



Federal
Anti-Discrimination
Agency

Act Implementing European Directives Putting Into Effect the Principle of Equal Treatment

Act Implementing European Directives Putting Into Effect the Principle of Equal Treatment¹

¹ This law serves to transpose the following into German law:

- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ L 180, 19.7.2000, p. 22);
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16);
- Directive 2002/73/EC of the European Parliament and of the Council amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 269, 5.10.2002, p. 15); and
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ L 373, 21.12.2004, p. 37).

Content

General Act on Equal Treatment.....	4
Part 1, General Provisions	4
Part 2, Protection of Employees Against Discrimination	7
Chapter 1, Prohibition of Discrimination	7
Chapter 2, Employer Obligations	9
Chapter 3, Employee Rights.....	10
Chapter 4, Supplementary Provisions.....	11
Part 3, Protection Against Discrimination Under Civil Law	12
Part 4, Defence of Rights	14
Part 5, Special Regulations Applying to Public-Law Employment Relationships	15
Part 6, Anti-Discrimination Agency	16
Part 7, Concluding Provisions.....	19

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Article 1

General Act on Equal Treatment

Part 1

General Provisions

Section 1

Purpose

The purpose of this Act is to prevent or to stop discrimination on the grounds of race or ethnic origin, gender, religion or belief, disability, age or sexual orientation.

Section 2

Scope

(1) For the purposes of this Act, any discrimination within the meaning of Section 1 shall be inadmissible in relation to:

1. conditions for access to dependent employment and self-employment, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of professional hierarchy, including promotion;
2. employment conditions and working conditions, including pay and reasons for dismissal, in particular in contracts between individuals, collective bargaining agreements and measures to implement and terminate an employment relationship, as well as for promotion;
3. access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience;
4. membership of and involvement in an organisation of workers or employers or any organisation whose members carry on a particular profession, including all benefits provided for by such organisations;
5. social protection, including social security and health care;
6. social advantages;
7. education;
8. access to and supply of goods and services which are available to the public, including housing.

(2) Section 33c Social Code, Book I and Section 19a Social Code, Book IV shall apply to social benefits. The Company Pensions Act (Betriebsrentengesetz) shall apply to company pension schemes.

(3) The application of other prohibitions of discrimination or laws on equal treatment shall remain unaffected by this Act. The same shall apply, *mutatis mutandis*, to provisions under public law which serve the protection of specific groups of persons.

(4) Only the provisions governing the protection against unlawful dismissal in general and specific cases shall apply to dismissals.

Section 3

Definitions

(1) Direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on any of the grounds referred to under Section 1. Direct discrimination on grounds of sex shall also be taken to occur in relation to Section 2(1) Nos 1 to 4 in the event of the less favourable treatment of a woman on account of pregnancy or maternity.

(2) Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons at a particular disadvantage compared with other persons on any of the grounds referred to under Section 1, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

(3) Harassment shall be deemed to be discrimination when an unwanted conduct in connection with any of the grounds referred to under Section 1 takes place with the purpose or effect of violating the dignity of the person concerned and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

(4) Sexual harassment shall be deemed to be discrimination in relation to Section 2(1) Nos 1 to 4, when an unwanted conduct of a sexual nature, including unwanted sexual acts and requests to carry out sexual acts, physical contact of a sexual nature, comments of a sexual nature, as well as the unwanted showing or public exhibition of pornographic images, takes place with the purpose or effect of violating the dignity of the person concerned, in particular where it creates an intimidating, hostile, degrading, humiliating or offensive environment.

(5) An instruction to discriminate against a person on any of the grounds referred to under Section 1 shall be deemed as discrimination. Such an instruction shall in particular be taken to occur in relation to Section 2(1) Nos 1 to 4 where a person instructs an employee to conduct which discriminates or can discriminate against another employee on one of the grounds referred to under Section 1.

Section 4

Unequal Treatment on Several Grounds

Where unequal treatment occurs on several of the grounds referred to under Section 1, this unequal treatment may only be justified under Sections 8 to 10 and 20 when the justification extends to all those grounds for which the equal treatment occurred.

Section 5

Positive Action

Notwithstanding the grounds referred to under Sections 8 to 10 and 20, unequal treatment shall only be permissible where suitable and appropriate measures are adopted to prevent or compensate for disadvantages arising on any of the grounds referred to under Section 1.

