall be elected in agencies with large areas of responsibility or complex areas of activity. This shall also apply to administrations with a large remit which apply the exemption under subsection (3).

(5) The Federal Government shall issue a statutory instrument without the consent of the Bundesrat to regulate the procedure for the election referred to in subsections (1) to (4).

Section 20

Appointment

(1) The agencies shall appoint the elected public employees as equal opportunities officer or her deputy for four years in each case. The appointments presuppose that the elected public employees are members of neither the staff nor of the severely disabled persons' representation.

(2) Where no candidate can be found to stand for election as equal opportunities officer or no candidate has been elected following the election, the head of the agency shall appoint the equal opportunities officer ex officio from amongst the female public employees. The consent of the public employee to be appointed shall be required therefor.

(3) Where insufficient candidates can be found to stand for election as deputies or insufficient candidates have been elected following the election, the head of the agency shall appoint the deputies ex officio on the suggestion of the equal opportunities officer. The consent of the public employee to be appointed shall be required therefor.

(4) In the case of small agencies under section 19 (2), as well as of offices and parts of an agency which are located remote from the agency, an equal opportunities liaison officer shall be appointed on the suggestion of the competent equal opportunities officer. The appointment of equal opportunities liaison officers shall require the consent of the female public employees to be appointed. The equal opportunities liaison officer must be a public employee in the respective agency, office of the agency or of the respective part of the agency.

Section 21

Contesting the election

(1) The election may be contested if key provisions on the election have been infringed and the infringement has not been rectified. An election shall not be contested if it was not possible to change or influence the result of the election by means of an infringement of key provisions on the election.

(2) A group of at least three people entitled to vote and the head of the agency shall be entitled to contest elections.

(3) The contestation must be submitted to the administrative court within 12 working days of publication of the election result.

Section 22

Premature departure

(1) In the event of the premature departure from office of the equal opportunities officer or in the event of her being prevented from exercising her office on a more than temporary basis, the agency shall without delay appoint a new equal opportunities officer for the remainder of the term of office. Section 19 shall not apply where the duration of the remainder of the term of office is two years or less.

(2) In the event of the premature departure of a deputy or of an equal opportunities liaison officer or in the event of their being prevented from exercising their office on a more than temporary basis, the agency shall without delay appoint a new deputy or a new equal opportunities liaison officer for the remainder of the term of office on the suggestion of the equal opportunities officer. Subsection (1) second sentence, shall apply mutatis mutandis.

(3) Where the equal opportunities officer as well as all her deputies leave office prematurely or they are prevented from exercising their office on a more than temporary basis, then new elections shall be held in accordance with section 19.

(4) Prevention on a more than temporary basis shall be deemed to be where the office cannot be exercised for an uninterrupted period of more than six months on account of the incapacity to work due to sickness.

Section 23

Merger, splitting and integration

(1) In the event of the merger of two agencies to form a new agency, the term of office of the equal opportunities officer and that of her deputies shall end one year after the merger at the latest. Up until that point in time the equal opportunities officers and deputies shall divide up and perform their tasks by mutual agreement. New elections in accordance with section 19 must have been concluded in good time before the expiry of one year following the merger.

(2) In the event of the division or splitting of an agency into two or more agencies, the term of office of the equal opportunities officer and that of her deputies shall end one year after the organisational act is enforced at the latest. Subsection (1), third sentence, shall apply mutatis mutandis.

(3) In the event of the integration of one agency into another agency, the term of office of the equal opportunities officer and that of her deputies in the integrated agency shall end upon the enforcement of the organisational act of integration.

Section 24

Legal status

(1) The equal opportunities officer is a member of the personnel management and reports directly to the head of the agency. In top-level federal authorities, she may also report to the head of the central department.

(2) The equal opportunities officer is not bound by instructions in the discharge of her duties. She may be charged with personnel matters only in her capacity as equal opportunities officer. Her authority to write staff reports for public employees who report to her (section 29 (2)) shall remain unaffected by the second sentence.

(3) The rights and duties of the equal opportunities officer referred to in subsections (1) and (2) as well as those referred to in sections 28 to 35 shall also apply to her deputies, unless provided otherwise in this Act.

