



Permanent Mission  
of the Federal Republic of Germany  
to the Office of the United Nations and  
to the other International Organizations  
Geneva



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### Note Verbale

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva presents its compliments to the Office of the High Commissioner for Human Rights and has the honour to submit herewith the observations by the Federal Republic of Germany in reply to the communication of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (AL DEU 1/2020), dated 27 April 2020.

The Permanent Mission of the Federal Republic of Germany to the Office of the United Nations and to the other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 6 October 2020



To the  
Office of the High Commissioner for Human Rights  
Palais Wilson  
Geneva

**Response by the Federal Republic of Germany to the communication of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context (AL DEU 1/2020):**

The Government of the Federal Republic of Germany herewith provides, as requested by the Special Rapporteur, the following observations.

Modernising the housing stock – particularly in terms of improved energy efficiency, with an eye to achieving climate change targets – is of great importance to the Federal Government. Section 555d of the Civil Code (*Bürgerliches Gesetzbuch*, BGB) therefore provides that lessees are in principle to tolerate modernisation measures

1. by means of which final energy is saved with lasting effect in relation to the leased property,
2. by means of which non-renewable primary energy is saved with lasting effect or the climate is protected with lasting effect,
3. by means of which water consumption is reduced with lasting effect,
4. by means of which the utility value of the leased property is increased with lasting effect,
5. by means of which the general living conditions are permanently improved,
6. which are carried out due to circumstances for which the lessor is not responsible, and which do not constitute structural maintenance measures, or
7. by means of which new residential space is created.

In order that lessors have an incentive to modernise their property, they may, pursuant to section 559 of the Civil Code, increase the annual rent by a percentage of the costs spent on the dwelling if they have carried out modernisation measures within the meaning of numbers 1, 3, 4, 5 or 6 above. However, a rent increase is ruled out where, also taking account of the likely future operating costs, it would signify a hardship for the lessee which cannot be justified, even taking account of the legitimate interests of the lessor (section 559 (4) of the Civil Code). No such consideration shall take place if the property was merely restored to a generally customary condition or if the modernisation measure was carried out as a result of circumstances for which the lessor was not responsible.

Despite this hardship provision, the rules on rent increases following modernisation in force until 31 December 2018 led in some instances to unacceptable burdens for some lessees and therefore prompted them to make use of their special right of termination on receipt of the modernisation notice (section 555e of the Civil Code). The reason was that – in particular – the extent of modernisation measures had in practice increased greatly. This meant that in many cases the absolute amount of the rent increase following modernisation rose substantially.

The Act adapting tenancy law (*Mietrechtanpassungsgesetz*) of 18 December 2018 (Federal Law Gazette I p. 2648) therefore reduced the rate at which the costs of modernisation can be added to the annual rent from eleven percent to eight percent. In addition, section 559 (3a) of the Civil Code introduced a cap on rent increases following modernisation. It states that the monthly rent may only rise by a maximum of three euro per square metre of floor space within six years. If the monthly rent

prior to the rent increase is less than seven euro per square metre, it may only rise by a maximum of two euro per square metre. Moreover, a provision was added to the 1954 Economic Offences Act (*Wirtschaftsstrafgesetz*) stating that abusive modernisation designed to make lessees end their leases can in future be punished as an administrative offence by a fine of up to one hundred thousand euro. Legal presumptions for violations of duty in connection with constructional changes were introduced in section 559d of the Civil Code; these impact in particular if the lessor is instrumentalising the announcement or implementation of a modernisation measure in order to make the lessee end the tenancy.

The Act adapting tenancy law entered into force on 1 January 2019. The Federal Government has not been made aware of any cases of the abusive modernisation of residential accommodation since then.

At the Housing Summit on 21 September 2018, the Federation, Länder and municipalities took key steps for more affordable housing and agreed on an unprecedented package of measures in the Joint Federal, State and Local Government Housing Strategy. This covers not only investment impetus for housing construction and measures to ensure affordability but also the reduction of construction costs and the development of a skilled labour force. Two years on, we can say that the implementation of the Joint Housing Strategy has been extremely successful, because all key decisions of the Housing Summit have been realised or set in motion.

With building-related child benefit, we are helping families to buy or build owner-occupied housing. KfW has already received around 250,600 applications with a volume of over five billion. We have strengthened social housing with an amendment to the Basic Law. From 2020, the Federation is granting the Länder earmarked financial assistance. From 2018 to 2021, the Federation is making available a total of five billion euro for social housing. In addition, in 2020 we have again kept urban development assistance at the high level of 790 million euro.

At the same time, the aim must be to ensure that housing is affordable. In an unprecedented move, we have already improved housing benefit twice during this legislative term. From 2022, housing benefit is to be brought into line with changes in rents and incomes at two-year intervals. We have also further developed the framework of tenancy law, for example by extending the reference period for the local rent comparison index from four to six years and extending the rent control mechanism to 2025.

The fundamental prerequisite for affordable housing is affordable building land. Measures to mobilise building land are therefore a very high priority. Working from the recommendations of the commission of experts on “sustainable mobilisation of building land and land policy”, we are revising the Federal Building Code to include various provisions that will help the municipalities to mobilise more land for housing construction more quickly.

Construction, too, must be affordable, if housing is to be affordable. In response to the Housing Summit and the report on the implementation of the recommendations of the commission for building cost reduction, we therefore defined a package of measures to limit building costs. In this context we are committed to serial and modular construction, the opportunities offered by digitisation, restricting the follow-up costs of standardisation, and the development of a skilled labour force.