Part 2**Protection of Employees Against Discrimination****Chapter 1****Prohibition of Discrimination****Section 6****Persons Covered**

(1) For the purposes of this Act, “employee” shall refer to

1. persons in dependent employment (salaried employees, workers);
2. persons employed for the purposes of their vocational training;
3. persons of similar status on account of their dependent economic status, including those engaged in home work and those equal in law to home workers. “Employee” shall here also refer to those applying for an employment relationship and persons whose employment relationship has ended.

(2) For the purposes of Part 2, “employer” shall refer to natural and legal persons as well as unincorporated firms with legal capacity employing persons referred to in Subsection (1). Where employees are transferred to a third party for the performance of work and services, the employer shall also be classified as such within the meaning of Part 2. The client or intermediary shall take the place of the employer in the case of employees engaged in home work and those equal in law to home workers.

(3) Insofar as the conditions for access to gainful employment and promotion are affected, the provisions under Part 2 shall apply, mutatis mutandis, to the self-employed and to members of an organ of an enterprise, in particular directors and board members.

Section 7**Prohibition of Discrimination**

(1) Employees shall not be permitted to suffer discrimination on any of the grounds referred to under Section 1; this shall also apply where the person committing the act of discrimination only assumes the existence of any of the grounds referred to under Section 1.

(2) Any provisions of an agreement which violate the prohibition of discrimination under Subsection (1) shall be ineffective.

(3) Any discrimination within the meaning of Subsection (1) by an employer or employee shall be deemed a violation of their contractual obligations.

Section 8**Permissible Difference of Treatment On Grounds of Occupational Requirements**

(1) A difference of treatment on any of the grounds referred to under Section 1 shall not constitute discrimination where, by reason of the nature of the particular occupational activities or of the context in which they are carried out, such grounds constitute a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

The agreement of a lower rate of remuneration for the same or equivalent work on any of the grounds referred to under Section 1 shall not be justified on account of special regulations applying for any of the reasons referred to under Section 1.

Section 9

Permissible Difference of Treatment On Grounds of Religion or Belief

(1) Notwithstanding Section 8, a difference of treatment on the grounds of religion or belief of employees of a religious community, facilities affiliated to it (regardless of their legal form) or organisations which have undertaken conjointly to practice a religion or belief, shall not constitute discrimination where such grounds constitute a justified occupational requirement for a particular religion or belief, having regard to the ethos of the religious community or organisation in question and by reason of their right to self-determination or by the nature of the particular activity.

(2) The prohibition of different treatment on the grounds of religion or belief shall be without prejudice to the right of the religious community referred to under Section 1, the facilities assigned to it (regardless of their legal form) or organisations which have undertaken conjointly to practice a religion or belief, to require individuals working for them to act in good faith and with loyalty to the ethos of the organisation.

Section 10

Permissible Difference of Treatment On Grounds of Age

Notwithstanding Section 8, a difference of treatment on grounds of age shall likewise not constitute discrimination if it is objectively and reasonably justified by a legitimate aim. The means of achieving that aim must be appropriate and necessary. Such differences of treatment may include, among others:

1. the setting of special conditions for access to employment and vocational training, as well as particular employment and working conditions, including remuneration and dismissal conditions, to ensure the vocational integration of young people, older workers and persons with caring responsibilities and to ensure their protection;
2. the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
3. the fixing of a maximum age for recruitment which is based on specific training requirements of the post in question or the need for a reasonable period of employment before retirement;
4. the fixing of upper age limits in company social security systems as a precondition for membership of or the drawing of an old-age pension or for invalidity benefits, including fixing different age limits within the context of these systems for certain employees or categories of employees and the use of criteria regarding age within the context of these systems for the purposes of actuarial calculations;
5. agreements providing for the termination of the employment relationship without dismissal at a point in time when the employee may apply for payment of an old-age pension; Section 41 Social Code, Book VI shall remain unaffected;

6. differentiating between social benefits within the meaning of the Works Constitution Act (Betriebsverfassungsgesetz), where the parties have created a regulation governing compensation based on age or length of service whereby the employee's chances on the labour market (which are decisively dependent on his or her age) have recognisably been taken into consideration by means of emphasising age relatively strongly, or employees who are economically secure are excluded from social benefits because they may be eligible to draw an old-age pension after drawing unemployment benefit.

Chapter 2

Employer Obligations

Section 11

Advertisement of Vacancies

A vacancy shall not be advertised in violation of Section 7(1).