Section 25

Tasks, rights and duties of the equal opportunities officer

(1) The equal opportunities officer is tasked with promoting and monitoring enforcement of this Act as well as the General Equal Treatment Act in respect of protecting public employees against discrimination on account of their gender, in particular discrimination against women. This also encompasses the protection of disabled women or women at risk of disability as well as protection against sexual harassment in the workplace.

(2) In particular, the tasks of the equal opportunities officer shall include

1. supporting the agency in achieving the aims of this Act and promoting compliance with the general obligations specified in section 4;
2. being involved in all personnel, organisational and social measures taken by the agency in respect of gender equality, the elimination of under-representation, the reconciliation of family life, care work and employment, and protection against sexual harassment in the workplace;
3. advising and supporting individual public employees as and when required, in particular in respect of professional development and promotion, reconciliation of family life, care work and employment, and in relation to protection against discrimination and
4. taking up the training offers referred to in section 10 (5).

(3) The equal opportunities officer may hold office hours and call annual meetings of the female public employees. She shall inform the head of the agency beforehand of her intent to call a meeting in accordance with the first sentence. The equal opportunities officer may take part in staff meetings and has a right to speak at such meetings.

(4) In the case referred to in section 19 (2), the equal opportunities officer in the next-highest agency shall also take on the tasks for the subordinate agency assigned in accordance with subsections (1) and (2). Subsection (3) shall apply mutatis mutandis.

(5) The equal opportunities officer of the top-level federal authority shall be responsible for the exchange of information and experience amongst equal opportunities officers, their deputies and equal opportunities liaison officers within their remit.

(6) The equal opportunities officer of a highest court shall be entitled to take part in the meetings of the presidential council and of its committees.

(7) Performance of the tasks of equal opportunities officer shall have priority over the performance of other tasks.

Section 26

Tasks of the deputy and equal opportunities liaison officer

(1) As a general principle, the deputy acts in the event of deputisation.

(2) In derogation of subsection (1), the equal opportunities officer may delegate a part of the tasks specified in section 25 to the deputy, with her consent, which she is to perform independently. In the case referred to in section 19 (4), the tasks shall be divided between the equal opportunities officer and her deputies by their mutual agreement. The equal opportunities officer may change or revoke the decision to delegate tasks in accordance with the first and second sentences at any time and without the consent of the deputy or deputies. Section 24 (2), second sentence, shall apply mutatis mutandis.

(3) The deputy shall comply with the equal opportunities guidelines prescribed by the equal opportunities officer. Overall responsibility for the performance of tasks shall remain with the equal opportunities officer.

(4) The equal opportunities liaison officer is the contact person for all public employees in the respective agency, office or of the respective part of the agency as well as for the competent equal opportunities officer. She is responsible for the passing on of information between the public employees and the equal opportunities officer. Where both the equal opportunities officer and her deputies are prevented from attending, the equal opportunities liaison officer may participate in interviews, special selection procedures or meetings of selection panels on the equal opportunities officer's behalf; in such cases the equal opportunities officer reserves the right to exercise her right of participation in accordance with section 32. Where the agency makes use of the possibility referred to in section 19 (3), the equal opportunities officer may also delegate to the equal opportunities liaison officer, with her consent, tasks to be performed independently in the local agency, office or part of the agency.

Section 27

Involvement and support of the equal opportunities officer

(1) The agency shall involve the equal opportunities officer in good time, in particular when it comes to

1. personnel matters; this concerns preparations for and decisions on
 - a) the allocation of training positions,
 - b) recruitment, as well as secondment, transfer and relocation for more than three months in each case,
 - c) training and professional advancement,
 - d) warnings, the institution and conclusion of disciplinary proceedings, including temporary suspension from service,

- e) dismissals, as well as termination agreements, redundancy, retirement and comparable decisions,
 - 2. organisational and social matters,
 - 3. writing assessment guidelines and meetings aimed at ensuring uniform application of these guidelines in the agency,
 - 4. procedures to fill vacancies in bodies under the provisions of the Federal Act on Appointment to Bodies, unless a gender equality unit has been established in the agency and
 - 5. preparing the Equality Plan.
- (2) Involvement in good time within the meaning of subsection (1) shall be deemed to be where the equal opportunities officer is involved from the start of the agency's decision-making process and the respective decision or measure can still be influenced.
- (3) The involvement of the equal opportunities officer presupposes a participatory procedure in accordance with the Federal Staff Representation Act and the Ninth Book of the Social Code; the procedure in accordance with section 32 (3) must have been concluded. Where, contrary to the first sentence, the staff or severely disabled persons' representation is also involved, the equal opportunities officer shall be informed of the reasons therefor.