Section 12

Employer Action and Duties

- (1) The employer has the duty to take measures necessary to ensure protection against discrimination on any of the grounds referred to under Section 1. This protection shall also cover preventive measures.
- (2) The employer shall draw attention to the inadmissibility of such discrimination in a suitable manner, in particular within the context of training and further training, and shall use his or her influence to ensure that such discrimination does not occur. Where an employer has trained his or her employees in an appropriate manner for the purpose of preventing discrimination, he or she shall be deemed to have fulfilled his or her duties under Subsection (1).
- (3) Where employees violate the prohibition of discrimination under Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to put a stop to the discrimination; this may include cautioning, moving, relocating or dismissing the employee in question.
- (4) Where employees are discriminated against in the pursuance of their profession by third persons within the meaning of Section 7(1), the employer shall take suitable, necessary and appropriate measures, chosen in a given case, to protect the employee in question.
- (5) This Act and Section 61b of the Labour Courts Act (Arbeitsgerichtsgesetz), as well as information concerning the departments competent to handle complaints pursuant to Section 13 shall be made known in the enterprise or public authority. This may be done by putting up a notice or displaying information leaflets in a suitable place or by using the information and communication channels normally used in the enterprise or authority.

Chapter 3 Employee Rights

Section 13

Right of Appeal

(1) Employees shall have the right to lodge a complaint with the competent department in the firm, company or authority when they feel discriminated against in connection with their employment relationship by their employer, superior, another employee or third party on any of the grounds referred to under Section 1. The complaint shall be examined and the complainant informed of the result of the examination.

(2) The rights of worker representatives shall remain unaffected.

Section 14

Right to Refuse Performance

Where the employer takes no or takes obviously unsuitable measures to stop the harassment or sexual harassment in the workplace, the affected employees shall have the right to refuse performance without loss of pay insofar as this is necessary for their protection. Section 273 of the German Civil Code (Bürgerliches Gesetzbuch) shall remain unaffected.

Section 15

Compensation and Damages

(1) In the event of a violation of the prohibition of discrimination, the employer shall be under the obligation to compensate the damage arising therefrom. This shall not apply where the employer is not responsible for the breach of duty.

(2) Where the damage arising does not constitute economic loss, the employee may demand appropriate compensation in money. This compensation shall not exceed three monthly salaries in the event of non-recruitment, if the employee would not have been recruited if the selection had been made without unequal treatment.

(3) The employer shall only be under the obligation to pay compensation where collective bargaining agreements have been entered into when he or she acted with intent or with gross negligence.

(4) Any claim resulting from Subsection (1) or (2) must be asserted in writing within a period of two months, unless the parties to a collective bargaining agreement have agreed otherwise. In the case of an application or promotion, the time limit shall commence on the date on which the rejection is received; in other cases of discrimination the time limit shall commence on the date on which the employee learns of the discrimination.

(5) This shall be without prejudice to other claims against the employer resulting from other legal provisions.

Any violation on the part of the employer of the prohibition of discrimination under Section 7(1) shall not justify a claim to the establishment of an employment relationship, a vocational training relationship or to promotion, unless such a relationship or promotion results from another legal ground.

Section 16

Prohibition of Victimisation

(1) The employer shall not be permitted to discriminate against employees who assert their rights under Part 2 or on account of their refusal to carry out instructions that constitute a violation of the provisions of Part 2. The same shall apply to persons who support the employee in this or who testify as a witness.

(2) The rejection or toleration of discriminatory conduct by an affected employee may not be used as the basis for a decision affecting that employee. Subsection (1) second sentence shall apply *mutatis mutandis*.

(3) Section 22 shall apply *mutatis mutandis*.

Chapter 4

Supplementary Provisions

Section 17

Social Responsibility of the Involved Parties

(1) The parties to collective bargaining agreements, employers, employees and their representatives shall be required to become actively involved in achieving the goal set out in Section 1 within the context of their duties and scope of action.

(2) Where the employer commits a gross violation of the provisions of Part 2 in an enterprise in which the conditions pursuant to Section 1(1) first sentence of the Works Constitution Act are present, the Works Council or a trade union represented in the enterprise may also assert before a court the rights set out in Section 23(3) first sentence Works Constitution Act if the preconditions therein are present; Section 23(3) second to fifth sentences of the Works Constitution Act shall apply *mutatis mutandis*. No claims of the person suffering discrimination shall be asserted in the application.

Section 18

Membership of Organisations

(1) The provisions set out in Part 2 shall apply, *mutatis mutandis*, to membership of or involvement in

1. a party to a collective bargaining agreement;
2. an organisation whose members belong to a specific occupational group or who have a dominating position of power in the economic or social sector if there is a basic interest in acquiring membership; as well as any associations thereof.

(2) Where a rejection constitutes a violation of the prohibition of discrimination under Section 7(1), this shall constitute the right to membership of or involvement in the organisations referred to under Subsection (1).

Part 3

Protection Against Discrimination Under Civil Law

Section 19

Prohibition of Discrimination Under Civil Law

(1) Any discrimination on the grounds of race or ethnic origin, sex, religion, disability, age or sexual orientation shall be illegal when founding, executing or terminating civil-law obligations which

1. typically arise without regard of person in a large number of cases under comparable conditions (bulk business) or where the regard of person is of subordinate significance on account of the obligation and the comparable conditions arise in a large number of cases ; or which
2. have as their object a private-law insurance.

(2) Any discrimination on the grounds of race or ethnic origin shall furthermore be illegal within the meaning of Section 2(1) Nos 5 to 8 when founding, executing or terminating other civil-law obligations.

(3) In the case of rental of housing, a difference of treatment shall not be deemed to be discrimination where they serve to create and maintain stable social structures regarding inhabitants and balanced settlement structures, as well as balanced economic, social and cultural conditions.

(4) The provisions set out in Part 3 shall not apply to obligations resulting from family law and the law of succession.

(5) The provisions set out in Part 3 shall not apply to civil-law obligations where the parties or their relatives are closely related or a relationship of trust exists. As regards tenancy, this may in particular be the case where the parties or their relatives use housing situated on the same plot of land. The rental of housing for not only temporary use shall generally not constitute business within the meaning of Subsection (1) No 1 where the lessor does not let out more than 40 apartments in total.

Section 20

Permissible Differences of Treatment

(1) Differences of treatment on grounds of religion, disability, age, sexual orientation or sex shall not be deemed to be a violation of the prohibition of discrimination if they are based on objective grounds. Such differences of treatment may include, among others, where the difference of treatment

1. serves the avoidance of threats, the prevention of damage or another purpose of a comparable nature;
2. satisfies the requirement of protection of privacy or personal safety;

3. grants special advantages and there is no interest in enforcing equal treatment;
4. is based on the concerned person's religion and is justified with regard to the exercise of the right to freedom of religion or the right to self-determination of religious communities, facilities affiliated to them (regardless of their legal form) and organisations which have undertaken conjointly to practice a religion or belief, given their respective ethos.

Costs arising from pregnancy and maternity may on no account lead to the payment of different premiums and benefits. Differences of treatment on the ground of religion, disability, age or sexual orientation in the case of application of Section 19(1) No 2 shall be permissible only where these are based on recognised principles of risk-adequate calculations, in particular on an assessment of risk based on actuarial calculations which are in turn based on statistical surveys.

Section 21

Enforcement

(1) Where a breach of the prohibition of discrimination occurs, the disadvantaged person may, regardless of further claims being asserted, demand that the discriminatory conduct be stopped. Where other discrimination is to be feared, he or she may sue for an injunction.

(2) Where a violation of the prohibition of discrimination occurs, the person responsible for committing the discrimination shall be obligated to compensate for any damage arising therefrom. This shall not apply where the person committing the discrimination is not responsible for the breach of duty. The person suffering discrimination may demand appropriate compensation in money for the damage, however not for economic loss.

(3) Claims in tort shall remain unaffected.

(4) The person responsible for committing the discrimination shall not be permitted to refer to an agreement which derogates from the prohibition of discrimination.

(5) Any claims arising from Subsections (1) and (2) must be asserted within a period of two months. After the expiry of the time limit the claim may only be asserted when the disadvantaged person was prevented from meeting the deadline through no fault of their own.

Part 4**Defence of Rights****Section 22****Burden of Proof**

Where, in case of conflict, one of the parties is able to establish facts from which it may be presumed that there has been discrimination on one of the grounds referred to in Section 1, it shall be for the other party to prove that there has been no breach of the provisions prohibiting discrimination.

Section 23**Support from Anti-Discrimination Organisations**

(1) “Anti-discrimination organisation” shall refer to any association of persons which attends to the particular interests of persons or groups of persons discriminated against within the meaning of Section 1; in accordance with their statutes these organisations must operate on a non-profit and non-temporary basis. The powers set out in Subsections (2) to (4) shall be granted to such organisations with at least 75 members or an association comprising at least seven organisations.