Section 28 **Protective rights**

- (1) The equal opportunities officer shall not be prevented from performing her duties and shall not be discriminated against or favoured in regard to her professional development on account of her activity as equal opportunities officer. In particular, she shall exercise her office without any reduction in her previous emoluments or her previous remuneration, and she shall take part in professional advancement in the same manner as would have been the case if she had not assumed the office.
- (2) The equal opportunities officer shall be relieved of other tasks to the extent necessary for her to be able to properly perform her tasks as equal opportunities officer. In agencies which normally have fewer than 600 public employees, such relief shall amount to at least half of the regular working time of a full-time public employee. Where the agency normally has at least 600 public employees, the equal opportunities officer shall be relieved to the extent of the regular working time of a full-time public employee. Where the equal opportunities officer works part time, the extent of the relief granted to her deputy or her deputies shall be increased *mutatis mutandis*; this shall apply regardless of the requirements made as regards relief granted to the deputy in subsection (5). Where, pursuant to section 19 (2), the equal opportunities officer is responsible for more than one agency, the total number of public employees in all the agencies shall be relevant as regards the extent of relief granted.
- (3) The agencies shall *ex officio* notionally map the professional development of the equal opportunities officer. This obligation shall apply regardless of the extent of the relief granted to equal opportunities officers. Such notional tracing serves as the basis for staff selection decisions. The entitlement to notional mapping of the staff report in accordance with section 33 (3) of the Federal Ordinance on Careers and Promotion of Civil Servants shall remain unaffected. The agencies shall, upon her request, give the equal opportunities officer a job description as proof of her role as equal opportunities officer.
- (4) The equal opportunities officer shall be protected against dismissal, transferral and secondment in the same way as a member of the staff representation.
- (5) Where the deputy becomes active in accordance with section 26 (1) in the event of deputisation, she shall, in place of the equal opportunities officer, be relieved of other tasks from the start of her deputisation to the extent of her role as deputy. In the case referred to in section 26 (2), first sentence, the deputy shall be relieved of duties instead of the equal opportunities officer for up to one quarter of the regular working time of a full-time public employee. In the case referred to in section 26 (2), second sentence, the relief granted to

deputies shall be up to half of the regular working time of a full-time public employee in each case; the amount of the relief granted to the equal opportunities officer shall remain unaffected thereby.

(6) Equal opportunities liaison officers shall be relieved of other tasks to the extent necessary for them to properly perform their tasks as mediators of information. The relief granted shall amount to at least one tenth and at most one quarter of the regular working time of a full-time public employee.

Section 29 Resources

(1) The equal opportunities officer shall be provided with the requisite staff, rooms and material resources from the beginning of and up until the end of her term of office.

(2) In agencies which normally employ fewer than 1,000 public employees, the equal opportunities officer may be assigned one member of staff. In agencies which normally have at least 1,000 public employees, the equal opportunities officer shall be assigned at least one member of staff.

(3) The task of these members of staff shall be restricted to providing support to the equal opportunities officer. Section 26 (4), third sentence, shall apply *mutatis mutandis*.

(4) The equal opportunities officer shall receive a monthly allowance. The amount of the allowance available to an equal opportunities officer who has been fully relieved of other tasks corresponds to the amount of the allowance paid to members of staff councils, general staff councils, district staff councils and central staff councils who have been fully released from their official duties. An equal opportunities officer who has been partially relieved of her other tasks shall receive an allowance which corresponds to the proportion of the relief granted to her. The Ordinance on the Amount of Allowance Paid to Members of Staff Representations Released from their Duties of 18 July 1974 (Federal Law Gazette I p. 1499), as amended by Article 7 of the Act of 3 December 2001 (Federal Law Gazette I p. 3306), shall apply *mutatis mutandis*.

Section 30 Co-operation and information

(1) The head of the agency and the equal opportunities officer shall co-operate closely for the good of the public employees and to achieve the aims specified in section 1.

(2) The head of the agency shall support the equal opportunities officer in the performance of her tasks and in the exercise of her rights of participation by, in particular, informing the equal opportunities officer without delay and comprehensively. The documents required in the performance of her tasks, in particular application documents, comparative overviews and selection notes, shall be presented to her at the earliest opportunity and the requested information given to her. The head of the agency is to give the equal opportunities officer the opportunity to actively participate in all decision-making processes in respect of personnel, organisational and social matters and to support the exchange of information and experience amongst the equal opportunities officer and other equal opportunities officers.

(3) The equal opportunities officer shall be entitled to inspect those parts of personnel files which are relevant to a respective decision in so far as it is necessary for her to be aware of the content of the file in the performance of her tasks.

Section 31 Obligation of secrecy

The equal opportunities officer and her deputies, her members of staff and the equal opportunities liaison officer shall be obliged to maintain secrecy in respect of the personal circumstances of public employees and other confidential matters in the agency from the time when they are appointed and beyond the end of the term of office.

Section 32 Form of participation and incremental involvement

(1) The equal opportunities officer shall be entitled and obliged to bring matters directly before the head of the agency. She has a right of initiative in respect of all matters which are subject to her participation in accordance with section 25 (1) and section 27 (1). The agency shall take a decision regarding an initiative within an appropriate period, after one month at the latest. In exceptional cases the final decision shall be taken after three months. The equal opportunities officer shall be notified of the decision in text form.

(2) The involvement of the equal opportunities officer shall normally comprise the giving of an opinion, which shall be placed on file. The opinion shall be given in text form within ten working days following receipt of the notification concerning the intended measure or decision; derogations from this time requirement are possible with the agreement of the equal opportunities officer. Only in particularly urgent cases can the period for the giving of the opinion be reduced to three working days by way of exception. Where the equal opportunities officer has not submitted her opinion within ten working days or, in the case referred to in the third sentence, has submitted no opinion within three working days, the intended measure or decision shall be deemed to be approved.

(3) Where the agency does not follow the equal opportunities officer's opinion, it must notify the equal opportunities officer of the reasons therefor if the equal opportunities officer has requested such notification when submitting her opinion. The agency shall make the notification in text form within 15 working days of receipt of the opinion.

(4) Where agencies take decisions in respect of subordinate agencies, each involved agency shall involve the equal opportunities officer responsible for it in the sub-procedures pending in it in accordance with the provisions of sections 25, 27 and 30 as well as of subsections (1) and (2). The opinion of the equal opportunities officer of the subordinate agency which has been submitted in text form shall be presented to the next highest agency together with the other documents relevant to the decision and by the next highest agency to the equal opportunities officer appointed in it. In the case of personnel matters, the first to third sentences shall apply mutatis mutandis in the event that the agency processing the personnel matter and the agency employing the person in question are not one and the same. The first sentence shall also apply where matters affecting the tasks of the equal opportunities officer under subsection (1) are being dealt with on behalf of another agency which is not a subordinate agency under section 25 (4).

Section 33

Right of objection and objection procedure

(1) The equal opportunities officer shall have a right of objection vis-à-vis the head of the agency where she asserts that the agency has

1. contrary to section 12 (1) not prepared an Equality Plan or has considerably infringed the time limit specified in section 12 (2),
2. prepared an Equality Plan which does not comply with the requirements set out in section 13,
3. contrary to section 27 (1) no. 5 not involved the equal opportunities officer in preparing the Equality Plan,
4. contrary to section 14 not published the Equality Plan,
5. infringed the rights of the equal opportunities officer or
6. infringed other provisions of this Act or other provisions on gender equality.

(2) The objection shall be filed in writing with the head of the agency within one week of receipt of the reasons under section 32 (3). It shall have suspensive effect. Section 80 (2), first sentence, no. 4 and subsection (3) of the Code of Administrative Court Procedure shall apply mutatis mutandis. In the event of immediate enforcement, the head of the agency shall notify the equal opportunities officer without delay.

(3) The head of the agency is to take a decision on an objection within one month of receipt. Where he or she deems the objection to be well-founded, the measures concerned and their consequences shall be rectified and account taken of the results of the objection when taking a decision on other comparable cases.