(2) Anti-discrimination organisations shall be authorised, under the terms of their statutes to act as legal advisor to a disadvantaged person in the court hearings. Otherwise, the provisions set out in the rules of procedure, in particular those according to which legal advisors may be barred from being heard, shall remain unaffected.

(3) Anti-discrimination organisations shall be permitted to be entrusted with the legal affairs of disadvantaged persons under the terms of their statutes.

(4) The special rights of action and powers of representation of associations for the benefit of disabled persons shall remain unaffected.

Part 5**Special Regulations Applying to Public-Law Employment Relationships****Section 24****Special Regulation Applying to Public-Law Employment Relationships**

The provisions of this Act shall apply, mutatis mutandis, taking into consideration their special legal relationship, to

1. civil servants of the Federal Administration, the Länder, local authorities, local authority associations, as well as other public-law bodies, institutions and foundations under the jurisdiction of the Federal Administration or one of the Länder;
2. judges of the Federal Administration and the Länder;
3. persons undertaking alternative military service (Zivildienstleistende) and recognised conscientious objectors, insofar as they are required to undertake alternative military service.

Part 6**Anti-Discrimination Agency****Section 25****Federal Anti-Discrimination Agency**

(1) The federal agency for the protection against discrimination on any of the grounds referred to in Section 1 (Federal Anti-Discrimination Agency) shall be established within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, regardless of the competence of any Parliamentary Commissioners of the German Bundestag or Federal Government Commissioners.

(2) The Federal Anti-Discrimination Agency shall be provided with the personnel and materials required to fulfil its tasks. It shall be identified as a separate chapter in the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth's individual plan.

Section 26**Legal Status of the Head of the Federal Anti-Discrimination Agency**

(1) The Federal Minister for Family Affairs, Senior Citizens, Women and Youth shall appoint a person to head the Federal Anti-Discrimination Agency, based on a suggestion put forward by the Federal Government. In accordance with this Act, the relationship between the Agency and the Federal Administration shall be that of an official public-law relationship (öffentlich-rechtliches Amtsverhältnis). The Agency shall be independent in the execution of its duties and only subject to the law.

(2) The official relationship under public law shall commence upon the handing over of the certificate of appointment by the Federal Minister for Family Affairs, Senior Citizens, Women and Youth.

(3) The official relationship under public law shall end, unless by death,

1. with the assembly of a new Bundestag;
2. with the end of the period of office upon the incumbent reaching the age limit set out in Section 51 para 1 and 2 of the Federal Civil Servants Act, (Bundesbeamtengesetz);
3. upon the incumbent being discharged. The Federal Minister for Family Affairs, Senior Citizens, Women and Youth shall discharge the head of the Federal Anti-Discrimination Agency upon his or her request or when grounds arise which, in the case of a judge appointed for life, would give rise to discharge from duty. In the event of the termination of the official relationship under public law, the head of the Federal Anti-Discrimination Agency shall receive a certificate executed by the Federal Minister for Family Affairs, Senior Citizens, Women and Youth. The discharge shall become effective upon the handing over of the certificate.

(4) The legal relationship between the head of the Federal Anti-Discrimination Agency and the Federal Administration shall be regulated by contract with the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The contract shall require the consent of the Federal Government.

Where a federal civil servant is appointed head of the Federal Anti-Discrimination Agency, he or she shall retire from his or her previous office at the same time as the official relationship under public law commences. For the period of the official relationship under public law, the rights and duties associated with being a civil servant shall be suspended, with the exception of the duty to official secrecy and the prohibition of accepting rewards or gifts. Where civil servants are injured in an accident, their legal right to claim treatment and compensation shall remain unaffected.

Section 27

Tasks

(1) Any person who believes he or she has been discriminated against on any of the grounds referred to in Section 1 may take their case to the Federal Anti-Discrimination Agency.

(2) The Federal Anti-Discrimination Agency shall give independent assistance to persons addressing themselves to the Agency in accordance with Subsection (1) in asserting their rights to protection against discrimination. Such assistance may, among other things, involve

1. providing information concerning claims and possible legal action based on legal provisions providing protection against discrimination;
2. arranging for advice to be provided by another authority;
3. endeavouring to achieve an out-of-court settlement between the involved parties.

Where responsibility lies either with a Parliamentary Commissioner of the German Bundestag or a Federal Government Commissioner, the Federal Anti-Discrimination Agency shall immediately pass on the matters of the person referred to in Subsection (1), with their prior approval.