(4) Where the head of the agency deems the objection to be ill-founded, he or she shall without delay submit it to the head of the next highest agency. In the case of independent bodies, institutions and foundations directly accountable to the Federal Government with no multi-level administrative structure, the objection shall be submitted mutatis mutandis to the board or management. The decision of the head of the next highest agency, of the board or of the management shall be issued in accordance with subsection (3).

(5) The decision on the objection shall be reasoned in writing and communicated to the equal opportunities officer without delay.

Section 34 **Judicial proceedings**

(1) Where an objection raised in accordance with section 33 is without success, the equal opportunities officer may bring the matter before the administrative court. Prior to that the equal opportunities officer or the agency must undertake a renewed attempt to reach agreement extra judicially. The matter shall be brought before the court within one month after the equal opportunities officer or the agency has determined in writing that the attempt to reach agreement extra judicially has failed. The bringing of the matter before the court shall not have suspensive effect.

(2) The bringing of the matter before the court may only be based on the fact that the agency has

1. infringed the rights of the equal opportunities officer or
2. prepared an Equality Plan which does not comply with the requirements set out in sections 12 to 14.

(3) In derogation of subsection (1), third sentence, it shall also be permissible to bring the matter before the court if no decision was taken on the merits of the objection within an appropriate period without sufficient grounds therefor. Section 75, second to fourth sentences, of the Code of Administrative Court Procedure shall apply mutatis mutandis.

(4) The agency shall carry the costs arising to the equal opportunities officer on account of the legal remedies referred to in subsections (1) or (2).

Section 35 **Right to ask questions**

(1) The equal opportunities officer and her deputies may turn directly to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth when it comes to settling issues of fundamental significance, in particular as regards interpreting this Act. The personal data of public employees may be transmitted to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth only with the consent of the public employees in question.

(2) Enquiries in accordance with subsection (1) are to be responded to within one month. The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth may pass on its reply to the respective top-level federal authority only for information purposes.

Section 36 **Interministerial Working Group of Equal Opportunities Officers**

The equal opportunities officers of the top-level federal authorities together make up the Interministerial Working Group of Equal Opportunities Officers of the Highest Federal Authorities. The Working Group shall regularly inform the equal opportunities officers in the subordinate authorities of its activities. The possibility of establishing other working groups within the scope of application of this Act to coordinate the work of the equal opportunities officers shall remain unaffected by the first and second sentences.

Part 6

Special provisions, statistics, report and transitional provisions

Section 37

Special provisions relating to the Federal Intelligence Service

This Act shall apply to the Federal Intelligence Service with the following derogations:

1. the Federal Intelligence Service shall be regarded as a single agency in which no equal opportunities liaison officers are appointed;
2. section 6 (2), second sentence, shall not apply;
3. section 14, first sentence, shall not apply; the public employees in the Federal Intelligence Service are entitled to inspect the Equality Plan in the offices designated by the personnel management;
4. female soldiers employed in the Federal Intelligence Service shall be actively entitled to vote pursuant to section 19 (1);
5. soldiers working in the Federal Intelligence Service shall be regarded as public employees in the Federal Intelligence Service for the purposes of the competence of the equal opportunities officer appointed there, in so far as the head of the Federal Intelligence Service or the Federal Chancellery is competent in respect of decisions in personnel, social or organisational matters affecting this group of people;
6. the security regulations applicable to the Federal Intelligence Service shall be complied with when it comes to the exchange of information and experience amongst the equal opportunities officers pursuant to section 25 (5);
7. an opinion of the equal opportunities officer in the Federal Intelligence Service which she has rendered pursuant to sections 25, 27 and 32 shall be submitted to the Federal Chancellery in so far as the Federal Chancellery is taking decisions in respect of the Federal Intelligence Service and the equal opportunities officer in the Federal Chancellery is thus not to be involved;
8. section 32 (4) and section 38 (1), fourth sentence, shall not apply;
9. the equal opportunities officer shall require the agreement of the agency in so far as, in a case referred to in section 35, an issue is to be dealt with which is a classified matter;
10. in the event of special security incidents or a special situation which affects all or a part of the Federal Intelligence Service, the rights and duties of the equal opportunities officer shall be suspended; the beginning and end of this suspension shall be determined by the head of the Federal Intelligence Service in each case in consultation with the Head of the Federal Chancellery.