(3) The Federal Anti-Discrimination Agency shall take on and independently carry out the following tasks, insofar as no Parliamentary Commissioner of the Bundestag or Federal Government Commissioner is competent in the matter:

1. publicity work;
2. measures to prevent discrimination on any of the grounds referred to in Section 1;
3. academic studies into such discrimination.

(4) The Federal Anti-Discrimination Agency and the competent Federal Government Commissioner and Parliamentary Commissioner of the German Bundestag shall jointly submit reports to the German Bundestag every four years concerning cases of discrimination on any of the grounds referred to in Section 1 and shall make recommendations regarding the elimination and the prevention of such discrimination. They may jointly carry out academic studies into such discrimination.

(5) The Federal Anti-Discrimination Agency and the competent Federal Government Commissioner and Parliamentary Commissioner of the German Bundestag shall co-operate in cases of discrimination on several of the grounds referred to in Section 1.

Section 28

Authority

(1) In cases in accordance with Section 27(2) second sentence, No 3, the Federal Anti-Discrimination Agency may request the involved parties to make submissions, insofar as the person who has turned to the Agency in accordance with Section 27(1) has consented thereto.

(2) All federal authorities and other federal public offices shall be under the obligation to assist the Federal Anti-Discrimination Agency in carrying out its tasks, in particular to supply the necessary information. The provisions regarding the protection of personal data shall remain unaffected.

Section 29

Co-operation with Non-Governmental Organisations and Other Institutions

The Federal Anti-Discrimination Agency shall involve in an appropriate manner non-governmental organisations and institutions active in the field of the protection against discrimination on any of the grounds referred to in Section 1 at European, Federal, Länder and regional level.

Section 30

Advisory Council

(1) The Federal Anti-Discrimination Agency shall be assigned an Advisory Council for the purposes of promoting dialogue with social groups and organisations whose goal is the protection against discrimination on any of the grounds referred to in Section 1. The Advisory Council shall advise the Federal Anti-Discrimination Agency as regards the submission of reports and recommendations to the German Bundestag in accordance with Section 27(4) and may put forward its own suggestions to that end and with regard to academic studies in accordance with Section 27(3) No 3.

(2) The Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall, in agreement with the head of the Federal Anti-Discrimination Agency as well the competent Federal Government Commissioner or Parliamentary Commissioner of the German Bundestag, appoint the members of this Advisory Council and a deputy for each member. The Advisory Council shall comprise representatives of social groups and organisations, as well as experts on issues concerning discrimination. The Advisory Council shall not exceed a total membership of 10 persons. The Advisory Council shall be made up of equal numbers of men and women.

(3) The Advisory Council shall adopt its own rules of procedure, which shall require the consent of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

(4) The members of the Advisory Council shall perform their duties in accordance with this Act on a voluntary basis. They shall have the right to claim expenses, travel costs, a per diem allowance and hotel expenses. The rules of procedure shall contain further details on these matters.

Part 7**Concluding Provisions****Section 31****Prohibition of Changing Any Provisions**

No agreement derogating from the provision of this Act may be made to the disadvantage of the persons protected thereby.

Section 32**Final Provision**

General legal provisions shall apply unless this Act provides otherwise.

Section 33**Transitional Provisions**

- (1) As regards discrimination in accordance with Sections 611a, 611b and 612(3) of the German Civil Code or sexual harassment pursuant to the Employee Protection Act (Act on the Protection of Employees from Sexual Harassment in the Workplace, *Beschäftigtenschutzgesetz*), the law applicable prior to 18 August 2006 shall find application.
- (2) As regards discrimination on the grounds of race or ethnic origin, Sections 19 to 21 shall not apply to relationships under the law of obligations entered into prior to 18 August 2006. The first sentence shall not apply to subsequent changes to continuous obligations.
- (3) As regards discrimination on the grounds of sex, religion, disability, age or sexual orientation, Sections 19 to 21 shall not apply to relationships under the law of obligations entered into prior to 1 December 2006. The first sentence shall not apply to subsequent changes to continuous obligations.
- (4) As regards relationships under the law of obligations whose object is a private-law insurance, Section 19(1) shall not apply where these were entered into prior to 22 December 2007. The first sentence shall not apply to subsequent changes to such obligations.
- (5) As regards insurance relationships established before 21 December 2012, different treatment in regard to premiums and benefits on the ground of gender in the case of application of Section 19(1) No 2 shall be permissible only where gender is a determining factor when assessing risk based on relevant and precise actuarial and statistical data. Costs arising from pregnancy and maternity may on no account lead to payment of different premiums and benefits.

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