Section 38

Statistics, authorisation to issue statutory instruments

(1) Each agency shall every two years record the total number of women and men employed in the agency as well as the number of women and men by the following criteria:

1. individual groups under section 3 no. 2,
2. full-time and part-time employment,
3. periods of leave on account of family or care responsibilities,
4. application, recruitment and professional advancement,

5. professional advancement of public employees on a period of leave on account of family or care responsibilities and of those public employees who have not made use of such measures,
6. the number of full-time and part-time supervisory or management positions.

The data referred to in nos 1 to 3 and 6 of the first sentence shall be recorded by 30 June of each reporting year, the data referred to in nos 4 and 5 of the first sentence for the period from 1 July of the preceding year up to 30 June of the reporting year. The data referring to subordinate federal authorities and those of the indirect federal service shall be reported to the top-level federal authority or the top-level supervisory authority by 30 September. The top-level federal authorities shall report their own data, the summarised data within their remit and the summarised data of the indirect federal administration under their legal supervision to the Federal Statistical Office by 31 December.

(2) Each top-level federal authority shall annually record the total number of women and men employed in the top-level federal authority as well as the number of women and men by the following criteria:

1. service class of the higher grade of civil service,
2. individual levels with supervisory or management responsibilities, including the political leadership,
3. full- and part-time employment, including public employees with supervisory or management responsibilities,
4. those taking a period of leave on account of family or care responsibilities,
5. professional advancement.

The data referred to in nos 1 to 4 of the first sentence shall be recorded by 30 June of each reporting year, the data referred to in no. 5 of the first sentence for the period from 1 July of the preceding year up to 30 June of the reporting year. The data shall be reported to the Federal Statistical Office by 30 September.

(3) The Federal Statistical Office shall, on behalf of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth,

1. prepare statistics every two years on the data collated in the agencies in accordance with subsection (1) (Equality Statistics) and forward them to the top-level federal authorities,
2. prepare an index every year based on the data collected in the top-level federal authorities in accordance with subsection (2) (Equality Index) and publish it by 31 December in each case.

(4) The Federal Government shall issue a statutory instrument without the consent of the Bundesrat to regulate the individual requirements in respect of the recording and notification of statistical data. Account shall be taken of the employment statistics in accordance with the Act on Financial and Personnel Statistics as published on 22 February 2006 (Federal Law Gazette I p. 438), as last amended by Article 1 of the Act of 22 May 2013 (Federal Law Gazette I p. 1312). The statutory instrument referred to in the first sentence shall restrict the group of agencies subject to the reporting requirement to the minimum necessary. The statutory instrument may also contain provisions regarding the content, preparation and annual updating of the annexes to the statutory instrument.

Section 39 Report

(1) The Federal Government shall every four years submit a report to the German Bundestag on the situation of women and men in the agencies under section 3 no. 5 (Report on the Federal Act on Gender Equality). The report shall be based on the data collected in

accordance with section 38 (1) and (2). The top-level federal authorities shall provide the requisite information.

(2) The report shall set out to what extent the aims of this Act have been achieved and the Act has been applied. It shall make reference to exemplary gender equality measures implemented in individual agencies. The report shall not contain any personal data.

(3) The Interministerial Working Group of the Equal Opportunities Officers of the Highest Federal Authorities shall be involved in preparing the report.

Section 40 Transitional provisions

(1) The Equality Plan referred to in Part 3 shall be prepared for the first time by 31 December 2015. This shall not apply where the Equality Plan's period of validity on 1 May 2015 still amounts to more than two years.

(2) The reference date for the data to be collated for the first time for the Equality Statistics in accordance with section 38 (1), first sentence, nos 1 to 3 and 6 is 30 June 2015; the data referred to in section 38 (1), first sentence, nos 4 and 5 refer to the period between 1 July 2013 and 30 June 2015. The reference date for the data to be collated for the first time for the Equality Index in accordance with section 38 (2), first sentence, nos 1 to 4 is 30 June 2015; the data referred to in section 38 (2), first sentence, no. 5 refer to the period between 1 July 2014 and 30 June 2015.

(3) Equal opportunities officers, deputies and equal opportunities liaison officers appointed before 1 May 2015 shall remain in office as equal opportunities officers, deputies and equal opportunities liaison officers after that date. In agencies with large areas of responsibility or complex areas of activity, new elections shall be held without delay for the vacant offices of deputies pursuant to section 19 (4).